

**WSR 18-05-007**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Podiatric Medical Board)  
[Filed February 7, 2018, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-094.

Title of Rule and Other Identifying Information: WAC 246-922-010 (podiatric physicians) Definitions, 246-922-240 Soliciting patients, and 246-922-120 General provisions. The podiatric medical board (board) is proposing to amend WAC 246-922-010 and 246-922-240 for clarity and necessary housekeeping purposes and is proposing to repeal WAC 246-922-120 to eliminate redundant information.

Hearing Location(s): On April 12, 2018, at 9:30 a.m., at the Department of Health, Creekside 2 at Center Point, Suite 310, Room 307, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: April 12, 2018.

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 5, 2018.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, TTY 360-833-6388 or 711, email [susan.gragg@doh.wa.gov](mailto:susan.gragg@doh.wa.gov), by April 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to two sections and repealing one section to establish clearer and relevant rules for podiatric physicians. The proposal (1) removes outdated definitions in WAC 246-922-010; (2) moves relevant definitions from WAC 246-922-120 to 246-922-010; (3) repeals WAC 246-922-120 and the remaining irrelevant language; and (4) adds the applicable statutory reference to WAC 246-922-240. It is anticipated the effects of the proposal will be clearer practice standards and expectations established for licensees in rule.

Reasons Supporting Proposal: RCW 43.70.041 was passed by the legislature in 2013 requiring the department of health to perform periodic rule review. The objective of the statute is to simplify and streamline the process for permitting, licensing, and regulation. The proposal meets the statute's intent of simplifying regulations under the board's authority by streamlining and repealing outdated and redundant rule sections, as well as ensuring these rules contain clearer information for podiatric physicians.

Statutory Authority for Adoption: RCW 18.22.015.

Statute Being Implemented: Chapter 18.22 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv)

exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

February 7, 2018  
Blake T. Maresh  
Executive Director

AMENDATORY SECTION (Amending WSR 99-14-074, filed 7/6/99, effective 8/6/99)

**WAC 246-922-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ~~((Chiroprody,))~~ Podiatry((;)) and podiatric medicine and surgery ~~((shall be))~~ are synonymous.

(2) "Board" ~~((shall))~~ means the Washington state podiatric medical board.

(3) ~~(("Secretary" shall mean the secretary of the department of health.~~

(4) ~~"Supervision" shall mean that a licensed podiatric physician and surgeon whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized and directed the procedures to be performed. A podiatric physician and surgeon shall be physically present in the treatment facility while the procedures are performed.~~

(5) ~~"Treatment facility" means a podiatric medical office or connecting suite of offices, podiatric medical clinic, room or area with equipment to provide podiatric medical treatment, or the immediately adjacent rooms or areas. A treatment facility does not extend to any other area of a building in which the treatment facility is located.~~

(6) ~~"Unlicensed person" means a person who is not a podiatric physician and surgeon duly licensed pursuant to the provisions of chapter 18.22 RCW.~~

~~((7))~~ "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(4) "Mentally or physically disabled podiatric physician and surgeon" means a podiatric physician and surgeon who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice podiatric medicine and surgery with reasonable skill and safety to patients by reason of any mental or physical condition.

(5) "Nursing home" has the same meaning as that in RCW 18.51.010(3).

(6) Orthotic devices defined:

(a) Prefabricated or off-the-shelf orthotics, are devices that are manufactured as commercially available stock items for no specific patient. It is appropriate to dispense prefabricated orthotic devices for some conditions.

(b) Direct-formed orthotics are devices formed or shaped during the molding process directly on the patient's foot.

(c) Custom-fabricated orthotics, also known as custom-made orthotics, are devices designed and fabricated, in turn,

from raw materials for a specific patient, and require the generation of an image, form, or mold that replicates the patient's foot, and, in turn, involves the rectification of dimensions, contours, and volumes to achieve proper fit, comfort, and function for that specific patient.

~~((Prefabricated orthotic devices that have been adjusted or modified may not be dispensed and sold to consumers as custom fabricated or custom made orthotics. All orthotic devices must be correctly represented and charged to the patient.))~~ (7) "Podiatric physician and surgeon" means a person licensed pursuant to chapter 18.22 RCW.

(8) "Secretary" means the secretary of the department of health.

(9) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 91-10-041, filed 4/25/91, effective 5/26/91)

**WAC 246-922-240 Soliciting patients.** In accordance with chapter 19.68 RCW, a podiatric physician and surgeon shall not participate in the division of fees or agree to split or divide fees received for podiatric medical services with any person for bringing or referring patients.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-922-120 General provisions.

**WSR 18-05-008**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Naturopathy)  
[Filed February 7, 2018, 4:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-094.

Title of Rule and Other Identifying Information: WAC 246-836-330, 246-836-340, 246-836-350, 246-836-360, 246-836-370, 246-836-380 and 246-836-390, the board of naturopathy (board) is proposing to amend WAC 246-836-330 and repeal the other six rule sections to address redundancies regarding mandatory reporting.

Hearing Location(s): On May 18, 2018, at 9:00 a.m., at the Department of Health, Creekside 2 at Center Point, Suite 310, Room 307, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: May 18, 2018.

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by May 11, 2018.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, TTY 360-833-6388 or 711, email [susan.gragg@doh.wa.gov](mailto:susan.gragg@doh.wa.gov), by February 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board reviewed existing rules in accordance with RCW 43.70.041 that requires the department of health, along with other boards and commissions, to perform a review of existing rules every five years. As a result of their review, the board is proposing to amend one rule section and repeal six rule sections to address redundancies between existing statute and rules regarding mandatory reporting that pertain to all health professions.

Reasons Supporting Proposal: RCW 43.70.041 was passed by the legislature in 2013 requiring the department of health to perform periodic rule review. This followed an earlier executive order (EO 06-02) for regulatory improvement - Improve, Simplify, and Assist. The objective of the statute and EO is to simplify and streamline the process for permitting, licensing, and regulation. The proposal meets the statutes' and EO's intent of simplifying regulations under the board's authority by repealing rule sections no longer needed.

Statutory Authority for Adoption: RCW 18.36A.160.

Statute Being Implemented: Chapter 18.36A RCW and RCW 43.70.041.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state board of naturopathy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

February 7, 2018

Blake T. Maresh  
Executive Director

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

**WAC 246-836-330 Mandatory reporting.** ~~(((1)) All reports required by this chapter shall be submitted to the board as soon as possible, but no later than twenty days after a determination is made.~~

~~(2) A report should contain the following information if known:~~

~~(a) The name, address, and telephone number of the person making the report.~~

~~(b) The name and address and telephone numbers of the naturopath being reported.~~

~~(c) The case number of any patient whose treatment is a subject of the report.~~

~~(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.~~

~~(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.~~

~~(f) Any further information which would aid in the evaluation of the report.~~

~~(3) Mandatory reports shall be exempt from public inspection and copying to the extent permitted under RCW 42.17.310 or to the extent that public inspection or copying of the report or any portion of the report would invade or violate a person's right to privacy as set forth in RCW 42.17.255.~~

~~(4) A person is immune from civil liability, whether direct or derivative, for providing information to the board pursuant to RCW 18.130.070-)) Any person including, but not limited to, a naturopathic physician, health care facility, or governmental agency shall always report in compliance with the uniform mandatory reporting rules found in WAC 246-16-200 through 246-16-270.~~

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 246-836-340 Health care institutions.
- WAC 246-836-350 Naturopathic associations or societies.
- WAC 246-836-360 Health care service contractors and disability insurance carriers.
- WAC 246-836-370 Professional liability carriers.
- WAC 246-836-380 Courts.
- WAC 246-836-390 State and federal agencies.

**WSR 18-05-015**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**  
 [Filed February 8, 2018, 11:25 a.m.]

Original Notice.

**AMENDATORY SECTION** (Amending WSR 14-03-055, filed 1/13/14, effective 2/13/14)

**WAC 260-84-060 Penalty matrixes.** (1) Unless provided for elsewhere, the imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace or improper conduct WAC 260-36-120 or 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 or 260-36-260	\$100	\$200	\$300

Preproposal statement of inquiry was filed as WSR 15-21-023.

Title of Rule and Other Identifying Information: Chapter 260-84 WAC, Penalties.

Hearing Location(s): On April 13, 2018, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: April 13, 2018.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-459-6461, by April 6, 2018.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, TTY 360-459-6462, email patty.brown@whrc.state.wa.us, by April 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Removes references to incorrect and repealed WAC. Adds penalty for adopted cobalt restrictions. Updates NSAID penalties to reflect amended threshold levels.

Reasons Supporting Proposal: Updates were needed to reflect current standards and amended WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

February 8, 2018  
 Douglas L. Moore  
 Executive Secretary

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150 and 260-44-080	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$500 and/or suspension (riding days)	Suspension (riding days)	
Rider's misuse of crop WAC 260-52-045	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$200	\$200 to \$300	\$200 to \$500
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Trainer failure to report proper identity of horses in their care WAC 260-28-295	\$50	\$100	\$200
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 or 260-36-260	\$50	\$100	\$150

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$25	\$50	\$100
Failure of jockey to report correct weight WAC 260-32-150	\$25	\$50	\$100
Failure of jockey to appear for films WAC 260-24-510	\$25	\$50	\$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$500 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$100 to \$500 and/or suspension (riding days)		
Rider's misuse of crop WAC 260-52-045	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$50	\$100 to \$200	\$200 to \$300
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$100
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$25	\$50	\$100
Failure to obtain permission for equipment change WAC 260-44-010	\$25	\$50	\$100
Failure to report performance records WAC 260-40-100	Warning to \$25	\$50	\$100
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$50	\$100	\$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$50	\$100	\$200
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning	\$50	\$50 - subsequent offenses \$50 plus possible suspensions
Use of improper, profane, or indecent language WAC 260-80-130	Warning to \$200	\$200 to \$300	\$300 to \$500
Failure to complete temporary license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-36-250	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - Licensing WAC 260-36-080	License canceled		
Failure to divulge a pending felony charge or a felony conviction WAC 260-36-050 and 260-36-120	\$100 to \$250		
False information or failure to provide accurate and complete information on application WAC 260-36-050 or 260-36-120	Warning to \$250		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a).

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the pari-mutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, ((260-84-100,)) 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a referral will not preclude commission action in any matter. An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

**AMENDATORY SECTION** (Amending WSR 15-07-058, filed 3/16/15, effective 4/16/15)

**WAC 260-84-110 Penalties for uniform classifications.** (1) Penalties will be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty-five days for Category "B," "C," and "D" penalties from Washington and all recognized racing jurisdictions will be considered. For Category "A" penalties, lifetime violations in Washington and all recognized racing jurisdictions will be considered.

(a) The following are recommended penalties for violations of a drug carrying a Category "A" penalty:

First Offense	Second Offense	Third Offense
Up to a one-year suspension and up to a fine of \$1500 absent mitigating circumstances. DQ and loss of purse.	One-year suspension and up to a fine of \$2500 absent mitigating circumstances. DQ and loss of purse. Referred to	Revocation of license and a fine of \$2500 absent mitigating circumstances. DQ and loss of purse.

First Offense	Second Offense	Third Offense
	commission for additional consideration.	

(b) The following are recommended penalties for violations of a drug carrying a Category "B" penalty:

First Offense	Second Offense (365-day period)	Third Offense (365-day period)
Zero to a fifteen-day suspension and up to \$500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.	Up to a thirty-day suspension and up to \$1000 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.	Minimum sixty-day suspension and up to \$2500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.

(c) The following are recommended penalties for violations of a drug carrying a Category "C" penalty, overages for permitted NSAIDs,(except phenylbutazone), and no furose-mide when reported:

First Offense	Second Offense (365-day period)	Third Offense (365-day period)
Minimum written warning to maximum \$500 fine.	Minimum written warning to maximum \$750 fine.	Minimum \$500 fine to maximum \$1000 fine. Possible DQ and loss of purse.

(d) The recommended penalty for a violation involving a drug that carries a Category "D" penalty is a written warning. Multiple violations may result in fines and/or suspensions.

(e) The recommended penalty for a finding of an overage of cobalt:

<u>Levels between 26 ppb to 49 ppb</u>	<u>Level 50 ppb or greater</u> <u>First Offense</u> <u>(365-day period)</u>	<u>Level over 50 ppb or greater</u> <u>Second Offense</u> <u>(365-day period)</u>
<u>Horse placed on official veterinarian list until providing a sample under 26 ppb</u>	<u>Zero to a fifteen-day suspension and up to \$500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.</u>	<u>Up to a thirty-day suspension and up to \$1000 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.</u>

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC 260-84-090 exist.

AMENDATORY SECTION (Amending WSR 15-07-058, filed 3/16/15, effective 4/16/15)

**WAC 260-84-120 Penalties relating to multiple NSAIDs and phenylbutazone.** (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed \$300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed \$750;

(c) For a third offense within a three hundred sixty-five day period - Fine not to exceed \$1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties will be assessed:

~~((a) For overnight and nongraded stakes races:))~~

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
<del>((&gt;5.0 but &lt;6.5 mcg/ml)) &gt; 2.0 but &lt; 3.5 mcg/ml</del>	Warning	Fine not to exceed \$300	Fine not to exceed \$500
<del>((&gt;6.5 but &lt;10.0 mcg/ml)) &gt; 3.5 but &lt; 7.0 mcg/ml</del>	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000
<del>((&gt;10.0 mcg/ml)) &gt; 7.0 mcg/ml</del>	Fine not to exceed \$500	Fine not to exceed \$1000	Fine not to exceed \$2500 and possible suspension

~~((b) For graded stakes races:))~~

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
>2.0 but < 4.9 mcg/ml	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000 and 7-day suspension
> 5.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000 and 7-day suspension	Fine not to exceed \$2500 and 15-day suspension))

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may include additional fines and/or suspension or revocation.

(5) In assessing penalties for equine medication, prior offenses will count regardless of whether the violation(s) occurred in Washington or another recognized racing jurisdiction, and regardless of the prior concentration level.

Hearing Location(s): On March 29, 2018, at 10:30, at the Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98511.

Date of Intended Adoption: April 16, 2018.

Submit Written Comments to: Peter Beaton, Washington State Department of Health, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by March 29, 2018.

Assistance for Persons with Disabilities: Contact Theresa McGuire, phone 360-236-3301, TTY 360-833-6388 or 711, email [Theresa.McGuire@doh.wa.gov](mailto:Theresa.McGuire@doh.wa.gov), by March 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to equitably assess the costs of commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck and ensure toxic shellfish do not reach the public.

Reasons Supporting Proposal: The proposed geoduck PSP fee redistribution is based on the 2017 total cost of service for the harvesters that submitted geoduck tests and the number of tests done for each harvester.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

Rule is not necessitated by federal law, federal or state court decision.

**WSR 18-05-046**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed February 14, 2018, 9:58 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-282-990(5), sanitary control of shellfish, fees, annual paralytic shellfish poisoning testing fee redistribution.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Darin Klein, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3341.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

February 14, 2018  
Clark Halvorson  
Assistant Secretary

**AMENDATORY SECTION** (Amending WSR 17-06-062, filed 2/28/17, effective 3/31/17)

**WAC 246-282-990 Fees.** (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(3) The fee for each export certificate is \$55.00.

(4) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		
Shucker-Packer	≤ 2	\$752
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,076
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$882
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,297
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	N/A	\$2,412
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1st of each year for companies licensed as harvesters; or
- (iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
Department of Natural Resources	NA	<del>\$(40,163))</del> <u>11,725</u>
Jamestown S'Klallam Tribe	WA-0588-SS	<del>\$(2,278))</del> <u>2,189</u>
Lower Elwha Klallam Tribe	WA-0587-HA	<del>\$(4,556))</del> <u>2,970</u>
Lummi Indian Business Council	WA-0098-SS	<del>\$(350))</del> <u>313</u>
Nisqually Indian Tribe	WA-1268-HA	<del>\$(350))</del> <u>313</u>

Harvester	Cert #	Fee
Port Gamble S'Klallam Tribe	WA-0859-HA	\$(( <del>2,278</del> )) <u>2,658</u>
Puyallup Tribe of Indians	WA-1137-HA	\$(( <del>6,483</del> )) <u>9,693</u>
Skokomish Indian Tribe	WA-0577-HA	\$(( <del>475</del> )) <u>156</u>
Squaxin Island Tribe	WA-0737-HA	\$(( <del>475</del> )) <u>156</u>
Suquamish Tribe	WA-0694-SS	\$(( <del>18,924</del> )) <u>18,135</u>
<del>(Swinomish Indian Tribal Community)</del>	WA-1420-SS	\$ <del>(1,227)</del>
The Tulalip Tribes	WA-0997-HA	\$(( <del>8,060</del> )) <u>4,846</u>
Taylor Shellfish Company, Inc.	WA-0046-SP	\$(( <del>2,979</del> )) <u>4,846</u>

(6) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(7) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 18-05-047**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Podiatric Medical Board)  
[Filed February 14, 2018, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-12-027.

Title of Rule and Other Identifying Information: WAC 246-922-036 (podiatric physicians) Temporary practice permit—Military spouse and state-registered domestic partner eligibility and issuance. The podiatric medical board (board) is proposing to add a new section that provides for temporary practice permits to be issued to military spouses or state-registered domestic partners who hold an out-of-state credential as a podiatric physician.

Hearing Location(s): On April 12, 2018, at 9:30 a.m., at the Department of Health, Creekside 2 at Center Point, Suite 310, Room 307, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: April 12, 2018.

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 5, 2018.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, TTY 360-833-6388 or 711, email [susan.gragg@doh.wa.gov](mailto:susan.gragg@doh.wa.gov), by April 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing to add a new section to chapter 246-922 WAC to

establish the process and criteria for applicants who are military spouses or state-registered domestic partners to obtain temporary practice permits as podiatric physicians. The proposed rule adopts secretary rules by reference and implements chapter 18.340 RCW regarding military spouses who move to the state of Washington due to the transfer of the military person, and where the applicant must complete specific additional licensing requirements in Washington state. The applicant must be credentialed in another state with substantially equivalent standards and meet other specific criteria.

Reasons Supporting Proposal: The proposed rule is necessary to establish a process and criteria in order to expedite the credentialing process for an applicant to receive a temporary practice permit. The temporary practice permit will allow approved applicants who are military spouses or state registered domestic partners to practice in the full scope of their profession for up to one hundred eighty days pending issuance of permanent credentials. The rule also complies with chapter 18.340 RCW.

Statutory Authority for Adoption: RCW 18.22.015 and 18.340.020.

Statute Being Implemented: Chapter 18.340 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

February 14, 2018  
Blake T. Maresh  
Executive Director

NEW SECTION

**WAC 246-922-036 Temporary practice permit—Military spouse eligibility and issuance.** A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for podiatric physicians and surgeons. The board adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

**WSR 18-05-054****PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed February 15, 2018, 7:50 a.m.]

Continuance of WSR 18-01-061.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Repeal of chapter 16-555 WAC, Washington strawberry commission.

Date of Intended Adoption: March 12, 2018.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, email [tnorman@agr.wa.gov](mailto:tnorman@agr.wa.gov), fax 360-902-2092, by March 1, 2018.

Assistance for Persons with Disabilities: Contact TTY 711.

Statutory Authority for Adoption: RCW 15.65.183 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington strawberry commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Teresa Norman, Olympia, Washington, 360-902-2043.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington strawberry commission are not named agencies under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

February 15, 2018  
Patrick Capper  
Deputy Director

**WSR 18-05-059****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed February 15, 2018, 2:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-103.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits? and 388-418-0005 How will I know what changes to report?

Hearing Location(s): On March 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS), Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies--assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than March 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., March 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by March 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-450-0162 and 388-418-0005 to repeal means testing for income eligibility for child-only temporary assistance for needy families assistance units per the 2017-2019 operating budget and 2ESSB 5890 (chapter 20, Laws of 2017) effective July 1, 2018.

Reasons Supporting Proposal: Current language in WAC 388-418-0005 How will I know what changes to report? and 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits?, reflects the use of means testing to determine income eligibility for child-only temporary assistance for needy families assistance units. This language needs to be amended to reflect the repeal of means testing for income eligibility for child-only temporary assistance for needy families assistance units per the 2017-2019 operating budget and 2ESSB 5890 (chapter 20, Laws of 2017).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010, 74.08A.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5470, 360-522-2214.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025.

Explanation of exemptions: RCW 34.05.328 (5)(b)(vii).

February 13, 2018

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-09-036, filed 4/9/15, effective 5/10/15)

**WAC 388-418-0005 How will I know what changes to report?** (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(a) If you receive **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than four thousand dollars; or

(v) You have a change in employment~~(-)~~, you need to tell us if ~~(you)~~:

(A) You get a job or change employers;

(B) ~~((Change))~~ Your schedule changes from part-time to full-time or full-time to part-time;

(C) You have a change in your hourly wage rate or salary; or

(D) You stop working~~((-or-))~~.

(b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) Anyone related to ~~((you or to))~~ the child you are caring for moves into or out of the home;

(iv) ~~((There is a change in the earned or unearned income of anyone in your child-only means testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).~~

~~((v))~~ There is a change in the recipient child's earned or unearned income ~~((see))~~ unless they are in school full-time

as described in WAC 388-450-0070 ~~((for how we count the earned income of a child))~~;

~~((vi))~~ (v) The recipient child has liquid resources more than four thousand dollars;

~~((vii))~~ (vi) A recipient child in the home becomes a foster child; or

~~((viii))~~ (vii) You legally adopt the recipient child.

(2) If you do not receive cash assistance but you do receive benefits from basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, and tell us if:

(a) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

(b) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.

AMENDATORY SECTION (Amending WSR 14-20-042, filed 9/24/14, effective 11/1/14)

**WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits?** (1) Countable income is all income your assistance unit (AU) ~~((or your child-only means testing AU))~~ has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170, 388-450-0177, and 388-450-0178;

~~((For child-only means testing AUs only, the department will disregard fifty percent of all countable unearned income, in addition to the deductions in WAC 388-450-0170;~~

~~((d))~~ For **basic food**, deductions allowed under WAC 388-450-0185; and

~~((e))~~ (d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

~~((3) Starting November 1, 2011, we may apply child-only means testing to determine eligibility and your payment standard amount.)~~

~~((a) ((Child-only means testing applies when you are a nonparental relative or unrelated caregiver applying for or receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.~~

~~((b) For the purposes of child-only means testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means testing AU.~~

~~(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.~~

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

~~((d))~~ If the children in your care qualify for a TANF/SFA grant (~~once the child-only means test is applied~~), the child's income is budgeted against the child-only (~~means-tested~~) payment standard amount.

~~((e))~~ ~~(b)~~ If the children in your care do not qualify for a TANF/SFA grant, they may still qualify for medical assistance (~~For Washington apple health coverage (medical assistance), go to Washington healthplanfinder to apply or see~~) under WAC 182-505-0210 (~~for information regarding eligibility for children for Washington apple health~~).

~~((4))~~ ~~(3)~~ For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 (~~or, for child-only means-tested cases~~) to the payment standard amount in subsection (3) of this section.

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

~~((5))~~ ~~(4)~~ For **basic food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for basic food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for basic food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for basic food.

(b) How we calculate your AU's monthly basic food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

**WSR 18-05-060**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)  
 [Filed February 15, 2018, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-034.

Title of Rule and Other Identifying Information: The department is proposing to repeal chapter 388-60 WAC, Domestic violence perpetrator treatment program standards, and create sections in new chapter 388-60A WAC, Domestic violence intervention program standards.

Hearing Location(s): On April 24, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than April 25, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 24, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The repeal of chapter 388-60 WAC and creation of chapter 388-60A WAC are intended to update rules to raise the standards of domestic violence perpetrator treatment, thereby increasing the effectiveness of treatment throughout Washington state. A cross-walk table of existing and new WAC sections is available upon request.

Reasons Supporting Proposal: These standards have not been updated since 2001. The new requirements will increase the effectiveness of domestic violence treatment and increase the safety of victims and their children.

Statutory Authority for Adoption: RCW 26.50.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amie Roberts, P.O. Box 45710, Olympia, WA 98504-5710, 360-902-7962.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Amie Roberts, P.O. Box 45710, Olympia, WA 98504-5710, phone 360-902-7962, email amie.roberts@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DSHS conducted a survey and invited all currently certified domestic violence treatment programs to participate. The results indicated the rule would not have "more than a minor" economic impact to the businesses that provide domestic violence treatment.

A copy of the detailed cost calculations may be obtained by contacting Amie Roberts, P.O. Box 45710, Olympia, WA 98504-5710, phone 360-902-7962, email amie.roberts@dshs.wa.gov.

February 15, 2018  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-07 issue of the Register.

**WSR 18-05-062**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed February 15, 2018, 5:41 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-410-040 under WSR 18-03-177, filed on January 24, 2018. The department will file a new proposal on this topic at a later date.

Scott Bird  
Rules Coordinator

**WSR 18-05-063**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)

[Filed February 16, 2018, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-073.

Title of Rule and Other Identifying Information: The department is proposing to repeal WAC 388-835-0150 When does DSHS require discharge and readmission of a resident?

Hearing Location(s): On March 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than March 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., March 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by March 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to repeal WAC 388-835-0150 to harmonize DSHS internal processes with guidance from the federal Centers for Medicare and Medicaid Services.

Reasons Supporting Proposal: Repealing WAC 388-835-0150 would decrease regulatory burdens on providers and simplify administrative processes.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Mick Petersen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1559.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses

so a small business economic impact statement is not required.

February 14, 2018  
 Katherine I. Vasquez  
 Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-835-0150 When does DSHS require discharge and readmission of a resident?

**WSR 18-05-064**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 [Filed February 16, 2018, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-173.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-478-0020 Payment standards for TANF, SFA, and RCA, WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA, and RCA?, and WAC 388-436-0050 Determining financial need and benefit amount for CEAP.

Hearing Location(s): On March 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than March 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., March 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by March 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-478-0020, 388-478-0035, and 388-436-0050 to implement a 2.5 percent increase in the payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA), a 2.5 percent increase in the financial need and benefit amount limits for the consolidated emergency assistance program (CEAP), and a 2.5 percent increase in the maximum earned income limits for the TANF, SFA, RCA, and the pregnancy women assistance (PWA) programs.

Reasons Supporting Proposal: The Washington state 2017-19 biennial operating budget (chapter 1, Laws of 2017 3rd sp. sess.) provides funding to increase the TANF, SFA, RCA, and CEAP payment standards by 2.5 percent effective July 1, 2018. This increase will provide essential supports to families and individuals experiencing financial hardship.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.08A.230.

Statute Being Implemented: None

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5470, 360-522-2214.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025.

Explanation of exemptions: RCW 34.05.328 (5)(b)(vii).

February 13, 2018  
 Katherine I. Vasquez  
 Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-01-093, filed 12/15/15, effective 1/15/16)

**WAC 388-436-0050 Determining financial need and benefit amount for CEAP.** (1) To be eligible for (~~CEAP assistance~~) the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than ninety percent of the (~~TANF~~) temporary assistance for needy families (TANF) payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	<del>(\$300)</del> <u>\$308</u>
2	<del>((377))</del> <u>386</u>
3	<del>((468))</del> <u>480</u>
4	<del>((550))</del> <u>564</u>
5	<del>((634))</del> <u>650</u>
6	<del>((722))</del> <u>740</u>
7	<del>((834))</del> <u>855</u>
8 or more	<del>((923))</del> <u>946</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	<del>(\$201)</del> <u>\$206</u>	<del>(\$256)</del> <u>\$262</u>	<del>(\$316)</del> <u>\$324</u>	<del>(\$373)</del> <u>\$382</u>	<del>(\$429)</del> <u>\$440</u>	<del>(\$487)</del> <u>\$499</u>	<del>(\$556)</del> <u>\$570</u>	<del>(\$615)</del> <u>\$630</u>
Shelter	<del>(245)</del> <u>251</u>	<del>(310)</del> <u>318</u>	<del>(386)</del> <u>396</u>	<del>(455)</del> <u>466</u>	<del>(522)</del> <u>535</u>	<del>(592)</del> <u>607</u>	<del>(686)</del> <u>703</u>	<del>(758)</del> <u>877</u>
Clothing	<del>(28)</del> <u>29</u>	<del>(36)</del> <u>37</u>	<del>(45)</del> <u>46</u>	<del>(52)</del> <u>54</u>	<del>(60)</del> <u>62</u>	<del>(70)</del> <u>72</u>	<del>(78)</del> <u>80</u>	<del>(89)</del> <u>91</u>
Minor medical care	<del>(170)</del> <u>174</u>	<del>(217)</del> <u>222</u>	<del>(269)</del> <u>276</u>	<del>(316)</del> <u>324</u>	<del>(364)</del> <u>373</u>	<del>(411)</del> <u>421</u>	<del>(479)</del> <u>491</u>	<del>(529)</del> <u>542</u>
Utilities	<del>(83)</del> <u>85</u>	<del>(105)</del> <u>108</u>	<del>(130)</del> <u>133</u>	<del>(152)</del> <u>156</u>	<del>(175)</del> <u>179</u>	<del>(201)</del> <u>206</u>	<del>(232)</del> <u>238</u>	<del>(256)</del> <u>262</u>
Household maintenance	<del>(60)</del> <u>62</u>	<del>(77)</del> <u>79</u>	<del>(96)</del> <u>98</u>	<del>(112)</del> <u>115</u>	<del>(130)</del> <u>133</u>	<del>(147)</del> <u>151</u>	<del>(170)</del> <u>174</u>	<del>(187)</del> <u>192</u>
Job related transportation	<del>(332)</del> <u>340</u>	<del>(420)</del> <u>431</u>	<del>(521)</del> <u>534</u>	<del>(613)</del> <u>628</u>	<del>(706)</del> <u>724</u>	<del>(802)</del> <u>822</u>	<del>(927)</del> <u>950</u>	<del>(1,026)</del> <u>1,052</u>
Child related transportation	<del>(332)</del> <u>340</u>	<del>(420)</del> <u>431</u>	<del>(521)</del> <u>534</u>	<del>(613)</del> <u>628</u>	<del>(706)</del> <u>724</u>	<del>(802)</del> <u>822</u>	<del>(927)</del> <u>950</u>	<del>(1,026)</del> <u>1,052</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

Assistance unit size	Payment standard	Assistance unit size	Payment standard
2	<del>(420)</del> <u>431</u>	7	<del>(927)</del> <u>950</u>
3	<del>(521)</del> <u>534</u>	8	<del>(1,026)</del> <u>1,052</u>
4	<del>(613)</del> <u>628</u>	9	<del>(1,126)</del> <u>1,154</u>
5	<del>(706)</del> <u>724</u>	10 or more	<del>(1,224)</del> <u>1,255</u>

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION** (Amending WSR 16-01-093, filed 12/15/15, effective 1/15/16)

**WAC 388-478-0020 Payment standards for TANF, SFA, and RCA.** (1) The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units with obligations to pay shelter costs are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	<del>(\$332)</del> <u>\$340</u>	6	<del>(\$802)</del> <u>\$822</u>

(2) The maximum monthly payment standards for TANF, SFA, and RCA assistance units with shelter provided at no cost are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	<del>(\$202)</del> <u>\$207</u>	6	<del>(\$487)</del> <u>\$499</u>
2	<del>(256)</del> <u>262</u>	7	<del>(\$564)</del> <u>578</u>
3	<del>(316)</del> <u>324</u>	8	<del>(\$623)</del> <u>639</u>
4	<del>(373)</del> <u>382</u>	9	<del>(\$685)</del> <u>702</u>
5	<del>(429)</del> <u>440</u>	10 or more	<del>(\$744)</del> <u>763</u>

AMENDATORY SECTION (Amending WSR 16-01-093, filed 12/15/15, effective 1/15/16)

**WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA?** To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	<del>(\$665)</del> \$682	6	<del>(\$1,604)</del> \$1,644
2	<del>((839))</del> 860	7	<del>((1,853))</del> 1,899
3	<del>((1,042))</del> 1,068	8	<del>((2,051))</del> 2,102
4	<del>((1,225))</del> 1,256	9	<del>((2,252))</del> 2,308
5	<del>((1,413))</del> 1,448	10 or more	<del>((2,448))</del> 2,509

**WSR 18-05-072  
PROPOSED RULES  
DEPARTMENT OF REVENUE**

[Filed February 16, 2018, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-025.

Title of Rule and Other Identifying Information: WAC 458-19-050 Port district levies and 458-19-05001 Port district levies for industrial development district purposes.

Hearing Location(s): On April 11, 2018, at 10:00 a.m., at Conference Room 252, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: April 18, 2018.

Submit Written Comments to: Wan Chen, P.O. Box 47453, Olympia, WA 98504-7453, email WanC@dor.wa.gov, fax 360-534-1606, by April 11, 2018.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-19-050 and adding new WAC 458-19-05001, to explain SHB 1337, chapter 135, Laws of 2015, on the industrial development district (IDD) levies under RCW 53.36.100 and 53.36.160.

Reasons Supporting Proposal: To clarify how port districts implement the IDD levies.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230.

Statute Being Implemented: RCW 53.36.100 and 53.36.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Wan Chen, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1581; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed rule amendments and addition clarify the application of RCW 53.36.100 and 53.36.160. The proposed rule does not impose more than minor costs on business, as it does not propose any new requirements not already provided for in statutes.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Erin T. Lopez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

**WAC 458-19-050 Port district levies. (1) Introduction.** This rule describes ~~((the various))~~ certain port district levies and ~~((the))~~ their respective limitations ~~((to which they are subject. Port district levies are not limited by the constitutional one percent limit nor by the statutory aggregate dollar rate limit)).~~ Discussions on port district levies authorized under RCW 53.36.100 and 53.36.160 for industrial development district purposes are in WAC 458-19-05001.

**Other rules that may apply.** Readers may also want to refer to the following rules for additional information:

- (a) WAC 458-19-005 Definitions.
- (b) WAC 458-19-010 Levy limit and levy rate calculations.
- (c) WAC 458-19-020 Levy limit—Method of calculation.
- (d) WAC 458-19-05001 Port district levies for industrial development district purposes.

(2) Definitions. For purposes of this rule, the definitions in WAC 458-19-005 apply.

(3) Limitations upon regular property tax levies; exceptions.

(a) As set forth in RCW 84.04.140, all port district levies discussed in this rule are regular property tax levies regardless of whether they are ~~((voted))~~ voter-approved levies. As

such, they are generally subject to the levy limit as described in subsection (7) of this rule, unless otherwise specified.

(b) Port district levies are not subject to either the statutory aggregate dollar rate limit set forth in RCW 84.52.043 or the constitutional one percent limit set forth in RCW 84.52-.050.

~~((2))~~ **(4) Levy for general port purposes.** Port districts may annually levy taxes for general port purposes, including the establishment of a capital improvement fund for future capital improvements. This levy cannot exceed the levy rate of forty-five cents per thousand dollars of assessed value of the port district. RCW 53.36.020 authorizes this levy ~~((may be made without an authorizing vote of the voters of the district))~~ without voter approval.

~~((3))~~ **(5) Levy for bond repayment.** Port districts may levy taxes for the purpose of paying the principal and interest on any general bonded indebtedness of the port district. RCW 53.36.020 authorizes this levy, in excess of any port levy that is subject to the forty-five cent levy rate limitation in subsection (4) of this rule. Even though ~~((this))~~ the levy for bond repayment is not subject to any statutory aggregate dollar rate ~~((limitation))~~ limit, the limitations in RCW 53.36.030 on the amount of indebtedness that a port district may incur by contract or borrowing ~~((and the levy limit))~~ do apply.

~~((4))~~ **(6) Levy for dredging, canal construction, or land leveling or filling purposes.** Port districts may annually levy taxes for dredging, canal construction, or land leveling or filling purposes, and the proceeds of any such levy must be used exclusively for these purposes. This levy cannot exceed the levy rate of forty-five cents per thousand dollars of assessed value of the port district. RCW 53.36.070 requires that this levy must ~~((first))~~ be authorized each year by a majority of the voters of the district voting on whether to make such a levy, submitted at an election held under RCW ~~((29.13.020))~~ 29A.04.330.

~~((5))~~ **Levy for industrial development district purposes.** Port districts that have adopted a comprehensive scheme of harbor improvements and industrial development may annually levy taxes to be used exclusively for purposes of industrial development districts as described in chapter 53.25 RCW. Any excess revenue collected but not required to complete projects under chapter 53.25 RCW must be used solely to retire the general obligation bonded indebtedness of the district. This levy cannot exceed forty-five cents per thousand dollars of assessed value of the port district. This levy need not be authorized by a vote of the people of the district, except as provided in (b) of this subsection.

~~(a) Levy for limited time period.~~ This levy is limited to a period of six years, and a second six years if the procedures in (b) of this subsection are followed. A third six year period is authorized for a port district located in a county bordering the Pacific Ocean that has adopted a comprehensive scheme of harbor improvements and industrial developments when approved by a simple majority of the voters in the port district.

~~(b) Notice to be given if levy to last more than six years.~~ If this levy is intended to extend beyond the first six years these levies were imposed, the port commission must publish notice of this intention, in one or more newspapers of general circulation in the district, after January 1 and not later

than June 1 of the year in which the seventh annual levy is to be made. If, within ninety days of the date of publication of this notice, a petition by the required number of registered voters in the port district in accordance with RCW 53.36.100 is filed with the county auditor and certified in the manner prescribed in RCW 29.79.200, the proposition to make these levies in the seventh through twelfth year period must be submitted to the voters of the port district at a special election called for this purpose no later than the date on which a primary election would be held under RCW 29.13.070. Levies may be made during the seventh through twelfth years only if approved by a majority of the voters of the port district voting on the proposition.

~~(6))~~ **(7) Calculation of the levy limit for port districts.** ~~((a))~~ The levies described in subsections ~~((2), (3), and))~~ (4), (5), and (6) of this rule are subject to the levy limit. For purposes of calculating the levy limit, the dollar amount of those levies are combined and the levy limit is calculated as provided in WAC 458-19-020.

~~((b))~~ The levy for industrial development district purposes described in subsection (5) will be treated as though it were a separate regular property tax levy made by or for a separate taxing district. The first such levy by a port district is not subject to the levy limit.

## NEW SECTION

**WAC 458-19-05001 Port district levies for industrial development district purposes.** (1) **Introduction.** Port districts may annually levy for industrial development district (IDD) purposes when they have adopted a comprehensive scheme of harbor improvements and industrial development. Levies for IDD purposes are treated as though they are separate regular property tax levies made by or for a separate taxing district. This rule describes these port district levies for IDD purposes, authorized in RCW 53.36.100 and 53.36.160.

(a) **Other rules that may apply.** Readers may also want to refer to the following rules for additional information:

- (i) WAC 458-19-005 Definitions.
- (ii) WAC 458-19-010 Levy limit and levy rate calculations.
- (iii) WAC 458-19-020 Levy limit—Method of calculation.
- (iv) WAC 458-19-050 Port district levies.

(b) **Examples.** This rule contains examples; each example identifies a number of assumed facts and then states a conclusion. The examples should only be used as a general guide. The results of other situations must be determined after a review of all the facts and circumstances.

(2) **Organization of rule.** This rule has two parts:

- (a) Part I - IDD levy under RCW 53.36.100.
- (b) Part II - Multiyear IDD levies under RCW 53.36.160.

(3) **Definitions.** For purposes of this rule, the definitions in WAC 458-19-005 apply. In addition, "base year" means the year prior to the first collection year in a first or second multiyear IDD levy period.

(4) **Limitations upon regular property tax levies; exception.**

(a) As set forth in RCW 84.04.140, all port district levies discussed in this rule are regular property tax levies regard-

less of whether they are voter-approved levies. As such, they are generally subject to the levy limit, unless otherwise specified.

(b) Port district levies are not subject to either the statutory aggregate dollar rate limit set forth in RCW 84.52.043 or the constitutional one percent limit set forth in RCW 84.52.-050.

#### Part I - IDD levies under RCW 53.36.100

(101) **Levy periods.** A port district having adopted a comprehensive scheme of harbor improvements and industrial developments may impose up to three periods of six IDD levies. The levy periods do not have to be continuous, but they may not overlap. The six IDD levies in a levy period do not have to be continuous, but may not overlap.

(a) **First IDD levy period.** The first IDD levy period does not require voter approval.

(b) **Second IDD levy period.** The port commission must publish their intention to make an additional period of six IDD levies in a newspaper by June 1st of the year in which the first levy of this period will be made. Voter approval to make this levy is only required if a petition with eight percent of the voters' signatures of the district is submitted to the county auditor within ninety days of the date of notice in the newspaper. If voter approval is required, a majority of the voters must approve this levy.

(c) **Third IDD levy period.** Port districts in a county bordering the Pacific Ocean may request voter approval to make a third period of six IDD levies. This levy period requires a simple majority voter approval.

(102) **Forty-five cent levy rate limitation.** This levy cannot exceed the levy rate of forty-five cents per thousand dollars of assessed value of the port district specified in RCW 53.36.100(1).

(103) **Levy limit calculation.** Except for the first levy in each period, the IDD levies are subject to the levy limit in chapter 84.55 RCW. Refer to WAC 458-19-020 for more information about the levy limit calculation. County assessors must calculate the levy limit every calendar year until there has been six levies in each period. County assessors must use the levy rate from the last year in which there is an IDD levy when calculating increases to the authorized levy amount due to new construction, wind turbine/solar/biomass/geothermal facility construction, improvements to property, and any increase in the value of state-assessed property (collectively "new construction increases").

#### (104) **Effective period.**

(a) RCW 53.36.100 applies to a port district that has initiated one or more IDD levy periods before tax year 2016.

(b) RCW 53.36.100 is repealed effective January 1, 2026, and port districts are prohibited from levying taxes under this repealed provision for collection in 2026 and after.

(c) A port district authorized under RCW 53.36.100 may continue to levy under this provision, so long as no collection occurs in 2026 and after.

#### Part II - Multiyear IDD levies under RCW 53.36.160

(201) **Multiyear levy periods.** A port district having adopted a comprehensive scheme of harbor improvements and industrial developments may impose up to three periods

of multiyear IDD levies. The multiyear levy periods do not have to be continuous, but they may not overlap. Except as otherwise provided, a multiyear levy period may not exceed twenty years from the date the first levy is made in the period.

(a) **First multiyear IDD levy period.** A port district must adopt a resolution during the base year approving the use of the first multiyear IDD levy period.

#### (b) **Second multiyear IDD levy period.**

(i) A port district must adopt a resolution during the base year approving the use of the second multiyear IDD levy period.

(ii) A port district must publish notice of the intention to impose a second multiyear IDD levy period. The port commission must publish their intention to make this levy in one or more newspapers of general circulation within the district, by April 1st of the base year of this second multiyear levy period.

(iii) A petition containing the signatures of eight percent of the number of voters registered and voting in the port district for the office of the governor at the last preceding gubernatorial election, may be filed with the county auditor within ninety days of the date of the port commission's publication. The county auditor then has two weeks to certify to the port commission the sufficiency of the signatures in accordance with RCW 29A.72.230. Once certified, the proposition to impose the levies in this second multiyear levy period is subject to voter's approval in a special election, no later than the date on which a primary election would be held under RCW 29A.04.311. The levies may proceed only if a majority of voters of the port district voting on this proposition approves it.

(c) **Third multiyear IDD levy period.** A county bordering on the Pacific Ocean having adopted a comprehensive scheme of harbor improvements and industrial developments may seek a simple majority voter approval to impose up to six levies in a six-year period for the third multiyear levy period.

(202) **Forty-five cent levy rate limitation.** RCW 53.36.160 (1) and (3) provide that no levy in any period may exceed forty-five cents per thousand dollars of assessed value of the port district.

#### (203) **Levy limit calculation.**

(a) RCW 84.55.130 provides that the levy limit under RCW 84.55.010 does not apply to a district's first or second multiyear levy period. The levy limit under RCW 84.55.010 only applies to the third multiyear levy period's years two through six.

(b) Instead, the first and second multiyear levy periods have a limit on the aggregate revenue amount that the period may collect. The aggregate revenue amount for each multiyear levy period may not exceed the maximum allowable amount that could have been collected under RCW 84.55.010 for the first six collection years of the period. This means that:

(i) County assessors must calculate the levy limit for each of the first six calendar years of the period as if the port district were levying;

(ii) County assessors must use the levy rate from the last year in which there is an IDD levy when calculating increases to the authorized levy amount due to new construction

increases; there would be no new construction increases in the first year. See subsection (203)(d) of this rule below for examples of aggregate revenue limit calculations.

(c) For purposes of this section (203), the levy limit in RCW 84.55.010 is calculated in accordance with RCW 84.55.092, and any other applicable provisions in chapter 84.55 RCW, and subject to the forty-five cent levy rate limitation. See WAC 458-19-020.

(d) **Examples.** Some numbers in the examples are rounded for ease of illustration.

(i) Example 1. Assume a qualifying port district has a base year of \$1,000,000,000 assessed value, with approximately four percent increase annually. There are new construction increases in years four and five. The maximum allowable amount that could have been levied under RCW 84.55.010 for the first six collection years of the levy period is computed as follows:

		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
(A)	Assessed value (AV)	\$1,040,000,000	\$1,082,000,000	\$1,125,000,000	\$1,170,000,000	\$1,217,000,000	\$1,266,000,000
(B)	Highest prior lawful levy	n/a	\$468,000	\$472,680	\$477,407	\$486,381	\$494,245
(C)	(B) + 1% growth	n/a	\$472,680	\$477,407	\$482,181	\$491,245	\$499,187
(D)	Statutory max, @ 45¢/ \$1,000 AV	\$468,000	\$486,900	\$506,250	\$526,500	\$547,650	\$569,700
(E)	New construction increases	n/a	\$0	\$0	\$10,000,000	\$7,500,000	\$0
(F)	Multiply (E) by prior year levy rate	n/a*	\$0	\$0	\$4,200	\$3,000	\$0
(G)	Levy limit: Lesser of (C) and (D), plus (F); and not exceeding (D)	\$468,000	\$472,680	\$477,407	\$486,381	\$494,245	\$499,187
(H)	Regular property tax levy rate: (G) divided by (A)	44¢	44¢	42¢	42¢	41¢	39¢

\* There has been no IDD levy yet, so there would not be any new construction increases for the first IDD levy year.

The aggregate revenue amount for the period is the sum of the levy limits (row G), which is \$2,897,900. A port district may collect this aggregate revenue amount for the levy period in at most twenty levies within twenty years from, and including, the first year.

(ii) Example 2. Assume a qualifying port district has a base year of \$2,200,000,000 assessed value, with fluctuating increases/decreases over the course of the six years. There are new construction increases in years three and six. The maximum allowable amount that could have been levied under RCW 84.55.010 for the first six collection years of the levy period is computed as follows:

		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
(A)	Assessed value (AV)	\$2,500,000,000	\$2,000,000,000	\$1,400,000,000	\$1,800,000,000	\$2,300,000,000	\$2,800,000,000
(B)	Highest prior lawful levy	n/a	\$1,125,000	\$1,125,000	\$1,125,000	\$1,125,000	\$1,125,000
(C)	(B) + 1% growth	n/a	\$1,136,250	\$1,136,250	\$1,136,250	\$1,136,250	\$1,136,250
(D)	Statutory max, @ 45¢/ \$1,000 AV	\$1,125,000	\$900,000	\$630,000	\$810,000	\$1,035,000	\$1,260,000
(E)	New construction increases	n/a*	\$0	\$100,000,000	\$0	\$0	\$800,000,000
(F)	Multiply (E) by prior year levy rate	n/a	\$0	\$45,000	\$0	\$0	\$360,000
(G)	Levy limit: Lesser of (C) and (D), plus (F); and not exceeding (D)	\$1,125,000	\$900,000	\$630,000	\$810,000	\$1,035,000	\$1,260,000
(H)	Regular property tax levy rate: (G) divided by (A)	45¢	45¢	45¢	45¢	45¢	45¢

\* There has been no IDD levy yet, so there would not be any new construction increases for the first IDD levy year.

The aggregate revenue amount for the period is the sum of the levy limits (row G), which is \$5,760,000. A port district may collect this aggregate revenue amount in up to twenty levies for the period.

**(204) Effective period.**

(a) RCW 53.36.160, authorizing multiyear IDD levies, is effective for IDD levy period that begins in 2016 and after.

(b) A port district that has levied the tax authorized under RCW 53.36.100 (see Part I of this rule) may not levy a tax authorized under RCW 53.36.160 (see Part II of this rule) except as follows:

<b>If a Port District Levied Under RCW 53.36.100:</b>	<b>Then the Port District May Levy Under RCW 53.36.160:</b>
<b>IDD Levy Period</b>	<b>IDD Levy Period</b>
At least one levy in the first period is collected in 2015 or prior	Second and third levy periods
At least one levy in the second period is collected in 2015 or prior	Third levy period

**WSR 18-05-073**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Long-Term Support Administration)  
 [Filed February 16, 2018, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-094.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-1045 Can I receive PDN services in a licensed adult family home (AFH)? and create new WAC 388-106-1046 When may an adult family home (AFH) be paid an all-inclusive daily rate for private duty nursing (PDN) services? and 388-106-1047 What is included in the all-inclusive daily rate payment to the adult family home (AFH) providing private duty nursing (PDN) services?

Hearing Location(s): On March 27, 2018, at 10:00 a.m., at the Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies--assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than March 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., March 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by March 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-106-1045 and create WAC 388-106-1046 and 388-106-1047 in order to clarify the definition for nurse services intervention, specifically PDN, to define the scope of services to be authorized and the necessity for documentation to support the required services in contracted AFH.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation: Jevahly Wark, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-1737.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

February 14, 2018

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

**WAC 388-106-1045 (~~Can~~) When may I receive private duty nursing (PDN) services in a (~~licensed~~) contracted PDN adult family home (AFH)? You may (~~be eligible to~~) receive private duty nursing (PDN) services (~~if you are residing~~) in an adult family home (AFH) (~~if the AFH provider (owner and operator)~~) when:**

~~(1) (Possesses a current Washington state registered nurse license and is in good standing) You are assessed;~~

~~((2) Signs a contract amendment with ADSA by which the provider agrees to ensure provision of twenty-four-hour personal care and nursing care services. Nursing care services must be provided in accordance with chapter 18.79 RCW))~~

(a) Using the comprehensive assessment reporting evaluation (CARE) assessment tool as provided in WAC 388-106-0500; and

~~((3) Provides your PDN service through an RN or an LPN under the supervision of an RN. The level of PDN services provided to you is based on the CARE assessment, the department-designated PDN skilled task log or its approved equivalent, and other documentation that determines eligibility and the number))~~ (b) By an aging and long-term support administration (AL TSA) community nurse consultant (CNC) or developmental disabilities administration (DDA) nurse care consultant (NCC) who, using their professional judgment, determines that you require a minimum of eight hours of PDN (~~hours to be authorized;~~) services per day.

~~((4) Provides the PDN services to you. Your service plan may authorize you to receive four to eight hours per day and cannot exceed eight PDN care hours per day;~~

~~(5) Has a nursing service plan prescribed for you by your primary care provider. The primary care provider must))~~ (2) You reside in an AFH that:

~~(a) ((Oversee your care plan, which must be updated at least once every six months))~~ Meets all AFH licensing requirements under chapter 388-76 WAC; and

~~(b) ((Monitor your client's medical stability))~~ Has a PDN contract with ALTSA; and

(c) Meets all other requirements in WAC 388-106-1046.

~~((6) Document the services provided in the care plan, including the submission of the PDN seven-day look back skilled nursing task log by the licensed nursing to the CN or NCC for review for initial eligibility and ongoing eligibility every six months; and~~

~~(7) Maintain records in compliance with AFH licensing and contract requirements))~~ (3) Your detailed service plan is reviewed and signed by your primary care provider at your initial assessment and at least every six months thereafter, and your detailed service plan is submitted to an ALTSA CNC or DDA NCC for review along with the following documents:

(a) Physical exam findings completed by your physician;

(b) Current Physician's orders;

(c) Current nursing assessment;

(d) Current plan of care;

(e) The nursing progress notes for the seven days prior to assessment, if applicable; and

(f) The PDN skilled nursing task log for dates corresponding with the nursing progress notes, if applicable.

#### NEW SECTION

**WAC 388-106-1046 When may an adult family home (AFH) be paid an all-inclusive daily rate for private duty nursing (PDN) services?** An adult family home (AFH) may be paid for private duty nursing (PDN) services when:

(1) The AFH provider, as defined in WAC 388-76-10000, ensures that personal care and nursing services are available in the home 24 hours per day.

(2) The AFH provider is either:

(a) A registered nurse (RN) licensed in Washington state in good standing under RCW 18.79.030(1); or

(b) Operates an in-home services agency licensed through the Washington state department of health (DOH) to provide home health services under chapter 246-335 WAC; and

(i) Employs a resident manager or entity representative, who is a registered nurse licensed in Washington state in good standing under RCW 18.79.030(1); and

(ii) The PDN program manager has approved a plan submitted by the AFH provider to replace the resident manager or entity representative in the event the resident manager or entity representative is no longer employed by the AFH; and

(iii) Ensures that a sufficient number of capable, qualified, and trained staff are available to provide necessary care and services consistent with each client's negotiated service agreement at all times, including but not limited to routine conditions, emergencies, fires, and disaster situations; and

(iv) May use nurses employed by their own in-home services agency to provide PDN for clients in the AFH.

(3) The RN resident manager or RN entity representative employed by the AFH provider, as required under subsection (2):

(a) Manages the daily operations of the AFH and oversees the care provided to the client; and

(b) Must notify the local fire agency, gas, phone, and electric companies at the time of each PDN client's admission to the AFH.

#### NEW SECTION

**WAC 388-106-1047 What is included in the all-inclusive daily rate payment to the adult family home (AFH) providing private duty nursing (PDN) services?** Department of social and health services (DSHS) will pay the adult family home (AFH) an all-inclusive daily rate for a private duty nursing (PDN) client, which includes payment for PDN services, all skilled nursing tasks, and all personal care services. DSHS will not authorize payment for nurse delegation services or hours provided by the in-home services agency nurses in addition to the PDN all-inclusive daily rate.

#### **WSR 18-05-076**

#### **PROPOSED RULES**

#### **ARTS COMMISSION**

[Filed February 20, 2018, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-063.

Title of Rule and Other Identifying Information: Creative districts program, amending WAC 30-02-010 Definitions and 30-12-010 Scope of this chapter; and adopting new WAC 30-42-010 Authority, 30-42-020 Purpose, 30-42-030 Application process, 30-42-040 Requirements for certification, approval and denial, 30-42-060 Creative districts certification and district activities, and 30-42-070 Creative districts recertification and revocation.

Hearing Location(s): On March 28, 2018, at 1:30 p.m., at 711 Capitol Way South, Suite 600, Olympia, WA 98504.

Date of Intended Adoption: March 28, 2018.

Submit Written Comments to: Terry J. West, P.O. Box 42675, Olympia, WA 98504-2675, email [terry.west@arts.wa.gov](mailto:terry.west@arts.wa.gov), fax 360-586-5351, by March 27, 2018.

Assistance for Persons with Disabilities: Contact Terry J. West, phone 360-586-5350, fax 360-586-5351, email [terry.west@arts.wa.gov](mailto:terry.west@arts.wa.gov), by March 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The creative districts [program] is a new program. These rules outline requirements for state certification and give guidance to cities, counties or towns or other entities applying for state certification. In addition, these rules also outline requirements for renewal, denial and reporting.

Reasons Supporting Proposal: Legislation passed as SHB 1183, session law chapter 240, Laws of 2017, effective July 23, 2017, creating the authority for the Washington state arts commission to grant state certification for creative districts throughout Washington state. As this is a new program, these proposed rules outline the new process and give guidance.

Statutory Authority for Adoption: RCW 43.46.110 Creative districts—Applications for certification—Review—Approval, rejection, revocation—Additional powers of commission.

Statute Being Implemented: Chapter 43.46 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state arts commission, governmental.

Name of Agency Personnel Responsible for Drafting: Annette Roth, 711 Capitol Way South, Suite 600, Olympia, 360-586-8098; Implementation and Enforcement: Terry J. West, 711 Capitol Way South, Suite 600, Olympia, 360-586-5350.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. No costs imposed on small businesses.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: No costs imposed on small businesses.

February 20, 2018  
Karen Hanan  
Executive Director

**AMENDATORY SECTION** (Amending WSR 18-02-086, filed 1/2/18, effective 2/2/18)

**WAC 30-02-010 Definitions.** The following definitions shall apply throughout Title 30 WAC:

"Accession" means to formally acquire a work of art for the state art collection, including the action of assigning an accession or control number to the work of art.

"Appeal procedure" means the procedure as established in WAC 30-12-036 (Request for review of denied applications) whereby an applicant may request a review of a denied application.

"Application form" means the printed, electronic, or web-based forms created and published by staff to be used in commission program applications.

"Application guidelines" means the published document that provides the public with information on how to apply for commission programs, including eligibility requirements, review criteria, deadlines, timelines, and appeal procedure. Application guidelines may be published in a printed format and/or in electronic format accessible through the commission's web site.

"Art advisory committee" means a committee formed by staff and a partner agency to develop plans and overall project specifications, and to make funding allocation decisions related to the state art collection.

"Art in public places program" means the visual art program of the commission established by the legislature in RCW 43.46.090 to acquire works of art and to develop, administer, and manage the state art collection.

"Art selection committee" means a committee formed by a partner agency, and approved by staff, to review and select

artists to create works of art for the state art collection, or to review and select works of art for or from the state art collection, through a process facilitated by staff.

"Artistic disciplines" means dance, design, folk and traditional arts, media arts, music, literature, theater, visual arts, and interdisciplinary arts.

"Artistic excellence" means evidence of some or all of the following: Mastery of skills and techniques, communication of unique vision or perspective, professional approaches to process and presentation. Additionally, for groups and organizations, includes the contribution the artistic work(s) make to the development of the artists involved, the art form and the arts generally; or for services delivered, the contribution the services make to the development of a vibrant arts and cultural community in the state.

"Arts professional" means an individual who has professional work experience in the arts or an arts-related field.

"Board" means the board of commissioners, consisting of nineteen members appointed by the governor and four members of the legislature appointed to the Washington state arts commission pursuant to RCW 43.46.015.

"Chair" means the chair of the board, elected pursuant to WAC 30-08-050 and fulfilling duties as established in Title 30 WAC.

"Collections management" means the ongoing care, preservation, and maintenance of the state art collection, including activities such as the management of conservation, restoration, deaccession, documentation, inventory, labeling, loans, and resiting of works of art.

"Commission" means the collective entity of the Washington state arts commission, including the board, executive director, and staff.

"Commissioner" means an individual appointed to the board of the Washington state arts commission.

"Conservation" means treatment of malfunctioning or damaged works of art for the purpose of bringing them to a stable condition so that future routine and special maintenance can be effective. Conservation-related activities may also include examination and documentation.

"Creative district" means a land area designated by a local government in accordance with RCW 43.46.105 that contains either a hub of cultural facilities, creative industries, or arts-related businesses, or multiple vacant properties in close proximity that would be suitable for redevelopment as a creative district.

"Curator" means a qualified visual arts professional with past curatorial experience selected to recommend works of art for acquisition to the state art collection.

"Deaccession" means board action to remove an accessioned work of art from the state art collection.

"Disability" is defined in RCW 49.60.040(7).

"Eligibility requirements" means published standards by which applications are reviewed to determine if they meet the minimum required qualifications to apply for a commission program.

"Executive director" means that person employed pursuant to RCW 43.46.045 to carry out the functions of that chapter and Title 30 WAC.

"Grant" means a contract for arts or cultural services between the commission and an organization or individual,

awarded through a competitive application process and approved or ratified by the board.

"Inventory" means a periodic survey of the physical state and current location of works of art in the state art collection.

"Local government" means a local governing body, city, county, town, municipal county, tribal government, or other entity as approved.

"Nonprofit" means incorporation under the nonprofit laws of the state of Washington or another state, and determination by the Internal Revenue Service (IRS) that the incorporated entity is exempt from taxation under Section 501 (c)(3) of the IRS code.

"Panel" means a group of individuals convened by staff to review applications, nominations, or staff recommendations based on published review criteria, in order to make recommendations to the board or executive director.

"Partner agency" means a state agency, K-12 public school, university, college, community college, or other public entity working with the art in public places program.

"Professional artist" means an individual who has a history of paid work as an artist.

"Public artist roster" means the board approved list of professional artists eligible to create visual works of art for the state art collection.

"Public benefit" means evidence of some or all of the following: Potential impact on the artistic, cultural, professional, or economic development of a community or individuals; and/or potential to broaden access to, expand and diversify the audiences for, and/or strengthen communities through the arts.

"Resiting" means the relocation of a work of art in the state art collection within the jurisdiction of a partner agency or between partner agencies.

"Restoration" means treatment that returns a malfunctioning or damaged work of art to a known or assumed state, often through the addition of nonoriginal material.

"Review criteria" means the standards used by panels to evaluate applications, nominations, or staff recommendations.

"Roster" means a list of approved arts professionals who have the skills and experience to address the needs of a specific commission program.

"Routine maintenance" means a regular procedure to preserve a work of art in the state art collection in proper condition: Clean, presentable, and in working order.

"Site responsive" means created, planned, or intended for a particular site. A site responsive work of art addresses both the physical characteristics of its location and the context of the community in which it is situated.

"Special maintenance" means anticipated but infrequent activities required to maintain aesthetic and/or structural aspects of the works of art in the state art collection, including integrity of the overall surface and/or individual elements.

"Staff" means employees of the Washington state arts commission, under the direction of the executive director, pursuant to RCW 43.46.045, employed to carry out the functions of that chapter, and Title 30 WAC.

"State art collection" means all works of art and select design models commissioned or purchased under RCW

43.17.200, 28A.58.055, 28A.335.210, 43.46.090, and 43.19.-455.

"State-certified creative district" means a creative district whose application for certification has been approved by the commission.

"Teaching artist" means a professional artist who is dedicated to arts education as an integral part of his/her professional practice, and who has cultivated skills as an educator in concert with skills as an artist.

"Underserved" means populations whose opportunities to experience the arts are limited by geography, historical exclusion and marginalization due to race, ethnicity, sexual orientation, gender identity, economics, disability, or other social or institutionally imposed barriers.

"Under-resourced" means a lack of access to specialized, professional, financial, or institutional expertise and communal knowledge, and/or working with neglected or dated infrastructures and limited or absent assets and resources resulting in lack of recognition, competitiveness, and cyclical absent or diminished funding.

"Washington state arts commission" means the collective entity of the Washington state arts commission, including the board and staff.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

**WAC 30-12-010 Scope of this chapter.** This chapter is to establish rules that apply generally to programs and services of the Washington state arts commission. Additional rules for specific programs are established in application guidelines, and in chapters 30-40 WAC (Art in public places program), 30-41 WAC (Poet laureate program), 30-42 WAC (Creative districts program), and 30-44 WAC (Governor's arts and heritage awards).

## Chapter 30-42 WAC

### CREATIVE DISTRICTS PROGRAM

#### NEW SECTION

**WAC 30-42-010 Authority.** The Washington state arts commission is authorized under RCW 43.46.100 through 43.46.115 to establish and administer the creative districts program. Staff has authority to develop, administer, and manage the creative districts program.

#### NEW SECTION

**WAC 30-42-020 Purpose.** A state-certified creative districts program supports communities to encourage economic and cultural development. The program supports activities that include, but are not limited to: Attracting artists and creative entrepreneurs, creating or expanding a hub of economic or business activity, establishing marketable tourism assets, revitalizing neighborhoods or preserve historic or cultural heritage, or other activities that may enhance and celebrate a community's unique cultural or economic identity as it relates to arts and cultural activities.

NEW SECTION

**WAC 30-42-030 Application process.** (1) Applications will be reviewed and processed pursuant to WAC 30-12-017.

(2) The application must be submitted on a standard form developed and approved by the commission.

(3) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(4) The creative districts program manager serves on panels pursuant to WAC 30-12-030 (Panels) and 30-12-035 (Conflicts of interest in panels and program committees).

NEW SECTION

**WAC 30-42-040 Requirements for certification.** In order to receive certification as a state-certified creative district, a creative district must:

(1) Be a geographically contiguous area or other approved configuration;

(2) Be distinguished by physical, artistic, or cultural resources that play a vital role in the quality and life of a community, including its economic and cultural development;

(3) Be the site of a concentration of artistic or cultural activity, a major arts or cultural institution or facility, arts and entertainment businesses, an area with arts and cultural activities, or artistic or cultural production;

(4) Be engaged in the promotional, preservation, and educational aspects of the arts and culture of the community and contribute to the public through interpretive, educational, or recreational uses; and

(5) Satisfy any additional criteria required by the commission that in its discretion will further the objectives of creative district certification.

NEW SECTION

**WAC 30-42-050 Review of creative districts applications, approval and denial.** The commission shall make available electronically the approved application forms, procedures and processes and post to the agency web site.

(1) Upon review of application for certification, the commission shall approve or reject the application. The commission may request additional relevant information at any time during the application, review, and certification process.

(2) Certification is based upon the criteria specified in RCW 43.46.105.

(3) If the commission approves an application for certification, it must notify the applicant in writing and must specify the terms and conditions of the approval.

(4) If an application is denied, the commission shall notify the applicant in writing within thirty days of determination that the application does not meet the state requirements and the applicant cannot meet the state requirements with the information at hand.

(5) Denied applications may reapply, if the deadline for accepting applications has not passed when all of the criteria can be met.

(6) Denied applications may appeal per WAC 30-12-036.

NEW SECTION

**WAC 30-42-060 Creative districts certification and district activities.** (1) State-certified creative districts shall use the state-certified designation when promoting their creative district, and shall acknowledge the arts commission as a technical resource and agency of support in compliance with certification requirements.

(2) State-certified creative districts may be eligible for resources as described in RCW 43.46.110(7).

(3) The commission shall require periodic written reports from any state-certified creative district for the purpose of reviewing the activities of the district, including the compliance of the district with the developed policies and standards. Written reports shall be filed a minimum of annually, and may be filed on a quarterly basis.

NEW SECTION

**WAC 30-42-070 Creative districts recertification and revocation.** (1) The state certification as a creative district is valid for five years. Creative districts may renew certification after five years, in compliance with arts commission guidelines.

(2) The commission may revoke a certification previously granted, for failure by a local government or organization to fully comply with commission requirements. Disputes shall be resolved through adjudicative proceedings as described in chapter 34.05 RCW.

**WSR 18-05-084**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed February 20, 2018, 12:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-091.

Title of Rule and Other Identifying Information: WAC 296-06-120 Copying fees, the department is proposing rule making to amend the current public records fee schedule in WAC 296-06-120, legislation passed in 2017 that amended RCW 42.56.120, which governs agency charges to requestors for providing copies of public records.

Hearing Location(s): On April 3, 2018, at 9:00 a.m., at the department of labor and industries (L&I) Headquarters, 7273 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 1, 2018.

Submit Written Comments to: Jessica Ward, P.O. Box 44632, Olympia, WA 98504, email Jessica.Ward@lni.wa.gov, fax 360-902-5529, by 5:00 p.m., April 6, 2018.

Assistance for Persons with Disabilities: Contact Jessica Ward, P.O. Box 44632, Olympia, WA 98504, fax 360-902-5529, email Jessica.Ward@lni.wa.gov, by 5:00 p.m., March 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to implement an agency fee schedule for

reimbursement of the costs associated with fulfilling public records requests. An agency study has been conducted to determine the actual costs associated with copying, scanning, electronically producing and delivering records and the guidelines to appropriately assess the fees. The current rule does not include a fee schedule for providing electronic records.

Reasons Supporting Proposal: This rule making is supported by RCW 42.56.120, which allows agencies to charge a default fee schedule or conduct a study to calculate the actual costs. The agency does not currently have a fee schedule in place in order to seek reimbursement of a small portion of the cost for administering the public records program.

Statutory Authority for Adoption: RCW 42.56.120.

Statute Being Implemented: RCW 42.56.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jessica Ward, Tumwater, Washington, 360-902-5232; Implementation and Enforcement: Darla Koflanovich, Tumwater, Washington, 360-902-4404.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The exemption criteria is listed in RCW 34.05.328 (5)(b) including: Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045. Under RCW 42.56.120, the department's fees are to be set at a level that does not exceed the amount necessary to reimburse the agency for its actual costs directly incident to copying public records.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 42.56.070, 42.56.120.

Explanation of exemptions: To the extent there are costs assessed by this agency for records provided in response to public records requests by small businesses, the authorized costs are set out in statute and apply to all requesters.

February 20, 2018  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 05-13-151, filed 6/21/05, effective 7/22/05)

**WAC 296-06-120 Copying fees.** ((The department may charge the requestor a fee for reimbursement of actual copy-

ing costs and postage costs. The department may require a deposit of up to ten percent of the estimated cost of all copies. If the department delivers a public records request on a partial or installment basis, it may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within thirty days, subject to a ease-by-ease consideration, the department is not obligated to complete the balance of the request. Requestors may make their own copies at a department location, under the supervision of a department staff member, if the records will not be harmed and it will not interfere with the normal work of the department.

**Note:** Copying charges for various media are found on the internet at [www.lni.wa.gov](http://www.lni.wa.gov). The contractor registration section and electrical program charge separate fees for copies of material from a contractor's or an electrician's files. These fees are in WAC 296-200-900 and 296-46B-910.)

Under RCW 42.56.120(2), the department may charge the requestor a fee for reimbursement of costs directly related to the copying of public records. If the department delivers copies of records request on a partial or installment basis, it may charge for each part of the request as it is provided. The agency is not allowed to make a profit from copy fees.

(1) There is no fee for locating or preparing records for inspection or copying.

(2) The department does not charge fees for a person to inspect or access records on the agency's public internet web site.

(a) The department will provide space to inspect public records.

(b) The department will notify the requestor in writing that the records are available to inspect. Within twenty days after the department sends notification, the requestor must make arrangements with the department to inspect the records.

(c) After inspection, the requestor must identify which records he or she wishes the department to copy.

(d) Depending on staff availability and the volume of records requested, the department may determine the actual cost of the records requested and provide an invoice to the requestor at that time or provide the invoice at a later date.

(e) Once payment has been made, staff will copy the requested records and provide them to the requestor.

(f) When the inspection is complete and all requested copies are provided, the department will send notification to the requestor that the request is closed.

(3)(a) Fee waivers are an exception and are granted within the discretion of the public records officer. Copying fees will be waived when the requestor or their representative requests a copy of their own individual case file, or an employer or its representative requests a copy of the case file for an employee/claimant including, but not limited to, safety and health inspection files, wage and hour investigation files, construction compliance investigation files, employer audits, or provider investigation files and no other records. Additional records may be subject to the appropriate fees.

(b) If the department waives fees for an installment, the waiver may not apply to other installments of the request.

(4) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying

fees for an installment, an entire request, or customized service charge exceeds twenty-five dollars.

(5) Requestors must pay fees in advance of the release of the copies, or an installment of copies, or in advance when a deposit is required. The department will notify the requestor of the amount owed and the date payment is due.

(6) If payment of fees is required, the department will send notification to the requestor. Within thirty days after the department sends notification, the requestor must pay the fee or make other arrangements with the department. The request will be closed if the fees are not paid by the due date or other arrangements made within the thirty days.

(7) If an outside vendor is used the department may charge the vendors actual costs to copy records. The department may use an outside vendor if they can make copies more quickly and less expensively than the agency.

(8) The department conducted a study to determine the actual costs associated with copying, scanning, and delivering records and the guidelines to appropriately assess the fees.

**Labor and Industries Public**

**Records Copy Fee Schedule**

<b><u>Cost Item</u></b>	<b><u>Manner Used to Determine Costs</u></b>
<b><u>Inspection</u></b>	
No fee	<u>Inspection of agency records on agency public internet web site or scheduled at agency.</u>
No fee	<u>Accessing or downloading records the agency routinely posts on its public internet web site, unless the requestor asks the agency for records to be provided through other means (the following copy charges below then apply).</u>
<b><u>Copies</u></b>	
<u>\$.44 per minute + cost for hardware that records are stored on (DVD, CD, flash drive, etc.)</u>	<u>Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.</u>  <u>Fees are determined by charging the per minute rate of the salary and benefits for a forms and records analyst 3 (FRA3) (FY18).</u>

<b><u>Cost Item</u></b>	<b><u>Manner Used to Determine Costs</u></b>
<u>\$.02 per page</u>	<u>Scanned records, or use of agency equipment for scanning.</u>  <u>Fees are determined by charging the per minute rate of the salary and benefits for an office assistant 3 (OA3) (FY18).</u>
<u>Actual cost</u>	<u>Vendor copying/scanning costs.</u>
<u>\$.44 per minute</u>	<u>Convert electronic records into PDF and sanitize as needed for redactions.</u>  <u>Fees are determined by charging the per minute rate of the salary and benefits for an FRA3 (FY18).</u>
<u>\$.44 per minute</u>	<u>Copying electronic records to media/storage/etc.</u>  <u>Fees are determined by charging the per minute rate of the salary and benefits for an FRA3 (FY18).</u>
<u>\$.16 per compact disc (CD)</u>	<u>Disc and disc sleeve.</u>
<u>\$.30 per digital video disc (DVD)</u>	
<u>Actual costs</u>	<u>Flash drives and other formats.</u>  <u>\$12.61 (8GB flash drive).</u>
<u>Actual cost (based on weight)</u>	<u>Postage, including the department of enterprise services (DES) consolidated mail service (CMS) metering fees.</u>
<u>\$.04 small CD/DVD envelope</u>	<u>Mailing materials.</u>
<u>\$.09 manila envelope (6"x9")</u>	
<u>\$.30 bubble envelope (7"x9.5")</u>	
<u>\$.04 CD sleeve</u>	
<b><u>Customized Service:</u></b>	
<u>Actual cost</u>	<u>Data compilations prepared or accessed as a customized service (cost is in addition to copying and delivery fees).</u>

**WSR 18-05-096**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**  
 [Filed February 21, 2018, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-099.

Title of Rule and Other Identifying Information: WAC 139-05-300 Requirement for in-service training.

Hearing Location(s): On Wednesday, June 13, 2018, at 10 a.m., at the Washington state criminal justice training commission (WSCJTC), 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email speterson@cjtc.state.wa.us, by June 6, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email speterson@cjtc.state.wa.us, by June 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 139-05-300 identifies the minimum in-service training requirements for certified and reserve peace officers. The addition of this language will add the online crisis intervention two-hour course as one of the mandated courses as per RCW 43.101.427.

Statutory Authority for Adoption: RCW 43.101.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bob Graham, Burien, Washington, 206-835-7302.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

February 21, 2018  
 Sonja Peterson  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-19-040, filed 9/14/16, effective 10/15/16)

**WAC 139-05-300 Requirement for in-service training.** The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) Effective January 1, 2006, every peace officer certified under RCW 43.101.095 or 43.101.157 will complete a

minimum of twenty-four hours of in-service training annually.

(a) This requirement is effective January 1, 2006, for incumbent officers.

(b) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(c) Training may be developed and provided by the employer or other training resources.

(d) The commission will publish guidelines for approved in-service training.

(e) As of July 1, 2018, the twenty-four hours must include the successful completion of the training commission's two-hour annual online crisis intervention course prescribed under RCW 43.101.427.

(2) Effective January 1, 2016, every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of twenty-four hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve peace officer/tribal peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic reserve law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(d) As of July 1, 2018, the twenty-four hours must include the successful completion of the training commission's two-hour annual online crisis intervention course prescribed under RCW 43.101.427.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a record-keeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may request an extension of three months for peace officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three month extension under this provision provides the individuals named until March 31st to complete the mandated twenty-four hours.

(d) Any training obtained during this three month extension only counts towards the previous year being audited.

(5) The commission auditor may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

**WSR 18-05-097**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed February 21, 2018, 11:04 a.m.]

Continuance of WSR 18-03-183.

Preproposal statement of inquiry was filed as WSR 13-15-128.

Title of Rule and Other Identifying Information: WAC 415-02-150 How is regular interest awarded and credited to Plan 1 and Plan 2 accounts?

Date of Intended Adoption: March 14, 2018.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by March 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This continuance reschedules the date of intended adoption to March 14, 2018, to allow for written comments to be submitted up to two weeks after the public hearing on February 27, 2018.

February 21, 2018  
Jilene Siegel  
Rules Coordinator

**WSR 18-05-098**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed February 21, 2018, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-072.

Title of Rule and Other Identifying Information: WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?, 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS?, 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS?, and 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?

Hearing Location(s): On March 27, 2018, at 10:00 a.m., at the Department of Retirement Systems (DRS), Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502.

Date of Intended Adoption: March 28, 2018.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by March 26, 2018.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by March 23, 2017 [2018].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify that eligibility for early retirement does not make a member ineligible to establish membership in another state retirement system.

Reasons Supporting Proposal: The department believes this interpretation reflects the legislative intent to accommodate career transitions within public service. The retirement statutes prohibit membership in one retirement plan after becoming eligible to retire from another plan, to prevent members from receiving a pension while also collecting wages for public employment. When that provision was enacted, early retirement with a reduced benefit was not available. However, a member may now be eligible for an early retirement benefit that would be reduced to a small fraction of its value at full retirement age. This rule allows the member to defer retirement from the first plan, while earning benefits in another plan related to subsequent public employment.

Statutory Authority for Adoption: RCW 41.50.050 Powers, duties, and functions of director.

Statute Being Implemented: RCW 41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system—Exceptions.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504, 360-664-7304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule only impacts members of the state retirement systems and does not affect small businesses.

February 21, 2018  
Jilene Siegel  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

**WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?** (1) If you have retired from

another retirement system authorized by the laws of this state, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(2) If you are **eligible ((to retire)) for normal retirement** from another retirement system listed in RCW 41.50.-030, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.-010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless you are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.37.020.

(b) "Service" - RCW 41.37.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

**AMENDATORY SECTION** (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

**WAC 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS?** (1) If you have **retired** from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(2) If you are **eligible ((to retire)) for normal retirement** from another retirement system listed in RCW 41.50.-030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.-010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Service" - RCW 41.40.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

**WAC 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS?** (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(2) If you are **eligible ((to-~~retire~~)) for normal retirement** from another retirement system listed in RCW 41.50-030, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54-010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless you are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.35.030.

(b) "Service" - RCW 41.35.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

**WAC 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?** (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(2) If you are **eligible ((to-~~retire~~)) for normal retirement** from another retirement system listed in RCW 41.50-030, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless you are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.32.032.

(b) "Service" - RCW 41.32.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

**WSR 18-05-099**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed February 21, 2018, 11:14 a.m.]

Supplemental Notice to WSR 17-18-104.

Preproposal statement of inquiry was filed as WSR 16-22-072.

Title of Rule and Other Identifying Information: Chapter 392-400 WAC regarding student discipline.

Hearing Location(s): On March 30, 2018, at 1:00 p.m., at the Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington Street, Olympia, WA 98501; and on April 2, 2018, at 5:30 - 8:30 p.m., at the Tukwila Public Library, Meeting Room, 14380 Tukwila International Boulevard, Tukwila, WA 98168. Those wishing to testify at the March 30, 2018, hearing should arrive by 1:00 p.m.

Date of Intended Adoption: April 30, 2018.

Submit Written Comments to: Dierk Meierbachtol, P.O. Box 47200, Olympia, WA 98504-7200, email DisciplineRuleComments@k12.wa.us, fax 360-753-4201, by April 2, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by March 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 28A.600.015 requires OSPI to adopt lawful and reasonable rules prescribing the substantive and procedural due process guarantees of students in public schools. These rules are found in chapter 392-400 WAC.

On September 6, 2017, OSPI filed proposed revisions to chapter 392-400 WAC (WSR 17-18-104) that were intended to (1) align student discipline definitions with new requirements and statutory language in HB 1541 (chapter 72, Laws of 2016); (2) provide further guidance on the requirements in HB 1541, including specific guidance on the provision of educational services while a student is suspended or expelled; and (3) increase clarity and readability of the entire chapter.

Following the public comment period, OSPI has made revisions to the rule that are substantially different from the rule proposed in WSR 17-18-104. OSPI is therefore providing supplemental notice under RCW 34.05.340 that OSPI is reopening the proceedings for public comment on proposed rule.

The revised proposed rules include the following changes:

- "Culturally responsive" is defined to have the same meaning as "cultural competency" in RCW 28A.410.-270.
- The proposed WAC 392-400-330 and 392-400-335 are revised to provide conditions, limitations, and procedures for classroom exclusions that do not exceed the balance of a school day. The revised proposed rules clarify that a student may not be removed from school during a classroom exclusion unless the school district

provides notice and due process for a short-term suspension, expulsion, or emergency expulsion.

- The proposed WAC 392-400-430, regarding general conditions and limitations for suspensions and expulsions, is revised to clarify that this section does not preclude a school district from administratively transferring a student, provided that the basis for the transfer is not the student's behavioral violation.
- The proposed WAC 392-400-450 is revised to provide an additional opportunity for parents to participate. At an initial hearing in which the principal is considering administering a long-term suspension or expulsion, the principal must make a reasonable attempt to contact the student's parents to provide an opportunity for the parents to participate in the initial hearing in person or by telephone.
- The proposed WAC 392-400-480 is revised to provide an option to request the school board review and reconsider a school district's decision to extend a student's expulsion.
- The proposed WAC 392-400-510 is revised to limit the use of emergency expulsions to situations where a school district has sufficient cause to believe that a student's presence poses an immediate and continuing danger to other students or school personnel.
- The proposed WAC 392-400-810 is revised to allow a school district, following notice and due process, to continue to administer a long-term suspension or expulsion administered by another school district when the student's behavioral violation would also be a violation of the district's discipline policy.

Relevant public comment received regarding the initial proposed rule will be considered in the new proceeding.

Reasons Supporting Proposal: These revisions to the student discipline rules incorporate substantial stakeholder feedback, including feedback from the OSPI student discipline task force. The revised rules (1) simplify and clarify due process procedures for school districts, students, and families; (2) eliminate problems of interpretation and problems of practice that are a result of confusing or vague terminology; (3) encourage fewer adversarial resolutions to discipline-related issues and the use of best practices to minimize the use of exclusionary discipline practices; (4) provide for more collaborative and culturally sensitive and culturally responsive reengagement process; and (5) increase opportunities for student, family, and community engagement in discipline, including in the development of discipline policies and in resolving discipline-related issues.

The supplemental revised rules reflect comments that OSPI received on the proposed revisions filed on September 6, 2017.

Statutory Authority for Adoption: RCW 28A.600.015, 28A.600.020.

Statute Being Implemented: RCW 28A.600.010 through 28A.600.022, 28A.320.211.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Dierk Meierbachtol, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6004; Implementation: Joshua Lynch,

OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-4969; and Enforcement: Not applicable.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

February 7, 2018  
Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

### Chapter 392-400 WAC

#### **((PUPILS)) STUDENT DISCIPLINE**

##### NEW SECTION

**WAC 392-400-010 Purpose.** The purpose of this chapter is to ensure that school districts in Washington:

- (1) Provide due process to students;
- (2) Implement culturally responsive discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;
- (3) Engage students, parents, families, and the community in decisions related to the development and implementation of discipline policies and procedures;
- (4) Improve fairness and equity in the administration of discipline;
- (5) Administer discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible;
- (6) Provide educational services that students need to complete their education without disruption; and
- (7) Facilitate collaboration between school personnel, students, and families to ensure successful reentry into the classroom following a suspension or expulsion.

##### NEW SECTION

**WAC 392-400-015 Authority.** The authority for this chapter is RCW 28A.600.015 and 28A.600.020, which require the office of superintendent of public instruction to establish rules that prescribe the substantive and procedural due process rights of students served by any program or activity conducted by, or on behalf of, school districts.

##### NEW SECTION

**WAC 392-400-020 Application.** (1) This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in

Washington school districts. A school district may establish additional due process protections for students consistent with federal statutes and regulations, state statutes, common law, and rules prescribed by the office of superintendent of public instruction.

(2) This chapter must be construed in a manner consistent with the following laws and rules:

(a) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(b) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(c) Chapter 392-190 WAC, prohibiting unlawful discrimination in Washington public schools, including the requirement under WAC 392-190-048 that school districts annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency (i.e., English learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and Part B of the Individuals with Disabilities Education Act;

(d) WAC 392-172A-05140 through 392-172A-05175, and 34 C.F.R. Part 300.530 through 300.536, regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act;

(e) RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and

(f) RCW 28A.415.410 and 28A.415.420, regarding training to support school district personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

##### NEW SECTION

**WAC 392-400-025 Definitions.** As used in this chapter the term:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-110.

(2) "Classroom exclusion" means the exclusion of a student from a classroom or instructional or activity area for behavioral violations, subject to the requirements in WAC 392-400-330 and 392-400-335.

(3) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

(4) "Discipline" means any action taken by a school district in response to behavioral violations.

(5) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.

(6) "Emergency expulsion" means the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, subject to the requirements in WAC 392-400-510 through 392-400-530.

(7) "Expulsion" means a denial of admission to the student's current school placement in response to a behavioral violation, subject to the requirements in WAC 392-400-430 through 392-400-480.

(8) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school board.

(9) "Other forms of discipline" means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(10) "Parent" has the same meaning as in WAC 392-172A-01125.

(11) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the office of the superintendent of a school district is open to the public for business.

(12) "School board" means the governing board of directors of a local school district.

(13) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

(14) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions.

(a) "In-school suspension" means a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school placement for up to ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

## DISCIPLINE POLICIES AND PROCEDURES

### NEW SECTION

**WAC 392-400-110 Discipline policies and procedures—Development, review, and distribution.** (1) **School district policies and procedures.** A school district must adopt written policies and procedures for supporting students in meeting behavioral expectations and administering discipline, consistent with the model policy developed under RCW 28A.345.090, that:

(a) Clearly state the types of behaviors for which discipline, including suspension and expulsion, may be administered;

(b) Have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process that is conducive to learning;

(c) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;

(d) Provide that school district personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which discipline may be administered;

(e) Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support students in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035;

(f) Identify school district personnel with the authority to administer classroom exclusions, suspensions, expulsions, emergency expulsions, and other forms of discipline;

(g) Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency expulsions, consistent with WAC 392-400-430 through 392-400-530;

(h) Establish grievance procedures to resolve parents' or students' disagreements related to the administration of classroom exclusions and other forms of discipline, including discipline that excludes a student from transportation or extra-curricular activity. The procedures must, at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation;

(i) Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610;

(j) Provide for reengagement meetings and plans, consistent with WAC 392-400-710; and

(k) Provide for readmission of students who have been suspended or expelled.

(2) **Development and review.** A school district must develop and periodically review discipline policies and procedures with the participation of school district personnel, students, parents, families, and the community. During the development and review of discipline policies and procedures, the school district must use disaggregated data collected under RCW 28A.300.042 to:

(a) Monitor the impact of the school district's discipline policies, procedures, and practices; and

(b) Update the school district's discipline policies and procedures to improve fairness and equity in the administration of discipline.

(3) **Distribution of policies and procedures.** A school district must make discipline policies and procedures available to families and the community. The school district must annually provide the district's discipline policies and procedures to all district personnel, students, and parents, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964. The school district must ensure district employees and contractors are knowledgeable of the discipline policies and procedures.

## CLASSROOM EXCLUSIONS

### NEW SECTION

**WAC 392-400-330 Classroom exclusions—Conditions and limitations.** (1) **Authority to administer classroom exclusions.**

(a) **Teacher authority.** A teacher may exclude a student from the teacher's classroom or instructional or activity area for behavioral violations that disrupt the educational process while the student is under the teacher's immediate supervision, subject to the requirements in this section and WAC 392-400-335.

(b) **Other school personnel authority.** A school district may authorize other school personnel to exclude a student from a classroom or instructional or activity area for behavioral violations of the district's discipline policy adopted under WAC 392-400-110, subject to the requirements in this section and WAC 392-400-335.

(2) **Other forms of discipline.** The teacher or other school personnel must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations, unless the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process. In administering other forms of discipline, the teacher or other school personnel may consider using best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(3) **Limitations on classroom exclusion.**

(a) **Duration of classroom exclusion.** A classroom exclusion may be administered for all or any portion of the balance of the school day in which the student was excluded from the student's classroom or instructional or activity area. When a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(b) **Removal from school.** A student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(4) **Assignments and tests.** The school district must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.

### NEW SECTION

**WAC 392-400-335 Classroom exclusion—Notice and procedure.** Following a classroom exclusion under WAC 392-400-330:

(1) **Notice to principal.** The teacher or other school personnel must report the classroom exclusion, including the behavioral violation that led to the classroom exclusion, to the principal or designee as soon as reasonably possible.

(2) **Notice to parents.** The teacher, principal, or designee must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school district

must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(3) **Emergency circumstances.** When a teacher or school personnel administers a classroom exclusion on the grounds that the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process:

(a) The teacher or other school personnel must immediately notify the principal or designee; and

(b) The principal or designee must meet with the student as soon as reasonably possible and administer appropriate discipline.

(4) **Reporting.** The principal or designee must report all classroom exclusions, including the behavioral violation that led to each classroom exclusion, to the school district superintendent or designee.

## SUSPENSIONS AND EXPULSIONS

### NEW SECTION

**WAC 392-400-430 Suspensions and expulsions—General conditions and limitations.** A school district may administer suspensions and expulsions for behavioral violations, subject to the following requirements:

(1) **Parent involvement.** A school district must provide for early involvement of parents in efforts to support students in meeting behavioral expectations and must make every reasonable attempt to involve the student and parents in the resolution of behavioral violations.

(2) **Considerations.** Before administering any suspension or expulsion, a school district must consider the student's individual circumstances and the nature and circumstances of the behavioral violation to determine whether the suspension or expulsion, and the length of the exclusion, is warranted.

(3) **Preventing students from completing academic requirements.** A school district may not suspend the provision of educational services to a student in response to behavioral violations or administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements.

(4) **Opportunity to receive educational services.**

(a) A school district must provide an opportunity for students to receive educational services during a suspension or expulsion under WAC 392-400-610.

(b) If a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion.

(c) Nothing in this section precludes a school district from administratively transferring a student, provided that the basis for the transfer is not the student's violation of the district's discipline policy adopted under WAC 392-400-110.

(5) **Reporting.** The principal or designee must report all suspensions and expulsions, and the behavioral violation that led to each suspension or expulsion, to the school district

superintendent or designee within twenty-four hours after the administration of the suspension or expulsion.

(6) **Reentry.** After suspending or expelling a student, a school district must:

(a) Make reasonable efforts to return the student to the student's regular educational setting as soon as possible.

(b) Allow the student to petition for readmission at any time.

(7) **Absences and tardiness.** A school district may not suspend or expel a student from school for absences or tardiness.

(8) **Access to school district property.** When administering a suspension or expulsion, a school district may deny a student admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the district.

#### NEW SECTION

**WAC 392-400-435 Short-term and in-school suspensions—Additional conditions and limitations.** (1) **Other forms of discipline.** Before administering a short-term or in-school suspension, a school district must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Length of exclusion.** A school district may not administer a short-term or in-school suspension beyond the school year in which the behavioral violation occurred.

(3) **Grade-level limitations.**

(a) A school district may not administer a short-term or in-school suspension for a student in kindergarten through fourth grade for more than ten cumulative school days during any academic term; and

(b) A school district may not administer a short-term or in-school suspension for a student in grades five through twelve:

(i) For more than fifteen cumulative school days during any single semester; or

(ii) For more than ten cumulative school days during any single trimester.

(4) **School personnel.** When administering an in-school suspension, a school district must ensure school personnel:

(a) Are physically in the same location as the student to provide direct supervision during the duration of the in-school suspension; and

(b) Are accessible to offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes as required under WAC 392-400-610.

#### NEW SECTION

**WAC 392-400-440 Long-term suspensions—Additional conditions and limitations.** (1) **Other forms of discipline.** Before administering a long-term suspension, a school district must consider other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best prac-

tices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on long-term suspensions.** A school district may only administer a long-term suspension:

(a) For behavioral violations under RCW 28A.600.015 (6); and

(b) Only after the school district has determined that, if the student returned to school before completing a long-term suspension:

(i) The student would pose an imminent danger to students or school personnel; or

(ii) The student would pose an imminent threat of material and substantial disruption of the educational process.

(3) **Length of exclusion.**

(a) A long-term suspension may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred.

(4) **Grade-level limitations.** Except for a violation of WAC 392-400-820, a school district may not administer a long-term suspension for any student in kindergarten through fourth grade.

#### NEW SECTION

**WAC 392-400-445 Expulsions—Additional conditions and limitations.** (1) **Other forms of discipline.** Before administering an expulsion, a school district must consider other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on expulsions.** A school district may only administer an expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6); and

(b) Only after the school district has determined that if the student returned to school before completing an expulsion, the student would pose an imminent danger to students or school personnel.

(3) **Length of exclusion.** An expulsion may not exceed the length of an academic term, unless the principal or designee petitions the school district superintendent for extension of an expulsion under WAC 392-400-480, and the petition is granted.

(4) **Grade-level limitations.** Except for violations of WAC 392-400-820, a school district may not administer an expulsion for any student in kindergarten through fourth grade.

#### NEW SECTION

**WAC 392-400-450 Suspensions and expulsions—Initial hearing with student.** (1) **Initial hearing.** Before administering any suspension or expulsion, the principal or designee must conduct an informal initial hearing with the student for the purpose of hearing the student's perspective. At the initial hearing, the principal or designee must provide the student:

- (a) Notice of the student's violation of the school district's discipline policy adopted under WAC 392-400-110;
- (b) An explanation of the evidence regarding the behavioral violation;
- (c) An explanation of the discipline that may be administered; and
- (d) An opportunity for the student to share the student's perspective and provide explanation regarding the behavioral violation.

**(2) Parent participation.**

(a) **Short-term and in-school suspensions.** At an initial hearing in which the principal or designee is considering administering a short-term or in-school suspension, the principal or designee must provide the student an opportunity for the student to contact the student's parents.

(b) **Long-term suspensions and expulsions.** At an initial hearing in which the principal or designee is considering administering a long-term suspension or expulsion, the principal or designee must make a reasonable attempt to contact the student's parents to provide an opportunity for the parents to participate in the initial hearing in person or by telephone.

(3) **Administrative decision.** Following the initial hearing, the principal or designee must inform the student of the decision regarding the behavioral violation, including the date on which any suspension or expulsion will begin and end.

(4) **Language assistance.** The school district must ensure that the initial hearing is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

**WAC 392-400-455 Suspensions and expulsions—Notice to student and parents.** (1) **Initial notice.** Before administering any suspension or expulsion, a school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the behavioral violation.

(2) **Written notice.** No later than one school business day following the initial hearing with the student in WAC 392-400-450, a school district must provide written notice of the suspension or expulsion to the student and parents in person, by mail, or by email. The written notice must include:

- (a) A description of the student's behavior and how the behavior violated the school district's policy adopted under WAC 392-400-110;
- (b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;
- (c) The other forms of discipline that the school district considered or attempted, and an explanation of the district's decision to administer the suspension or expulsion;
- (d) The opportunity to receive educational services during the suspension or expulsion under WAC 392-400-610;
- (e) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-460;

(f) The student's and parents' right to appeal the suspension or expulsion under WAC 392-400-465, including where and to whom the appeal must be requested; and

(g) For a long-term suspension or expulsion, the opportunity for the student and parents to participate in a reengagement meeting under WAC 392-400-710.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

**WAC 392-400-460 Suspensions and expulsions—Optional conference with principal.** (1) **Requesting a conference.** If the student or parents disagree with the school district's decision to suspend or expel the student, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide the student and parents the opportunity to:

- (a) Share the student's perspective and explanation regarding the behavioral violation;
- (b) Confer with the principal or designee and school personnel involved in the incident that led to the suspension or expulsion; and
- (c) Discuss other forms of discipline that may be administered.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the suspension or expulsion under WAC 392-400-465, participate in a reengagement meeting under WAC 392-400-710, or petition for readmission.

NEW SECTION

**WAC 392-400-465 Suspensions and expulsions—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal a suspension or expulsion. Appeal time limits must be no less than five school business days from the date the school district provides the written notice under WAC 392-400-455.

**(3) Short-term and in-school suspensions.**

(a) **Appeal.** The superintendent or designee must provide the student and parents the opportunity to share the stu-

dent's perspective and explanation regarding the behavioral violation orally or in writing.

(b) **Appeal decision.** The superintendent or designee must deliver a written appeal decision to the student and parents in person, by mail, or by email within two school business days after receiving the appeal. The written decision must include:

(i) The decision to affirm, reverse, or modify the suspension;

(ii) The duration and conditions of the suspension, including the dates on which the suspension will begin and end;

(iii) The educational services the school district will offer to the student during the suspension under WAC 392-400-610; and

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request.

**(4) Long-term suspensions and expulsions.**

(a) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

(i) The time, date, and location of the appeal hearing;

(ii) The name(s) of the official(s) presiding over the appeal;

(iii) The student's and parents' rights to inspect the student's education records under (e) of this subsection;

(iv) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under (e) of this subsection;

(v) The student's and parents' rights under (f) of this subsection; and

(vi) Whether the school district will offer to hold a reengagement meeting under WAC 392-400-710 before the appeal hearing.

(b) **Reengagement.** Before the appeal hearing, the student, parents, and school district may agree to hold a reengagement meeting and develop a reengagement plan under WAC 392-400-710. The student, parents, and school district may mutually agree to postpone the appeal hearing while participating in the reengagement process.

(c) **Appeal hearing.** The school district must hold an appeal hearing within three school business days from the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student or parents.

(d) **Presiding officials.** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to suspend or expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

**(e) Evidence and witnesses.**

(i) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing.

The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(ii) Upon request, the student and parents may review the student's education records. The district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(iii) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(A) The district made a reasonable effort to produce the witness; and

(B) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(f) **Student and parent rights.** During the appeal hearing, the student and parents have the right to:

(i) Be represented by legal counsel;

(ii) Question witnesses;

(iii) Share the student's perspective and provide explanation regarding the behavioral violation; and

(iv) Introduce relevant documentary, physical, or testimonial evidence.

(g) **Recording of hearing.** The appeal hearing must be recorded by manual, electronic, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(h) **Appeal decision.** The presiding official(s) must base the decision solely on the evidence presented at the hearing. The presiding official(s) must provide a written decision to the student and parents in person, by mail, or by email within three school business days after the appeal hearing. The written decision must include:

(i) The findings of fact;

(ii) A determination whether:

(A) The student's behavior violated the school district's discipline policy adopted under WAC 392-400-110;

(B) The behavioral violation reasonably warrants the suspension or expulsion and the length of the suspension or expulsion; and

(C) The suspension or expulsion is affirmed, reversed, or modified;

(iii) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request; and

(v) Notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710 and the contact information for the person who will coordinate scheduling of the reengagement meeting.

(5) **Language assistance.** The school district must ensure that the notice, appeal proceedings, and decision are in a language the student and parents understand, which may require language assistance for students and parents with lim-

ited-English proficiency under Title VI of the Civil Rights Act of 1964.

(6) **Pending appeal.** If the student or parents request an appeal under this section, the school district may temporarily continue to administer the suspension or expulsion during the appeal period subject to the following requirements:

(a) The school district may temporarily continue to administer the suspension or expulsion for no more than ten consecutive school days from the initial hearing under WAC 392-400-450 or until the appeal is decided, whichever is earlier;

(b) Any days that the student is temporarily suspended or expelled before the appeal is decided must be applied to the term of the student's suspension or expulsion and may not extend the term of the student's suspension or expulsion;

(c) If the student who is temporarily suspended or expelled returns to school before the appeal is decided under this section, the school district must provide the student an opportunity to make up assignments and tests missed during the suspension or expulsion upon the student's return.

#### NEW SECTION

**WAC 392-400-470 Suspensions and expulsions—Review and reconsideration.** (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-465. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than ten school business days from the date the school district provides the written appeal decision to the student and parents under WAC 392-400-465.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the behavioral violation, any records from the appeal under WAC 392-400-465, relevant state law, and the school district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the behavioral violation, the decision to suspend or expel the student, or the appeal decision under WAC 392-400-465. If the discipline appeal council presided over the appeal under WAC 392-400-465, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within ten school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms, reverses, or modifies the suspension or expulsion;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end; and

(c) For long-term suspensions or expulsions, notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

#### NEW SECTION

**WAC 392-400-475 Discipline appeal council.** A school board may designate a discipline appeal council to hear and decide appeals under WAC 392-400-465 or to review and reconsider the district's appeal decisions under WAC 392-400-470. A discipline appeal council must consist of at least three persons appointed by the school board for fixed terms. All members of the discipline appeal council must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

#### NEW SECTION

**WAC 392-400-480 Petition to extend expulsion.** (1) **Petition.** When risk to public health or safety warrants extending a student's expulsion, the principal or designee may petition the school district superintendent or designee for authorization to exceed the academic term limitation on an expulsion. The petition must inform the superintendent or designee of:

(a) The behavioral violation that resulted in the expulsion and the public health or safety concerns;

(b) The student's academic, attendance, and discipline history;

(c) Any nonacademic supports and behavioral services the student was offered or received during the expulsion;

(d) The student's academic progress during the expulsion and the educational services available to the student during the expulsion;

(e) The proposed extended length of the expulsion; and

(f) The student's reengagement plan.

(2) **Time limit.** The principal or designee may request a petition under this section only after the development of a reengagement plan under WAC 392-400-710 and before the end of the expulsion. For violations of WAC 392-400-820, the principal or designee can request a petition at any time.

(3) **Notice.** The school district must provide written notice of the petition to the student and parents in person, by mail, or by email within one school business day from the date the superintendent or designee received the petition. The written notice must include:

(a) A copy of the petition;

(b) The student's and parents' right to an informal conference with the school district superintendent or designee to be

held within five school business days from the date the district provided written notice to the student and parents; and

(c) The student's and parents' right to respond to the petition orally or in writing to the school district superintendent or designee within five school business days from the date the district provided written notice.

(4) **Written decision.** The school district superintendent or designee may grant the petition only if there is substantial evidence that, if the student were to return to the student's previous school of placement after the length of an academic term, the student would pose a risk to public health or safety. The school district superintendent or designee must deliver a written decision to the principal, the student, and the student's parents in person, by mail, or by email within ten school business days after receiving the petition.

(a) If the petition is granted, the written decision must include:

(i) The date on which the extended expulsion will end;

(ii) The reason that, if the student were to return before the initial expulsion end date, the student would pose a risk to public health or safety; and

(iii) Notice of the student's or parents' right to request review and reconsideration of the appeal decision under subsection (5) of this section, including where and to whom to make the request.

(b) If the petition is not granted, the written decision must identify the date on which the expulsion will end.

**(5) Review and reconsideration.**

(a) **Requesting review.** The students or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the decision to extend the student's expulsion. The student or parents may request the review orally or in writing.

(b) **Time limit.** A school district may establish a time limit for parents and students to request a review under this subsection. The time limit must be no less than ten school business days from the date the school district superintendent or designee provides the written decision under subsection (4) of this section.

**(c) Review procedure.**

(i) The school board or discipline appeal council may request to meet with the student or parents or the principal to hear further arguments and gather additional information.

(ii) The decision of the school board or discipline appeal council may be made only by board or council members who were not involved in the behavioral violation, the decision to expel the student, or the appeal decision under WAC 392-400-465.

(d) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within ten school business days after receiving the request for review and reconsideration. The written decision must identify:

(i) Whether the school board or discipline appeal council affirms, reverses, or modifies the decision to extend the student's expulsion; and

(ii) The date on which the extended expulsion will end.

(6) **Duration.** Any extension of an expulsion may not exceed the length of an academic term.

(7) **Language assistance.** The school district must ensure that any petition proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(8) **Annual reporting.** The school district must annually report the number of petitions approved and denied to the office of superintendent of public instruction.

## EMERGENCY EXPULSIONS

### NEW SECTION

**WAC 392-400-510 Emergency expulsions—Conditions and limitations.** A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

(1) **Determination of danger.** The school district must have sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school personnel.

(2) **Time limit.** An emergency expulsion may not exceed ten consecutive school days. An emergency expulsion must end or be converted to another form of discipline within ten school days from the start of the emergency expulsion.

(3) **Conversion.** If a school district converts an emergency expulsion to a suspension or expulsion, the district must:

(a) Apply any days that the student was emergency expelled before the conversion to the total length of the suspension or expulsion; and

(b) Provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480.

(4) **Reporting.** All emergency expulsions, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be reported to the district superintendent or designee within twenty-four hours after the start of the emergency expulsion.

### NEW SECTION

**WAC 392-400-515 Emergency expulsions—Notice to student and parents.** (1) **Initial notice.** After an emergency expulsion, the school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the reason the district believes the student's presence poses an immediate and continuing danger to other students or school personnel.

(2) **Written notice.** Within twenty-four hours after an emergency expulsion, a school district must provide written notice of the emergency expulsion to the student and parents in person, by mail, or by email. The written notice must include:

(a) The reason the student's presence poses an immediate and continuing danger to students or school personnel;

(b) The duration and conditions of the emergency expulsion, including the dates on which the emergency expulsion will begin and end;

(c) The opportunity to receive educational services during the emergency expulsion under WAC 392-400-610;

(d) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-520; and

(e) The student's and parents' right to appeal the emergency expulsion under WAC 392-400-525, including where and to whom the appeal must be requested.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

#### NEW SECTION

**WAC 392-400-520 Emergency expulsions—Optional conference with principal.** (1) **Requesting a conference.** If a student or the parents disagree with the school district's decision to administer an emergency expulsion, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide students and parents the opportunity to share the student's perspective and explanation regarding the events that led to the emergency expulsion.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the emergency expulsion under WAC 392-400-525.

#### NEW SECTION

**WAC 392-400-525 Emergency expulsions—Appeal.**

(1) **Requesting an appeal.** A student or the parents may appeal an emergency expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency expulsion. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency expulsion.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

- (a) The time, date, and location of the appeal hearing;
- (b) The name(s) of the official(s) presiding over the appeal;
- (c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;

(d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and

(e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

- (i) The district made a reasonable effort to produce the witness; and
- (ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

- (a) Be represented by legal counsel;
- (b) Question witnesses;
- (c) Share the student's perspective and provide explanation regarding the events that led to the emergency expulsion; and
- (d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by manual, electronic, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

- (a) The findings of fact;

(b) A determination whether the student's presence continues to pose an immediate and continuing danger to students or school personnel; and

(c) Whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

#### NEW SECTION

**WAC 392-400-530 Emergency expulsions—Review and reconsideration.** (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency expulsion, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency expulsion, the decision to emergency expel the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district's decision that the stu-

dent's presence posed an immediate and continuing danger to students or school personnel; and

(b) If the emergency expulsion has not yet ended or been converted, whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

## EDUCATIONAL SERVICES

### NEW SECTION

**WAC 392-400-610 Educational services during suspension, expulsion, or emergency expulsion.** (1) **Educational services.** During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must be comparable, equitable, and appropriate to the regular educational services the student would have received without the suspension or expulsion.

(2) **Comparable, equitable, and appropriate services.** When determining whether educational services are comparable, equitable, and appropriate, the school district must consider how the educational services will enable the student to continue to participate in the general education curriculum so that the student can meet the educational standards established within the district. In making the determination, the school district must consider:

(a) Meaningful input from the student, parents, and the student's teachers;

(b) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and

(c) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services.

(3) **Notice.** As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include:

(a) A description of the educational services that will be provided; and

(b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

(4) **Exclusions for up to five days.** For students subject to suspension or emergency expulsion for up to five consecu-

tive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes; and

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

(5) **Exclusions for six to ten days.** For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically until the suspension or emergency expulsion ends to:

(i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and

(ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress.

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

(6) **Long-term suspensions and expulsions.** For students subject to expulsion or suspension for more than ten consecutive school days, a school district must provide educational services in accordance with WAC 392-121-107.

(7) **Language assistance.** The school district must ensure that notices and communications required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

## REENGAGEMENT

### NEW SECTION

**WAC 392-400-710 Student reengagement after long-term suspension or expulsion.** (1) **Reengagement meeting.** When a school district administers a long-term suspension or expulsion, the district must convene a reengagement meeting with the student and parents to discuss a plan to reengage the student. Before convening a reengagement meeting, a school district must communicate with the student and parents to schedule the meeting time and location. The reengagement meeting must occur:

(a) Within twenty calendar days of the start of the student's long-term suspension or expulsion, but no later than five calendar days before the student returns to school; or

(b) As soon as reasonably possible, if the student or parents request a prompt reengagement meeting.

(2) **Reengagement plan.** The school district must collaborate with the student and parents to develop a culturally sensitive and culturally responsive reengagement plan tailored to the student's individual circumstances to support the student in successfully returning to school. In developing a reengagement plan, the school district must consider:

(a) The nature and circumstances of the incident that led to the student's suspension or expulsion;

(b) As appropriate, students' cultural histories and contexts, family cultural norms and values, community resources, and community and parent outreach;

(c) Shortening the length of time that the student is suspended or expelled;

(d) Providing academic and nonacademic supports that aid in the student's academic success and keep the student engaged and on track to graduate; and

(e) Supporting the student, parents, or school personnel in taking action to remedy the circumstances that resulted in the suspension or expulsion and preventing similar circumstances from recurring.

(3) **Documentation.** The school district must document the reengagement plan and provide a copy of the plan to the student and parents.

(4) **Language assistance.** The school district must ensure that the reengagement meeting and plan are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Student and parent rights.** Reengagement meetings do not replace an appeal hearing under WAC 392-400-465 or a petition for readmission.

## ADDITIONAL DUE PROCESS PROTECTIONS

### NEW SECTION

**WAC 392-400-805 Fundamental rights.** When administering discipline under this chapter, the school district must not:

(1) Unlawfully discriminate against a student on the basis of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal;

(2) Deprive a student of the student's constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have the student's school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising the right;

(3) Deprive a student of the student's constitutional right to be secure in the student's person, papers, and effects against unreasonable searches and seizures;

(4) Unlawfully interfere in a student's pursuit of an education while in the custody of the school district; or

(5) Deprive a student of the student's right to an equal educational opportunity, in whole or in part, by a school district without due process of law.

#### NEW SECTION

**WAC 392-400-810 Long-term suspensions and expulsions administered by another school district.** (1) A school district may continue to administer a long-term suspension or expulsion administered by another school district when the student's behavioral violation would also be a violation of the district's discipline policy adopted under WAC 392-400-110.

(2) **Procedure.** If a school district continues to administer a long-term suspension or expulsion administered by another school district under this section:

(a) The length of the long-term suspension or expulsion must not exceed the original length of the long-term suspension or expulsion administered by the other school district. The school district must apply any days the student was suspended or expelled by the other district to the total length of the suspension or expulsion; and

(b) The district must provide the student and parents notice and due process in accordance with WAC 392-400-455 through 392-400-470.

(3) **Nonresident students.** This section does not limit a school district from rejecting applications from nonresident students under RCW 28A.225.225.

#### NEW SECTION

**WAC 392-400-815 Behavior agreements.** (1) **General.** A school district may enter into behavior agreements with students and parents in response to behavioral violations, including agreements to reduce the length of a suspension conditioned on the participation in treatment services, agreements in lieu of suspension or expulsion, or agreements holding a suspension or expulsion in abeyance.

(2) **Policies and procedures.** A school district entering into behavior agreements under this section must adopt written policies and procedures authorizing the agreements.

(3) **Reengagement meetings and educational services.** A school district must ensure that a behavior agreement does not waive a student's opportunity to participate in a reengagement meeting under WAC 392-400-710, or receive educational services as provided under WAC 392-400-610.

(4) **Duration.** The duration of behavior agreements must not exceed the length of an academic term.

(5) **Subsequent behavioral violations.** Nothing in this section precludes a school district from administering discipline for behavioral violations that occur after the district enters into an agreement with the student and parents.

(6) **Language assistance.** The school district must ensure any behavior agreement under this section is provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

#### NEW SECTION

**WAC 392-400-820 Firearm exceptions.** As provided under RCW 28A.600.420:

(1) A school district must expel a student for no less than one year if the district has determined that the student has carried or possessed a firearm on school premises, school-provided transportation, or areas of facilities while being used exclusively by public schools. The school district superintendent may modify the expulsion on a case-by-case basis.

(2) A school district may suspend or expel a student for up to one year if the student acts with malice, as defined under RCW 9A.04.110, and displays an instrument that appears to be a firearm on school premises, school-provided transportation, or areas of facilities while being used exclusively by public schools.

(3) This section does not apply to:

(a) Any student while engaged in military education authorized by the school district in which rifles are used;

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by the school district in which the rifles of collectors or instructors are handled or displayed; or

(c) Any student while participating in a rifle competition authorized by the school district.

#### NEW SECTION

**WAC 392-400-825 Corporal punishment, restraint, and isolation.** (1) **Corporal punishment.** A school district may not administer corporal punishment, including any act that willfully inflicts or willfully causes the infliction of physical pain on a student. Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school personnel or volunteer as necessary to maintain order or to prevent a student from harming themselves, other students, school personnel, or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or

(c) Physical exertion shared by all students in a teacher-directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects.

(2) **Restraint and isolation.** A school district may not use isolation, restraint, or a restraint device on any student, except as provided for in RCW 28A.155.210, 28A.600.485, WAC 392-172A-02105, and 392-172A-02110.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-400-200 Purpose and application.

WAC 392-400-205 Definitions.

WAC 392-400-210 Student responsibilities and duties.

WAC 392-400-215 Student rights.

- WAC 392-400-220 Student disciplinary boards—Establishment at option of school district—Functions.
- WAC 392-400-225 School district rules defining misconduct—Distribution of rules.
- WAC 392-400-227 School district rules defining students religious rights.
- WAC 392-400-230 Persons authorized to impose discipline, suspension, expulsion, or emergency removal upon students.
- WAC 392-400-233 Unexcused absences and tardiness.
- WAC 392-400-235 Discipline—Conditions and limitations.
- WAC 392-400-240 Discipline—Grievance procedure.
- WAC 392-400-245 Short-term suspension—Conditions and limitations.
- WAC 392-400-250 Short-term suspension—Prior conference required—Notice to parent.
- WAC 392-400-255 Short-term suspension—Grievance procedure.
- WAC 392-400-260 Long-term suspension—Conditions and limitations.
- WAC 392-400-265 Long-term suspension—Notice of hearing—Waiver of hearing.
- WAC 392-400-270 Long-term suspension—Prehearing and hearing process.
- WAC 392-400-275 Expulsion—Conditions and limitations.
- WAC 392-400-280 Expulsion—Notice of hearing—Waiver of hearing.
- WAC 392-400-285 Expulsion—Prehearing and hearing process.
- WAC 392-400-290 Emergency removal from a class, subject, or activity.
- WAC 392-400-295 Emergency expulsion—Limitations.
- WAC 392-400-300 Emergency expulsion—Notice of hearing—Waiver of hearing right.
- WAC 392-400-305 Emergency expulsion—Prehearing and hearing process.
- WAC 392-400-310 Appeals—Long-term suspension and expulsion.
- WAC 392-400-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures.
- WAC 392-400-317 Appeals—Discipline and short-term suspension grievances.
- WAC 392-400-320 School board or disciplinary appeal council decisions.
- WAC 392-400-410 Appeal for extension of an expulsion.
- WAC 392-400-420 Reengagement meetings and plans.

**WSR 18-05-101**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**ENTERPRISE SERVICES**

[Filed February 21, 2018, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-176.

Title of Rule and Other Identifying Information: Debarment procedures, the proposed rules provide an option, at the discretion of the department of enterprise services (DES), to fine in lieu of debarment for certain statutory causes that otherwise could be a basis for debarment. A fine in lieu of debarment, if timely paid, would not be a debarment order. Of the numerous enumerated statutory reasons for debarment, fines in lieu of debarment could be available for:

- *Serious Contract Violations*: "Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action: (i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or (ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment[.]" See RCW 39.26.200 (2)(e).
- *Ethic Violations*: "Violation of ethical standards set forth in RCW 39.26.020[.]" See RCW 39.26.200 (2)(f).

Hearing Location(s): On March 27, 2018, at 10 a.m. to 12 p.m., in Room 1213, 1500 Jefferson, Olympia, WA.

Date of Intended Adoption: April 13, 2018.

Submit Written Comments to: Jack Zeigler, online at <https://www.surveymonkey.com/r/DebarmentFines>, by March 30, 2018.

Assistance for Persons with Disabilities: Contact Jack Zeigler, phone 360-407-9209, email [jack.zeigler@des.wa.gov](mailto:jack.zeigler@des.wa.gov), by March 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2015, the Washington state legislature amended Washington's procurement code to provide DES additional authority, within the context of debarment, to correct behavior through fines in lieu of debarment. See chapter 44, Laws of 2015 (SHB 1447 amends RCW 39.26.200, which passed the House 96-1 and passed the Senate 49-0). The legislature, however, required DES to establish the fining process by rule.

This proposal changes chapter 200-305 WAC.

Reasons Supporting Proposal: This proposal is necessary to implement the rule-making requirements of RCW 39.26.-200 (2015) (chapter 44, Laws of 2015 as amended by SHB 1447). SHB 1447 allows DES to debar or impose civil fines. Civil fines must use debarment process.

Statutory Authority for Adoption: RCW 43.19.011 Director—Powers and duties.

Statute Being Implemented: RCW 39.26.200 (2015) (chapter 44, Laws of 2015 as amended by SHB 1447).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DES, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Greg Tolbert, 1500 Jefferson, Olympia, WA, 360-407-9038; and Enforcement: Farrell Presnell, 1500 Jefferson, Olympia, WA, 360-407-8820.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, DES does not voluntarily make section 201 applicable to this rule adoption nor to date, has the joint administrative rules review committee made section 201 applicable to this rule adoption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

February 18, 2018

Jack Zeigler

Policy and Rules Manager

#### NEW SECTION

**WAC 200-305-005 Purpose.** The purpose of this chapter is to provide rules for the department of enterprise services to implement the provisions of RCW 39.26.200, which authorize the department either to fine or to debar contractors. Fines in lieu of debarment provide a cost-effective, efficient, progressive enforcement mechanism to utilize state resources to police certain causes that otherwise would result in debarment and help ensure a vibrant, open, competitive procurement marketplace for bidders and the state of Washington.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-010 Definitions.** The definitions set forth in chapter 39.26 RCW and in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Affiliate" means a person in a business relationship who either directly or indirectly controls or has the power to control the other or a third party who controls or has the power to control both. Factors used to determine control include:

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity organized following the debarment or proposed debarment of a person which has the same or

similar management, ownership, or ((principal)) employees as the person that was debarred or proposed for debarment.

(2) ("~~Agency~~" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of state institutions.

(3) "~~Bid~~" means an offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

(4) "~~Bidder~~" means an individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

(5) "~~Contractor~~" means an individual or entity awarded a contract with an agency to perform a service or provide goods.

(6)) "~~Conviction~~" means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

((7)) (3) "~~Covered transaction~~" means submitting a bid, having a bid considered, entering into a state contract, or subcontracting on a state contract.

((8) "~~Debar~~" means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.

(9)) (4) "~~Debarring official~~" means the director of the department of enterprise services or the director's designee, who shall exercise the authority to debar or fine in lieu of debarment.

((10) "~~Department~~" means the department of enterprise services.

(11) "~~Director~~" means the director of the department of enterprise services.

(12) "~~Person~~" means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

(13) "~~Principal~~" means:

(a) An officer, director, owner, partner, principal investigator, or other person within a bidder or contractor with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the bidder or contractor, who:

(i) Is in a position to handle state funds;

(ii) Is in a position to influence or control the use of those funds; or

(iii) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

~~(14))~~ (5) "Fine in lieu of debarment" means an alternative to debarment, for certain causes that otherwise could result in debarment, but for which a monetary penalty, under the circumstances, may be more appropriate than debarment.

(6) "Investigating official" means a person appointed to investigate the merits of a debarment referral.

(7) "Service" or "service of process" means, for any delivery required under this chapter ~~((means))~~, personal delivery, delivery by US postal mail service, electronic mail delivery, or delivery by other reasonable commercially acceptable means of delivery.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-020 Causes for debarment.** The director may debar a contractor based on a finding of one or more of the causes specified in RCW 39.26.200(2). A contractor or affiliate also may be debarred for failure to timely pay a fine in lieu of debarment as provided in WAC 200-305-025. A debarment may include any affiliate of the contractor if specifically named and given notice of the proposed debarment pursuant to this chapter. ~~((The director may also debar a contractor or affiliate for any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.))~~

#### NEW SECTION

**WAC 200-305-025 Causes for fine in lieu of debarment.** The director may fine a contractor in lieu of debarment based on a finding of one or more of the causes specified in RCW 39.26.200 (2)(e) or (f).

(1) The director shall decide whether to order debarment or a fine in lieu of debarment. Such decision shall rest with the sound discretion of the director but be informed by the aggravating and mitigating factors set forth in this chapter.

(2) A fine in lieu of debarment shall be set at an amount to:

(a) Negate any economic gain to the contractor from the violation; and

(b) Recover the cost to the state from the contractor's violation.

(3) In the event that a fine in lieu of debarment is ordered and the contractor does not timely pay such fine in lieu of debarment as set forth in the order, the fine in lieu of debarment shall be deemed, without further action, to be a debarment order for a period of three years. Notwithstanding any provision to the contrary, because the fine in lieu of debarment was subject to review, there shall be no further review of a debarment order that is the result of a fine in lieu of debarment that is not timely paid.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-030 Aggravating and mitigating factors.** The following are the mitigating and aggravating factors that the ~~((reviewing))~~ investigating official and debarment official may consider in determining whether to debar and the

length of the debarment period, or to fine in lieu of debarment.

(1) The actual or potential harm or impact that resulted or may result from the wrongdoing.

(2) The frequency of incidents and/or duration of the wrongdoing.

(3) Whether there is a pattern or prior history of wrongdoing.

(4) Whether the contractor or affiliate has been excluded or disqualified by an agency of the federal government or has not been allowed to participate in state or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this rule.

(5) Whether the contractor or affiliate has entered into an administrative agreement with a federal agency or a state or local government that is not government-wide but is based on conduct similar to one or more of the causes for debarment specified in this rule.

(6) Whether the contractor or affiliate has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the cause for debarment.

(7) Whether the contractor or affiliate has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.

(8) Whether the contractor or affiliate has cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the ~~((reviewing))~~ investigating official or debarment official may consider when the cooperation began and whether the contractor or affiliate disclosed all known pertinent information.

(9) The kind of positions held by the individuals involved in the wrongdoing.

(10) Whether the contractor or affiliate took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(11) Whether the contractor or affiliate brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(12) Whether the contractor or affiliate has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the ~~((reviewing))~~ investigating official or debarment official.

(13) Whether the contractor or affiliate had effective standards of conduct and internal control systems in place at the time the wrongdoing occurred.

(14) Whether the contractor or affiliate has taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the cause for debarment.

(15) Other factors appropriate to the circumstances of a particular case.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-040 Referring a person for debarment or fine in lieu of debarment.** (1) Any person may file a

referral for debarment or fine in lieu of debarment with the department. The referral must be in writing. The referring party may complete the department's debarment referral form. The referral ~~((should))~~ must include the following information:

(a) The name and contact information of the person submitting the referral;

(b) The specific facts supporting the request for debarment or fine in lieu of debarment, including the dates and locations for all events upon which the referral is made;

(c) The cause or causes specified in RCW 39.26.200(2) upon which debarment or fine in lieu of debarment may be based that the referring party believes are supported by the facts presented; and

(d) The name of the contractor and any affiliates the referring party believes should be subject to debarment or fine in lieu of debarment.

~~((2))~~ ~~((The person submitting the referral should provide additional information if requested by the department.))~~

~~((3))~~ The department will make an initial assessment of the ~~((submittal))~~ referral. If the department determines that the facts as presented, if true, support a debarment or fine in lieu of debarment, the department will conduct ~~((a review))~~ an investigation to substantiate the allegations. Otherwise, the department will reject the referral.

~~((4))~~ (3) The department will notify the referring party in writing and state whether the referral will be ~~((reviewed))~~ investigated or rejected.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-050 ((Review-)) Investigation.** (1) If the department accepts a debarment referral and conducts ~~((a review))~~ an investigation, the department will notify the contractor and affiliates in writing.

(2) The notice must:

(a) Provide a complete copy of the debarment referral;

(b) State the applicable cause(s) for debarment or fine in lieu of debarment, including the applicable statutory or administrative code provisions, and the factual allegations supporting each cause in terms sufficient to put the contractor and affiliates on notice of the specific reasons for the ((review)) investigation;

~~((b) Identify the statutory and administrative code provisions addressing debarment;))~~

(c) Request a written response to the allegations including any documents that support the response, and state that failure to respond will result in the department making a decision without the recipient's input; and

(d) State the effects of a debarment order or fine in lieu of debarment order.

(3) At the conclusion of the ~~((review))~~ investigation, the ~~((reviewing))~~ investigating official will issue a report that includes the following information:

(a) Facts found by the ~~((reviewing))~~ investigating official;

(b) Whether the facts support debarment or a fine in lieu of debarment; and

~~((c))~~ ~~((Either))~~ A recommendation ((that)). The recommendation shall state whether the referral should be dismissed with no further action taken or ((that)) whether a debarment order or fine in lieu of debarment should be issued, including the duration of the debarment or the amount of the fine in lieu of debarment.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-060 Notice of recommended debarment or fine in lieu of debarment.** (1) If, based on the ~~((review))~~ investigation, the ~~((reviewing))~~ investigating official determines that the facts support debarment or a fine in lieu of debarment the ~~((reviewing))~~ investigating official shall notify the affected contractor and affiliates. The ~~((reviewing))~~ investigating official shall cause service of the notice of recommended debarment or fine in lieu of debarment on the affected contractor and affiliates. The notice shall include the following information:

(a) The effective date ((when the)) for any recommended debarment ((takes effect)) or fine in lieu of debarment;

(b) Each cause for the recommended debarment or fine in lieu of debarment and the facts that the ~~((reviewing))~~ investigating official found that support each cause;

(c) The period of the recommended debarment or the amount of the fine in lieu of debarment and the deadline for payment of such fine in lieu of debarment;

(d) Notice that, in the case of a fine in lieu of debarment, if such fine is not timely paid, the fact that such failure will cause the fine in lieu of debarment to be converted to a debarment, without further action or process, and state the period of the recommended debarment in such event;

(e) How the recommended debarment or fine in lieu of debarment will impact either the contractor or affiliates or both;

~~((e))~~ (f) The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the debarring official may issue a final, unappealable debarment order or fine in lieu of debarment order.

(2) Either the contractor or affiliates or both, as applicable, may request a hearing in accordance with WAC 200-305-070 to dispute the recommended debarment or recommended fine in lieu of debarment or the recommended debarment period or the recommended amount of the fine in lieu of debarment. ((The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the debarring official shall issue a final, unappealable debarment order; and

~~((f))~~

(3) Where a hearing is requested, the recommended debarment order or fine in lieu of debarment order will not go into effect until the resolution of the hearing in accordance with WAC 200-305-080.

~~((2) In the event either an affected contractor or affiliate or both does not))~~ (4) If no one requests a hearing, the ((reviewing)) investigating official will provide the report and recommendation to the debarring official, who may issue the recommendation as a final debarment order or fine in lieu of debarment order. The order shall include the effective date

and term of the debarment order or fine in lieu of debarment order. If the debarring official elects to impose a sanction that is more severe than the recommendation of the investigating official, a new notice will be provided and an opportunity to request a hearing under WAC 200-305-070 will be provided before the order becomes effective.

(5) A fine in lieu of debarment order shall not constitute a debarment order.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-070 Request for a hearing on recommended debarment or fine in lieu of debarment.** Either the contractor, or affiliate or both may request a hearing ~~((or))~~ to contest the recommended debarment or fine in lieu of debarment. The request must be ~~((filed))~~ served with the director within thirty days after the date the ~~((reviewing))~~ investigating official ~~((issued))~~ served the notice of recommended debarment or recommended fine in lieu of debarment on the contractor and affiliates. The person requesting the hearing must also serve a copy of the request on the ~~((reviewing))~~ investigating official.

The request for hearing must be in writing and must specify:

(1) The name of the person requesting the hearing and the person's contact information; and

(2) The ~~((items))~~ facts ~~((or))~~ conclusions, penalties or other matters in the notice of recommended debarment or the notice of recommended fine in lieu of debarment that ~~((the requestor contests))~~ are contested.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-080 Hearing on recommended debarment or recommended fine in lieu of debarment.** (1) The director may hear the ~~((appeal))~~ contested matter personally or may delegate the authority to hold the hearing and draft a proposed decision to another person or to an administrative law judge pursuant to chapter 34.12 RCW. The ~~((reviewing))~~ investigating official, on behalf of the department, shall be the petitioner in the hearing, and the contractor and affiliates shall be the respondents.

(2) The ~~((reviewing))~~ investigating official shall have the burden of proving the basis for the cause for debarment and the debarment period or fine in lieu of debarment and fine amount as set forth in the notice for recommended debarment or the notice for recommended fine in lieu of debarment.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 1-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final decision in writing that includes findings of fact, conclusions of law, and, if appropriate, the debarment period or fine amount. The director shall cause service of the final decision on all parties.

(5) If the director's delegate or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of

law, and, if appropriate, the debarment period or fine amount. The proposed decision ~~((shall))~~ shall include instructions on how to ~~((file))~~ serve objections and written arguments or briefs with the debarring official. Objections and written arguments and briefs must be ~~((filed))~~ served within twenty ~~((20))~~ days from the date of receipt of the proposed decision.

(6) The parties ~~((shall agree))~~ may stipulate to the method of service, as defined in WAC 200-305-010(14) for the proposed decision. Absent agreement or stipulation, the department will serve the final order by United States mail, with service complete on the date of mailing.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-090 Final decision.** (1) The debarring official shall review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW and any objections, written arguments and briefs timely filed by the parties. The debarring official may:

(a) Allow the parties to present oral arguments;

(b) Allow the parties to submit additional information if circumstances so warrant; or

(c) Remand the matter to the delegate or administrative law judge for further proceedings;

(2) The debarring official shall issue a final decision that adopts in whole or in part, modifies or rejects the proposed decision.

(a) If the decision is to issue a debarment order, the debarment becomes effective on the date specified in the debarment order ~~((, but in no event will the debarment order go into effect sooner than five (5) days from the date issued))~~.

(b) If the decision is to issue a fine in lieu of debarment, the fine becomes due and effective on the date specified in the order.

(3) The debarring official shall cause service of the final decision on all parties. Either the contractor or affiliate or both may file a petition for review of the final decision to superior court. If neither the contractor nor affiliate appeals within the period set by RCW 34.05.542, the debarring official's decision is conclusive and binding on all parties. The appeal must be filed within ~~((30))~~ thirty days from service of the final decision.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-100 Effect of a debarment order on the contractor and affiliate.** The effects of a debarment order on the contractor and affiliate are:

(1) A debarred contractor (and, if applicable, affiliate) is ineligible to ~~((be a participant in any covered transaction or act as a principal of a person participating))~~ participate, directly or indirectly, in any covered transaction ~~((as defined in WAC 200-305-010(7)))~~.

(2) Debarment constitutes debarment of all divisions or other organizational elements of the debarred person, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.

(3) A person's debarment shall be effective in every agency, unless the director states in writing the compelling reasons justifying continued business dealings between an agency and the debarred person.

(4) A fine in lieu of debarment shall not constitute a debarment order.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-110 Effect of a debarment order on state agencies.** The effects of a debarment order on state agencies are:

(1) Agencies shall not permit debarred persons to participate in covered transactions, unless the debarring official determines in writing that there is a compelling reason to do so.

(2) If the period of debarment expires or is terminated prior to award, ~~((the))~~ a contracting officer may, but is not required to, consider a debarred ~~((persons))~~ person's bid.

(3) Notwithstanding debarment, agencies may continue contracts or subcontracts in existence at the time the person was debarred unless the debarring official determines otherwise.

(4) Agencies shall not add new work, exercise options, or otherwise extend the duration of current contracts or orders for debarred persons, unless the debarring official makes a written determination of the compelling reasons for doing so.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-130 Service and delivery ~~((to the department))~~.** (1) Any notice, objection or information that is required or allowed by these rules may be served or delivered to the department as follows:

(a) By courier delivery:

Department of Enterprise Services  
1500 Jefferson Street S.E.  
Olympia, WA 98504-1466  
Attn: Office of the Director

~~((2))~~ (b) Or, mailed, by certified mail, return receipt requested to:

Department of Enterprise Services  
Office of the Director  
1500 Jefferson Street S.E.  
MS: 41466  
Olympia, WA 98504-1466

~~((3))~~ (c) Or, electronically mailed to department of enterprise services at the following email address: director@des.wa.gov.

(d) Service is complete upon receipt by the department.

(2) Any notice, objection or information that is required or allowed by these rules may be served by the department by U.S. mail or by any alternative means agreed to by the parties. Unless otherwise agreed, service is complete upon mailing to the contractor's address as registered with the Washington secretary of state.