

WSR 18-06-008
PROPOSED RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)
[Filed February 23, 2018, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-093.

Title of Rule and Other Identifying Information: WAC 246-922-045, 246-922-130, 246-922-140, 246-922-150, 246-922-160, 246-922-170, 246-922-180 and 246-922-190, the podiatric medical board (board) is proposing to repeal a rule section concerning conduct at an examination that is no longer needed. The board is also addressing redundancies regarding mandatory reporting by proposing to amend one rule section and repeal six other sections.

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, by April 5, 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 (department), along with the other health profession's boards and commissions, to perform a review of existing rules every five years. As a result of their review, the board is proposing to repeal a rule section concerning conduct at an examination, because the state no longer administers the examination. The board is also addressing redundancies between existing statute and rules regarding mandatory reporting. The board proposes to amend one rule section and repeal six other sections of rule.

Reasons Supporting Proposal: RCW 43.70.041 was passed by the legislature in 2013 requiring the department to perform periodic rule review. This included the department's health profession's boards and commission. 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 amending a section of rule and repealing rule sections that are no longer needed.

Statutory Authority for Adoption: RCW 18.22.015.

Statute Being Implemented: Chapter 18.22 RCW and RCW 43.70.041.

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 23, 2018

Blake T. Maresh
Executive Director

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

WAC 246-922-130 Mandatory reporting. ~~((1) All reports required by these regulations shall be submitted to the board as soon as possible, but no later than sixty 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, address and telephone number of the podiatric physician and surgeon 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.)~~ Any person including, but not limited to, a podiatric physician and surgeon, 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 246-922-045 Examination conduct.

WAC 246-922-140 Health care institutions.

WAC 246-922-150 Podiatric medical associations or societies.

WAC 246-922-160 Health care service contractors and disability insurance carriers.

WAC 246-922-170 State and federal agencies.

WAC 246-922-180 Professional review organizations.

WAC 246-922-190 Malpractice suit reporting.

WSR 18-06-010
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed February 23, 2018, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-007.

Title of Rule and Other Identifying Information: Implement ESHB 1105, chapter 333, Laws of 2017, to establish rules for railroad contract crew transportation.

Hearing Location(s): On April 12, 2018, at 1:00 p.m., at the Utilities and Transportation Commission Building, 1300 South Evergreen Park Drive S.W., Room 207, Olympia, WA 98504-7250. Public hearing to consider adoption of proposed rules.

Date of Intended Adoption: April 12, 2018.

Submit Written Comments to: Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, email records@utc.wa.gov, fax 360-586-1150, by March 30, 2018.

Assistance for Persons with Disabilities: Contact Ashley Miller, phone 360-664-1130, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email asmiller@utc.wa.gov, by March 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to adopt rules as required in ESHB 1105, chapter 333, Laws of 2017, for regulation of railroad contract crew transportation companies. The proposed rules adopt the requirements of the legislation. These are new rules, not changes to existing rules.

Reasons Supporting Proposal: The commission is required by the legislation to adopt rules. In addition, the rules will provide necessary safety regulation of companies, vehicles, and drivers that transport railroad crews from one location to another. No such safety requirements currently exist.

Statutory Authority for Adoption: RCW 81.04.160 and 81.61.050.

Statute Being Implemented: ESHB 1105, chapter 333, Laws of 2017.

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

Name of Proponent: Utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mathew Perkinson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, 360-664-1236.

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 does not apply to the commission, as it is not one of the listed agencies in RCW 34.05.328 (3)(a)(i).

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. The commission mailed a notice to all stakeholders for this rule making,

providing a copy of the draft rules and an opportunity to identify rules that would have a cost impact and what that impact would be. No stakeholder indicated that any rules would have a cost impact.

A copy of the detailed cost calculations may be obtained by contacting Jason Lewis, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, phone 360-644-1206, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email jlewis@utc.wa.gov.

February 23, 2018

Steven V. King

Executive Director and Secretary

AMENDATORY SECTION (Amending WSR 04-11-023, filed 5/11/04, effective 6/11/04)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of \$250 million or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than \$250 million, but more than \$20 million; and

"Class III railroad company" means a railroad company having annual operating revenues of \$20 million or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport fifteen or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses (~~and~~), vans, trucks, and cars owned, operated, and maintained by a railroad company (~~which~~) primarily used to transport((s)) railroad employees ((~~it~~)), other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection

therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means controlling the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.

"Remote-control zone" means a designated area where access is restricted in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

AMENDATORY SECTION (Amending WSR 10-03-044, filed 1/14/10, effective 2/14/10)

WAC 480-62-240 Railroad owned or operated passenger carrying vehicles—Equipment. (1) Equipment requirements for all vehicles.

(a) Vehicles must comply with all applicable equipment requirements of Title 46 RCW.

(b) Vehicles must have exhaust systems that prevent exposure of passengers to the vehicle's emissions.

(c) Vehicles must have two external rear vision mirrors, one at each side of the cab. The mirrors must be firmly attached to the motor vehicle at a point where the driver is provided a view of the highway to the rear along both sides of the vehicle. An outside mirror may be placed only on the driver's side on vehicles in which the driver has a view to the rear by means of an interior mirror.

(d) Vehicles must be equipped with a steering system maintained to insure that lash or preplay do not exceed those values set forth in 49 C.F.R., Parts 570.7 and 570.60 (Vehicle in Use Inspection Standards). Information about Title 49 C.F.R. regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(e) Vehicles must have a heating system that will maintain an ambient temperature of at least fifty-five degrees in passenger areas.

(f) Vehicles must have at least three red-burning fuses, three red portable emergency reflectors, or at least two red cloth flags suitable for warning the motoring public in an emergency. The driver must ensure that such equipment is in the vehicle and is maintained in good condition. Any devices that may create a spark or open flame must be carried in a

separate compartment or a closed metal container provided for that purpose.

(g) The driver must ensure that such equipment is in the vehicle and is maintained in good condition.

(h) Any devices that may create a spark or open flame must be carried in a separate compartment or a closed metal container provided for that purpose.

(i) Vehicles must have a two and one-half pound dry chemical fire extinguisher or its equivalent, properly filled and located where it is readily accessible for use. The extinguisher must allow visual determination of the state of its charge at all times. The extinguishing agent must be nontoxic and ~~((preferably))~~ noncorrosive. The fire extinguisher must be suitable for attachment to the motor vehicle, bear the label of approval by the Underwriters Laboratories, Inc., and be kept in good working condition at all times.

~~((H))~~ (j) Vehicles must have a first-aid kit located where it is readily accessible. The kit must contain all of the items specified in ANSI Z308.1-2009, Minimum Requirements for Workplace First Aid Kits. Additionally, the kit must contain gloves capable of preventing exposure to blood-borne pathogens. Items used from first-aid kits must be replaced before the next shift, and kits must be checked for compliance with this rule if the seal on the kit is broken. Information about ANSI Z308.1-2009 regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) Equipment requirements for specified vehicles.

(a) Coupling devices used on a vehicle equipped with retractable flange wheels for operation on railroad tracks must be substantial and made of metal. The devices must be equipped with safety chains or straps of sufficient strength to prevent separation in the event of accidental uncoupling.

(b) A passenger compartment separate from the cab of the vehicle must be made of metal and be fastened directly to the frame of the vehicle. The compartment must have an interior lining sufficient to absorb condensation, and padded seats and backrests firmly secured in place. The floor of the compartment must be constructed to bear the weight of all cargo and passengers. The floor must not have unnecessary openings, and it must be constructed to prevent the entry of noxious fumes or permeation with flammable materials. The compartment must have a curtain of nonpermeable material of sufficient weight and size to close off the rear opening and a tailgate ~~((which))~~ that must be closed whenever the vehicle is in motion. If the bottom of the entrance to the passenger compartment is more than three feet six inches above ground level, the vehicle must have permanent or temporary steps designed for the safe boarding and discharge of passengers.

(c) Communication between a cab and a separated passenger compartment must be provided by means of a light or audible device mounted in the cab of the vehicle that may be activated by a passenger in the rear compartment.

(d) On vehicles designed to transport nine or more passengers, an emergency exit must be placed at the end of the vehicle opposite the regular entrance. The exit must be at least six and one-half square feet in area, and the smallest dimension must be at least eighteen inches. The route to and from the emergency exit must be unobstructed at all times.

AMENDATORY SECTION (Amending WSR 01-04-026, filed 1/30/01, effective 3/2/01)

WAC 480-62-245 Railroad owned or operated passenger carrying vehicles—Operation. (1) General.

(a) All passenger carrying motor vehicles must be operated in compliance with state law no matter where the vehicle is operated.

(b) Drivers must operate vehicles in a careful and prudent manner and at reasonable and proper speeds, with due regard to circumstances and to the use of highways by others.

(2) Minimum age, skill, and physical condition of drivers.

(a) Drivers of passenger carrying vehicles must be at least eighteen years old.

(b) Before being allowed to drive or operate a passenger carrying vehicle, drivers must have demonstrated the physical capability of handling the controls of the vehicle with ease.

(c) Before driving a vehicle, drivers or operators must obtain either a valid Washington state driver's license or a valid license from the state of the driver's residence. The driver must carry the license at all times while operating a vehicle. If the passenger carrying vehicle is a type for which the state of Washington requires an extraordinary license or endorsement, the driver must have such license or endorsement.

(3) **Driver's daily hours of service.** No driver of any passenger carrying vehicle may drive for more than ten hours without resting afterward for a minimum of eight consecutive hours.

(4) **Refueling.** No driver or any employee of a railroad company operating within the state may:

(a) Fuel a passenger carrying vehicle with the engine running;

(b) Smoke or expose any flame in the vicinity of a vehicle being fueled;

(c) Fuel a passenger carrying vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(d) Insofar as practicable, permit any other person to engage in activities that might result in a fire or explosion.

(e) Except on buses, all occupants of the vehicle, except the driver and those within the operating cab, must dismount and stand clear while the vehicle is being refueled.

(5) Driving rules.

(a) Drivers must bring vehicles to a complete stop not less than fifteen feet from the nearest rail of any at-grade crossing before crossing the track except:

- Where traffic is controlled by a police officer or a duly authorized flagger;

- Where traffic is regulated by a traffic control signal;

- Where traffic is controlled by crossing gate arms or an alternately flashing light signal intended to give warning of the approach of a train;

- Where an official traffic control device as designated by the commission pursuant to RCW 81.53.060 (i.e., an "EXEMPT" sign, specified as R15-3 by the Manual on Uniform Traffic Control Devices) gives notice that the stopping requirement imposed by this section does not apply. Information about the Manual on Uniform Traffic Control Devices

regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(b) Drivers must not change gears while crossing any railroad tracks.

(c) No driver may ~~((drink intoxicating liquors))~~ consume alcohol or ingest any controlled substance while on duty, or drive while affected by the use of intoxicating liquor or other substance ~~((which))~~ that might impair the ability to drive.

(d) No driver may proceed down a grade with the gears in neutral or the clutch disengaged.

(e) At the beginning of his or her use of a vehicle, the driver must perform a brake test immediately before, and immediately after, the vehicle begins moving to ensure that the brakes are functioning properly.

(6) Loading and carrying of passengers.

(a) Drivers are in charge of the vehicle and must require passengers to observe vehicle rules.

(b) Passengers may not enter or exit from the vehicle while it is in motion, or ride on running boards, fenders, bumpers, tops of cabs, or with any part of their body projecting beyond the sides or the ends of the vehicle. ~~((When equipment or tools are carried inside the vehicle, they must be stored in enclosed racks or boxes that are secured to the vehicle in a manner that prevents employees from being struck in the event of sudden starts, stops, or turns. The driver must assure that tools and materials are properly secured before moving the vehicle.))~~

(7) Carrying equipment or tools.

(a) When equipment or tools are carried inside the vehicle, they must be stored in enclosed racks or boxes that are secured to the vehicle in a manner that prevents employees from being struck in the event of sudden starts, stops, or turns.

(b) All tools and equipment, including cylinders, containers, or drums must be properly secured so they will not interfere with the use of any exit.

(c) The driver must ensure that equipment and tools are properly secured before moving the vehicle.

(8) Limitation on transportation of explosives, gasoline, and other hazardous materials on passenger carrying vehicles.

(a) Explosives other than track torpedoes and fusees may not be carried in or on any vehicle while the vehicle is being used to transport crew members in a passenger compartment.

(b) If track torpedoes or fusees are carried in a passenger carrying vehicle, they must be carried in a separate compartment or container provided for that purpose.

(c) Gasoline, or other hazardous materials, must not be carried in either the cab or in the passenger compartment; however, oxygen or acetylene cylinders may be carried if gauges and regulators have been removed with caps in place before loading.

(d) Passenger carrying vehicles may be used to carry flammable materials when they are located outside of and isolated from the passenger carrying area, and are stored in containers approved by the Underwriters Laboratories, Inc. Containers for fuel must be vented in a manner that prevents the hazardous concentration of fumes. ~~((All tools and equipment, including cylinders, containers, or drums, must be~~

properly secured where they will not interfere with the use of any exit.)

(e) A passenger carrying vehicle containing hazardous materials must not be parked within three hundred feet of an open fire.

(f) Smoking is prohibited within fifty feet of a vehicle carrying explosive or flammable materials.

NEW SECTION

WAC 480-62-275 Contract crew transportation registration and permit required. (1) A person must register with, and receive a permit from, the commission before operating as a contract crew transportation company in the state of Washington.

(2) The company name is the name of the permit holder.

(a) A company electing to conduct operations under a trade name must first register the trade name with the commission.

(b) A company must conduct all operations under the company name, a registered trade name, or both.

NEW SECTION

WAC 480-62-278 Contract crew transportation vehicle and driver safety requirements. (1) Every contract crew

transportation company must operate its vehicles in compliance with state law, no matter where the vehicle is operated. Drivers must operate vehicles in a careful and prudent manner, at reasonable and proper speeds, with due regard to circumstances or conditions at the time of operation.

(2) Companies must comply with the parts of 49 C.F.R. adopted by reference that are shown in the chart in subsection (4) of this section. Information about 49 C.F.R. including the version adopted by the commission and where to obtain copies is set out in WAC 480-62-999.

(3) The commission will place out-of-service any motor vehicle having safety defects identified in the *North American Uniform Out-Of-Service Criteria*. Information about the *North American Uniform Out-Of-Service Criteria* including the version adopted and where to obtain copies is set out in WAC 480-62-999. A company must not operate any vehicle placed out-of-service until proper repairs have been completed.

(4) The commission will place out-of-service any driver meeting criteria identified in the *North American Uniform Out-Of-Service Criteria*. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected.

49 C.F.R. Part:		Notes:
Part 379 -	Preservation of Records	Entire Part 379 is adopted and applies to Washington intrastate operations.
Part 385 -	Safety Fitness Procedures	Entire Part 385 is adopted and applies to Washington intrastate operations.
Part 390 -	Safety Regulations, General	Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to "contract crew transportation vehicle" in WAC 480-62-125 (Definitions). (2) Whenever the term "director" is used in Title 49 C.F.R., it means the commission.
Part 391 -	Qualification of Drivers	Entire Part 391 is adopted, with the following exceptions: (1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively in intrastate commerce. Instead refer to WAC 480-62-281 for intrastate medical waivers.
Part 392 -	Driving of Motor Vehicles	Entire Part 392 is adopted and applies to Washington intrastate operations.
Part 393 -	Parts and Accessories Necessary for Safe Operation	Entire Part 393 is adopted and applies to Washington intrastate operations.
Part 395 -	Hours of Service of Drivers	Entire Part 395 is adopted and applies to Washington intrastate operations.
Part 396 -	Inspection, Repair, and Maintenance	Entire Part 396 is adopted and applies to Washington intrastate operations.

49 C.F.R. Part:		Notes:
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	Entire Part 397 is adopted and applies to Washington intrastate operations.

(5) Companies operating a contract crew transportation vehicle must:

(a) Comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety.

(b) Maintain all motor vehicles in a safe and sanitary condition.

(c) Ensure that vehicles are free of defects likely to result in an accident or breakdown.

(6) Persons that drive for companies operating a contract crew transportation vehicle must be immediately and automatically disqualified from operating a contract crew transportation vehicle for a period of three years if:

(a) The person is convicted of, or is found to have committed, two or more traffic violations that result in suspension or revocation of the person's driver's license within a three-year period for a reason other than failure to pay fines.

(b) The person is convicted of, or is found to have committed, any of the following offenses:

(i) Any drug or alcohol-related traffic offense.

(ii) Using a vehicle to commit a felony.

(iii) Leaving the scene of an accident.

(iv) Prohibited passing of another vehicle.

(v) A railroad-highway grade crossing offense identified in RCW 46.25.090(8).

(vi) Driving with a suspended, revoked, or canceled license.

(7) Persons that drive for companies operating a contract crew transportation vehicle that sustain a conviction or traffic violation as outlined in subsection (5) of this section, must report the conviction or infraction to the company within ten days of the date of the conviction or infraction.

(8) No company operating a contract crew transportation vehicle, its agents, officers, or employees, will allow any article, commodity, or substance to be loaded in or on any vehicle used by the company to transport passengers that is:

(a) Dangerous to the lives and safety of passengers.

(b) Prohibited by the hazardous materials rules in Title 49 C.F.R. from being transported on passenger-carrying vehicles.

(9) No company operating a contract crew transportation vehicle may carry more passengers than the vehicle was originally manufactured to carry.

(10) All vehicles operated under the provisions of this chapter are at all times subject to inspection by the commission or its duly authorized representatives.

(11) All contract crew transportation companies must implement a controlled substance and alcohol testing program to include:

(a) Preemployment testing: A preemployment controlled substance and alcohol test must be administered prior to a driver performing a safety-sensitive function.

(b) Postaccident testing.

(i) An alcohol test must be administered as soon as practicable but no longer than eight hours following an accident where the accident involved the loss of human life, a driver receives a citation for a moving traffic violation arising from

the accident if the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(ii) A controlled substance test must be administered within thirty-two hours following an accident where the accident involved the loss of human life, a driver receives a citation for a moving traffic violation arising from the accident if the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) Random testing.

(i) Every driver shall submit to random alcohol and controlled substance testing.

(ii) The minimum annual percentage rate for random alcohol testing shall be ten percent of the average number of driver positions.

(iii) The minimum annual percentage rate for random controlled substances testing shall be twenty-five percent of the average number of driver positions.

(d) Reasonable suspicion testing.

(i) All persons designated to supervise drivers shall receive at least sixty minutes of training on alcohol misuse and receive at least an additional sixty minutes of training on controlled substances use.

(ii) The training will be used by supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

NEW SECTION

WAC 480-62-281 Contract crew transportation intrastate medical waivers. (1) Department of licensing intrastate medical waiver. A passenger transportation company may use a driver that is not physically qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating over 26,000 lbs.;

(ii) Transporting sixteen or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of sixteen or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A passenger transportation company may use a driver that is not physically qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391.41, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) The doctor's opinion is that the driver's condition is likely to remain stable for the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 lbs.;

(ii) Transporting fifteen or fewer passengers, including the driver; or

(iii) With a manufacturer's seating capacity of fifteen or fewer passengers, including the driver.

(3) **Driver qualification files.** A passenger transportation company that uses a driver under an intrastate medical waiver must maintain in the driver's qualification file a copy of the doctor's statement of intrastate medical waiver.

NEW SECTION

WAC 480-62-284 Contract crew transportation insurance requirements. (1) Companies operating a contract crew transportation vehicle must meet the following minimum insurance requirements:

(a) Five million dollars combined single limit coverage for bodily injury and property damage liability coverage.

(b) One million dollars uninsured and underinsured motorist coverage.

(2) Insurance policies must:

(a) Be written by an insurance company authorized to write insurance in the state of Washington.

(b) Include the Uniform Motor Carrier Bodily Injury and Property Liability Endorsement (Form F).

(3) A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E). Form E is a standard motor carrier insurance form recognized by the insurance industry and is filed with the commission by an insurance company.

(a) The Form E must be issued in the company name exactly as it appears on the company's permit.

(b) The Form E must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than thirty days before the cancellation effective date.

(c) The commission will accept an insurance certificate or binder for up to sixty days pending receipt of the Form E.

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) in place of a Form E.

(4) If a company's insurance filing is canceled and a new filing is not received prior to the cancellation date, the com-

mission may dismiss a company's application for a permit or cancel an existing permit.

(5) If a contract crew transportation company hires a driver to drive a vehicle owned by the contract crew transportation company to transport a railroad crew, the insurance requirements outlined in subsection (1) of this section, apply.

(a) The insurance requirements may be met by either the contract crew transportation company, the third party, or the railroad company.

(b) It is the responsibility of the contract crew transportation company to obtain and retain proof of insurance coverage for the third-party driver.

NEW SECTION

WAC 480-62-287 Contract crew transportation passenger notice requirements. Companies operating a contract crew transportation vehicle must post adequate notice in a conspicuous location in all vehicles that advises passengers of:

(1) Their right to submit a complaint to the commission regarding alleged unsafe driver or vehicle conditions.

(2) The telephone number and email address of the commission's motor carrier safety manager where passengers may file complaints. The contact information for the motor carrier safety manager can be found on the agency's public web site.

NEW SECTION

WAC 480-62-290 Contract crew transportation safety training. (1) Companies providing contract crew transportation must provide at least eight hours of safety training that includes, but is not limited to:

(a) Vehicle safety awareness.

(b) Passenger safety awareness.

(c) Rail yard safety.

(d) Grade crossing safety.

(e) Load securement.

(f) Distracted driving.

(g) Fatigued driving.

(h) Familiarization with:

(i) Railroad yards, property, pick-up points and drop-off points where the driver is expected to operate the vehicle.

(ii) Any rules or requirements imposed by the railroad at the locations where the driver is expected to operate the vehicle.

(iii) General railroad safety requirements.

(iv) Grade crossing safety.

(i) The training required in subsection (h) of this section must be provided by the railroad for whom the driver will be transporting railroad crews. The railroad may contract with a third party or other designee to provide training, however, such delegation does not absolve the railroad of responsibility to ensure compliance with this section.

(2) Each company providing contract crew transportation must provide to the commission a description of its safety training program for approval prior to implementing the program at the company.

(3) Each company must require existing drivers to attend the safety training within six months of approval of the training program by the commission.

(4) If the commission finds driver safety behavior is such that refresher training is warranted, the commission may require such training.

NEW SECTION

WAC 480-62-293 Contract crew transportation enforcement. (1) The commission will investigate safety complaints related to contract crew transportation. Information included in safety complaints that identifies the employee who submitted the complaint is exempt from public inspection and copying pursuant to RCW 42.56.330.

(2) The commission may, in enforcing rules and orders, inspect any contract crew transportation vehicle.

Contract crew transportation companies are required to inspect, or have inspected, every vehicle as required in WAC 480-62-278 through adoption of 49 C.F.R., Part 396.

(3) The commission may take enforcement action, based on a complaint or on its own motion, as follows:

(a) Assess penalties as warranted.

(b) Suspend or revoke a permit after notice and opportunity for hearing.

NEW SECTION

WAC 480-62-296 Contract crew transportation reporting requirements. Companies operating a contract crew transportation vehicle must, at the request of the commission, provide data relevant to any complaints and accidents, including:

(1) Location;

(2) Time of day;

(3) Visibility;

(4) Description of the event;

(5) Any resulting property damage or personal injuries;

(6) Any corrective action taken by the railroad company, person operating the contract crew transportation vehicle, or the commission.

NEW SECTION

WAC 480-62-299 Contract crew transportation record retention requirements. A contract crew transportation company must keep and provide or make available to the commission on request, and within forty-eight hours, the following records for the specified time periods:

(1) All documents related to driver hours of service for a period of at least six months;

(2) Verification of each driver's qualifications for the duration of the driver's employment and for three years thereafter;

(3) All documents related to alcohol and controlled substance testing for a period of three years;

(4) All documents related to vehicle maintenance for a period of twelve months; and

(5) All documents related to any vehicle collisions or other accidents that occur for a period of at least three years from the date of the accident. Such records must include cop-

ies of all accident reports and any other documents that identify the date and geographic location of the accident, the driver name, the number of fatalities or persons injured and a description of those injuries.

AMENDATORY SECTION (Amending WSR 17-15-054, filed 7/13/17, effective 8/13/17)

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, (~~2016~~) 2017.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), (~~and~~) WAC 480-62-240 (Passenger carrying vehicles—Equipment), and WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, (~~2016~~) 2017.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices) and WAC 480-62-235 (Flaggers).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **ANSI Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, (~~2016~~) 2017.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits and Supplies are available from IHS Global Engineering Documents in Englewood, Colorado.

(4) **ANSI/ISEA (~~207-2014~~) 207-2015 - American National Standard for High-Visibility Public Safety Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, (~~2016~~) 2017.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA ((~~207-2011~~) 207-2015 - American National Standard for High-Visibility Public Safety Vests are available from IHS Global Engineering Documents in Englewood, Colorado.

(5) North American Standard Out-of-Service Criteria (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2017.

(b) This publication is referenced in WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA.

WSR 18-06-015

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed February 26, 2018, 10:37 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-310-070 from WSR 17-22-115 filed on October 31, 2017.

Scott Bird

WSR 18-06-026

PROPOSED RULES DEPARTMENT OF HEALTH (Dental Quality Assurance Commission)

[Filed February 27, 2018, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-011.

Title of Rule and Other Identifying Information: WAC 246-817-441 Dentist suicide prevention education, creating a new section to establish a one-time continuing education requirement for dentists in suicide prevention.

Hearing Location(s): On April 20, 2018, at 9:35 a.m., at the Department of Health, Point Plaza East Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: April 20, 2018.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 13, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388, or 711, email jennifer.santiago@doh.wa.gov, by April 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule implements E2SHB 1612 (chapter 262, Laws of 2017) codi-

fied as RCW 43.70.442. The law amended RCW 43.70.442 by adding dentists to the list of professionals required to complete a one-time continuing education in suicide prevention. The proposed rule requires dentists to take a one-time, three-hour training in suicide assessment that includes screening, referral, and imminent harm via lethal means.

Reasons Supporting Proposal: RCW 43.70.442 requires the commission to determine a three or six hour education requirement. The commission determined three hours was sufficient to include content related to the assessment of issues related to imminent harm via lethal means, since dentist[s] will only screen and refer patients. The educational requirements proposed in this new rule will increase dentist's knowledge and understanding of suicidal ideation and better prepare dentists if they encounter suicidal patients. The goal of RCW 43.70.442 is to save the lives of Washington residents, and the commission proposes to achieve that goal through establishment of this rule.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: RCW 43.70.442.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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 Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.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. The proposed rule does not impose costs on businesses.

John B. Carbery, DMD, Chairperson
Dental Quality Assurance Commission

NEW SECTION

WAC 246-817-441 Dentist suicide prevention education. Effective August 1, 2020, a licensed dentist must complete a commission-approved one-time training that is at least three hours in length for suicide assessment that includes screening, referral, and imminent harm via lethal means elements.

(1) This training must be completed by the end of the first full continuing education reporting period after August 1, 2020, or during the first full continuing education reporting period after initial licensure, whichever is later.

(2) Training accepted by the commission must be on the department's model list as authorized in chapter 246-12 WAC, Part 14.

(3) A licensed dentist who has successfully completed the suicide assessment, treatment, and management curriculum in RCW 43.70.447, by the school of dentistry at the Uni-

versity of Washington prior to licensure is exempt from the training requirement in this section.

(4) Training completed between July 23, 2017, and August 1, 2020, that meets the requirements of subsection (2) or (3) of this section, is accepted as meeting the one-time training requirement of this section.

(5) The hours spent completing the training in suicide assessment under this section count toward meeting applicable continuing education requirements for dentist license renewal.

WSR 18-06-027

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed February 27, 2018, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-16-031.

Title of Rule and Other Identifying Information: WAC 246-817-440 Dentist continuing education requirements, the dental quality assurance commission (commission) is proposing amendments to update and clarify continuing education requirements when dentists renew their license.

Hearing Location(s): On April 20, 2018, at 9:35 a.m., at the Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: April 20, 2018.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 13, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.wa.gov, by April 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments update continuing education (CE) requirements for licensed dentists. The proposed amendments clarify CE subject matter, describe different ways to obtain CE, the number of hours a license[d] dentist may devote to specific CE activities, and identifies mandatory CE of a dental jurisprudence examination. Additionally, the proposed rule amendment changes the reporting period of CE from twenty-one hours annually to sixty-three hours every three years.

Reasons Supporting Proposal: The proposed rule amendments are necessary to provide clear requirements for licensed dentists to obtain CE. The commission considered the Washington State Dental Association request for required jurisprudence and ethics education of no more than two hours every three years and the specific question related to live webinar CE. The proposed change of the CE reporting period change does not increase the number of hours, but allows the dentist time over a three year period to complete the hours.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: RCW 13.32.0357 and 18.32.180.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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 Jennifer Santiago, P.O. Box 47852, Olympia, WA 98501-7852 [98504-7852], phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.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. A significant cost analysis has been completed. Changes in this proposed rule do not increase costs to licensed dentists. Licensed dentists currently must complete twenty-one hours of CE annually. The proposed rule allows for more alternative methods to complete CE and does not increase number of CE hours but does change reporting period from twenty-one CE hours annually to sixty-three CE hours every three years. The proposed rule does not impose more-than-minor-costs as defined in RCW 19.85.020(2).

February 27, 2018

John B. Carbery, DMD, Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-440 Dentist continuing education requirements. ~~((1) Purpose. The dental quality assurance commission (DQAC) has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all dentists, licensed under chapter 18.32 RCW, to continue their professional development via continuing education after receiving such licenses.~~

~~(2) Effective date. The effective date for the continuing education requirement for dentists is July 1, 2001. The first reporting cycle for verifying completion of continuing education hours will begin with renewals due July 1, 2002, and each renewal date thereafter. Every)) The goal of continuing education is to encourage the lifetime professional development of the licensed dentist, and to enhance the clinical and overall skills needed to protect the health and safety of all patients.~~

(1) A licensed dentist shall complete a minimum of sixty-three hours of continuing education every three years.

(a) The three-year continuing education reporting period for a dentist licensed in Washington before 2019 begins January 1, 2019, and verification of completion of continuing education hours will be due on the dentist's annual license

renewal date in 2022, and every three years thereafter. The three-year continuing education reporting period for a dentist initially licensed in Washington in 2019 or later begins upon date of licensure.

~~(b) A licensed dentist ((must sign an affidavit attesting)) shall attest to the completion of ((the required number of)) sixty-three hours of continuing education every three years as a part of their ((annual)) license renewal requirement.~~

~~((3) **Requirements.** Licensed dentists must complete twenty-one clock hours of continuing education, each year, in conjunction with their annual renewal date. DQAC)) (c) The dental quality assurance commission (commission) may randomly audit up to twenty-five percent of ((practitioners)) licensed dentists every three years for compliance after the ((credential)) license is renewed as allowed by chapter 246-12 WAC, Part 7.~~

~~((4) **Acceptable continuing education—Qualification of courses for continuing education credit.** DQAC)) (d) A licensed dentist shall comply with the requirements of chapter 246-12 WAC, Part 7.~~

~~(e) The commission will not authorize or approve specific continuing education courses.~~

~~(2) A licensed dentist shall complete the commission approved dental jurisprudence examination once every three years. One hour of continuing education will be granted toward the sixty-three hour requirement.~~

~~(3) Continuing education ((course work)) must contribute to the professional knowledge and development of the ((practitioner,)) licensed dentist or enhance services provided to patients(-~~

~~For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry recognized state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors, or types of continuing education courses may include, but are not limited to:~~

~~(a) The American Dental Association, Academy of General Dentistry, National Dental Association, American Dental Hygienists' Association, National Dental Hygienists' Association, American Dental Association specialty organizations, including the constituent and component/branch societies.~~

~~(b) Basic first aid, CPR, BLS, ACLS, OSHA/WISHA, or emergency related training; such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.~~

~~(c) Educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion are acceptable but may not exceed seven hours per year.~~

~~(d) Teaching a seminar or clinical course for the first time is acceptable but may not exceed ten hours per year.~~

~~(e) Nonclinical courses relating to dental practice organization and management, patient management, or methods of health delivery may not exceed seven hours per year. Estate planning, financial planning, investments, and personal health courses are not acceptable.~~

~~(f) Dental examination standardization and calibration workshops.~~

~~(g) Provision of clinical dental services in a formal volunteer capacity may be considered for continuing education credits when preceded by an educational/instructional training prior to provision of services. Continuing education credits in this area shall not exceed seven hours per renewal cycle.~~

~~(5) Refer to chapter 246-12 WAC, Part 7, administrative procedures and requirements for credentialed health care providers for further information regarding compliance with the continuing education requirements for health care providers). Continuing education must be completed in one or more of the following subject categories:~~

~~(a) Education courses relating to the practice of dentistry;~~

~~(b) Emergency management, advanced cardiac life support (ACLS), and pediatric advanced life support (PALS);~~

~~(c) Health care provider basic life support (BLS). BLS certification is required in WAC 246-817-720. One hour of continuing education for each BLS certification course will be granted. A licensed dentist may not count more than three hours every three years in this category;~~

~~(d) Infection control, federal/state safety standards, and radiation protection;~~

~~(e) Pharmacology, prescribing practices, and pain management;~~

~~(f) Ethics;~~

~~(g) Patient care related education including risk management, methods of health delivery, multicultural, and suicide prevention education;~~

~~(h) Washington state dentistry law;~~

~~(i) Practice management and billing practices. A licensed dentist may not count more than twenty-one hours every three years in this category.~~

~~(4) Continuing education in subject categories identified in subsection (3) of this section may be completed using any of the following activities or methods:~~

~~(a) Attendance at local, state, national, or international continuing education courses, live interactive webinars, dental study clubs, postdoctoral education, and dental residencies;~~

~~(b) Self-study by various means, relevant to dentistry, without an instructor physically present.~~

~~(i) Self-study can be continuing education provided online or through the mail provided by a continuing education provider. Thirty minutes will count for every one hour completed for this activity;~~

~~(ii) Self-study can be reading a book that contributes to the professional knowledge and development of the licensed dentist, or enhance services provided to patients. A two-page synopsis of what was learned written by the licensed dentist is required. Two hours of continuing education for each book and synopsis will be granted. A licensed dentist may not count more than six hours every three years for this activity.~~

~~(c) Teaching, presenting, or lecturing in a course, only if the presentation or lecture is created or authored by the dentist claiming the continuing education hours. A licensed dentist may not count more than twenty-one hours every three years in this activity;~~

~~(d) Direct clinical supervision of dental students and dental residents. A licensed dentist may not count more than twenty-one hours every three years in this activity;~~

(e) Publishing a paper in a peer review journal. A licensed dentist may count fifteen hours the year the paper is published and may not count more than a total of thirty hours every three years in this activity. A copy of the publication is required;

(f) Reading and critically evaluating any hypothesis-driven scientific journal article on a topic that has relevance to dentistry and is published in a peer-reviewed journal devoted to dentistry, medicine, or useful to dentistry. A licensed dentist may not count more than twenty-one hours every three years.

(i) Before completing this activity, the licensed dentist must complete at least four hours of education in evidence-based dentistry or medicine that includes journal article evaluation. The four-hour education may count toward the required sixty-three hour requirement. The four-hour education is a one-time requirement. A licensed dentist may not count more than four hours every three years.

(ii) A licensed dentist may count one hour for each article that the dentist completes a "Critical Evaluation of a Journal Article" questionnaire. The questionnaire may be obtained from the commission. The completed questionnaire is required;

(g) Volunteer dental patient care. A licensed dentist may not count more than twenty-one hours every three years; and

(h) The commission will accept a current certification or recertification from any specialty board approved and recognized by the American Dental Association (ADA), the American Board of Dental Specialties (ABDS), or other specialty board certification or recertification approved by the commission as sixty-two hours of continuing education. The commission will also accept the award of Fellow of the Academy of General Dentistry, Master of the Academy of General Dentistry, or the Lifelong Learning and Service Recognition Award as sixty-two hours of continuing education. The certification, recertification, or award must be obtained in the three-year reporting period.

(5) Proof of continuing education is a certificate of completion, letter, or other documentation verifying or confirming attendance or completion of continuing education hours. Documentation must be from the organization that provided the activity, except in subsection (4)(b)(ii), (e), and (f)(ii) of this section, and must contain at least the following:

(a) Date of attendance or completion;

(b) Hours earned; and

(c) Course title or subject.

WSR 18-06-036

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 1, 2018, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-095.

Title of Rule and Other Identifying Information: WAC 182-550-2900 Payment limits—Inpatient hospital services, 182-550-3000 Payment method, and 182-550-3840 Payment adjustment for potentially preventable readmissions.

Hearing Location(s): On April 10, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 11, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 10, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by April 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is repealing WAC 182-550-3840 and restoring previous rule language regarding fourteen day readmissions to WAC 182-550-2900 and 182-550-3000. The agency is making these changes because it has determined that restoring the fourteen day readmission rule is the most clinically sound and cost-effective approach to managing readmissions.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Grant Stromsdorfer, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-1678.

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 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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. The updates to WAC 182-550-2900 and 182-550-3000 and the repeal of WAC 182-550-3840 do not impose additional compliance costs or requirements on providers.

A copy of the detailed cost calculations may be obtained by contacting March 1, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-021, filed 11/19/15, effective 1/1/16)

WAC 182-550-2900 Payment limits—Inpatient hospital services. (1) To be eligible for payment for covered inpatient hospital services, a hospital must:

(a) Have a core-provider agreement with the medicaid agency; and

(b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of that hospital, as defined in WAC 182-550-1050; or

(c) Be an out-of-state hospital that meets the conditions in WAC 182-550-6700.

(2) The agency does not pay for any of the following:

(a) Inpatient care or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.

(b) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.

(c) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.

(d) Additional days of hospitalization on a non-DRG claim when:

(i) Those days exceed the number of days established by the agency or mental health designee under WAC 182-550-2600, as the approved length of stay (LOS); and

(ii) The hospital or distinct unit has not received prior authorization for an extended LOS from the agency or mental health designee as specified in WAC 182-550-4300(4). The agency may perform a prospective, concurrent, or retrospective utilization review as described in WAC 182-550-1700, to evaluate an extended LOS. A mental health designee may also perform those utilization reviews to evaluate an extended LOS.

(e) Inpatient hospital services when the agency determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The agency may perform a retrospective utilization review as described in WAC 182-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.

(f) Two separate inpatient hospitalizations if a client is readmitted to the same or affiliated hospital or distinct unit within fourteen calendar days of discharge and the agency determines that one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000.

(g) A client's day(s) of absence from the hospital or distinct unit.

~~((g))~~ (h) A nonemergency transfer of a client. See WAC 182-550-3600 for hospital transfers.

~~((h))~~ (i) Charges related to a provider preventable condition (PPC), hospital acquired condition (HAC), serious reportable event (SRE), or a condition not present on admission (POA). See WAC 182-502-0022.

~~((i))~~ (j) An early elective delivery as defined in WAC 182-500-0030. The agency may pay for a delivery before thirty-nine weeks gestation, including induction and cesarean section, if medically necessary under WAC 182-533-0400 (20).

(3) This section defines when the agency considers payment for an interim billed inpatient hospital claim.

(a) When the agency is the primary payer, each interim billed nonpsychiatric claim must:

(i) Be submitted in sixty calendar day intervals, unless the client is discharged before the next sixty calendar day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the agency is not the primary payer:

(i) The agency pays an interim billed nonpsychiatric claim when the criteria in (a) of this subsection are met; and

(ii) Either of the following:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(c) For psychiatric claims, (a)(i) and (b)(i) of this subsection do not apply.

(4) The agency considers for payment a hospital claim submitted for a client's continuous inpatient hospital admission of sixty calendar days or less upon the client's formal release from the hospital or distinct unit.

(5) To be eligible for payment, a hospital or distinct unit must bill the agency using an inpatient hospital claim:

(a) Under the current national uniform billing data element specifications:

(i) Developed by the National Uniform Billing Committee (NUBC);

(ii) Approved or modified, or both, by the Washington state payer group or the agency; and

(iii) In effect on the date of the client's admission.

(b) Under the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) Under the agency's published billing instructions and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the agency considers and pays an initial interim billed hospital claim and any subsequent interim billed hospital claims;

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (e.g., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes; and

(g) With the appropriate NUBC revenue code specific to the service or treatment provided to the client.

(6) When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room

charges must not exceed the hospital's usual and customary charges to the general public, as required by C.F.R. Sec. 447.271.

(7) The agency allows hospitals an all-inclusive administrative day rate for those days of a hospital stay in which a client no longer meets criteria for the acute inpatient level of care. The agency allows this day rate only when an appropriate placement outside the hospital is not available.

(8) The agency pays for observation services according to WAC 182-550-6000, 182-550-7200, and other applicable rules.

(9) The agency determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include:

- (a) Client participation (e.g., spenddown);
- (b) Any third-party liability amount, including medicare part A and part B; and
- (c) Any other adjustments as determined by the agency.

(10) The agency pays hospitals less for services provided to clients eligible under state-administered programs, as provided in WAC 182-550-4800.

(11) All hospital providers must present final charges to the agency according to WAC 182-502-0150.

AMENDATORY SECTION (Amending WSR 15-24-096, filed 12/1/15, effective 1/1/16)

WAC 182-550-3000 Payment method. (1) The medic-aid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 182-550-4300 and 182-550-4400.

(2) The agency assigns a DRG code to each claim for an inpatient hospital stay using 3M™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

- (a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and
- (b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:
 - (i) Ratio of costs-to-charges (RCC); and
 - (ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(4) An inpatient claim payment includes all hospital covered services provided to a client during days the client is eligible. This includes, but is not limited to:

- (a) The inpatient hospital stay;
- (b) Outpatient hospital services, including preadmission, emergency department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim;

(c) Any hospital covered service for which the admitting hospital sends the client to another facility or provider during the client's inpatient hospital stay, and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, detox, or CUP) times covered allowable days	182-550-2600 and 182-550-3381
Single Case Rate	Hospital specific bariatric case rate per stay	182-550-3470
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598
Military	Depending on the revenue code billed by the hospital: <ul style="list-style-type: none"> • RCC times billed covered allowable charges; and • Military subsistence per diem. 	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ancillary charges that are allowable and covered for administrative days	182-550-3381

(6) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

- (a) A claim qualifies as a high outlier (see WAC 182-550-3700);
- (b) A claim is paid by the DRG method and a client transfers from one acute care hospital or distinct unit per WAC 182-550-3600;
- (c) A client is not eligible for a Washington apple health program on one or more days of the hospital stay;

(d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges; ~~((e))~~

(f) A client is discharged from an inpatient hospital stay and, within fourteen calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The agency or the agency's designee performs a retrospective utilization review (see WAC 182-550-1700) on the initial admission and all readmissions to determine which inpatient hospital stays qualify for payment;

(g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition). The agency or its designee performs a retrospective utilization review to determine if:

(i) Both admissions are appropriate and qualify for individual payments; or

(ii) The claims for these admissions must be combined to be reimbursed as one payment; or

(h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The agency does not pay for a client's day(s) of absence from the hospital.

(10) The agency pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 182-550-2900.

(11) The agency applies to the allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(12) The agency pays hospitals in designated bordering cities for allowed covered services as described in WAC 182-550-3900.

(13) The agency pays out-of-state hospitals for allowed covered services as described in WAC 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(16) Hospitals participating in the Washington apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(21) For a client's hospital stay that involves regional support network (RSN)-approved voluntary inpatient or involuntary inpatient hospitalizations, the hospital must bill the agency for payment. When the hospital contracts directly with the RSN, the hospital must bill the RSN for payment.

(22) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the agency may manually price the claim at the hospital's psychiatric per diem rate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-3840 Payment adjustment for potentially preventable readmissions.

WSR 18-06-046

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 1, 2018, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-166.

Title of Rule and Other Identifying Information: The department is proposing to amend and repeal existing sections and create one new section in chapter 388-832 WAC, Individual and family services program.

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 DSHSRPAURulesCoordinator@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 proposed amendments to chapter 388-832 WAC remove references to the individual and family services (IFS) request list, add required approval from the deputy assistant secretary or designee for a community service grant project, and limit community service grant projects to available funding. Other proposed amendments clarify program requirements, eliminate unnecessary section divisions, and combine section content.

Reasons Supporting Proposal: Under SSB 6387 (2014), the legislature directed the department to create a request list. The developmental disabilities administration no longer requires clients to be added to the IFS request list. Removing references to the IFS request list allows people to access one-time awards and emergency services. Adding prior approval requirements and limits to community service grants clarifies the process related to these grants.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.161.

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:** Lonnie Keese, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1529.

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 28, 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 18-06-047
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 2, 2018, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-020.

Title of Rule and Other Identifying Information: Chapter 246-11 WAC, model procedural rules for adjudicative proceedings conducted under the authority of a board or commission having disciplinary authority under the Uniform Disciplinary Act. A chapter review including clarification, streamlining, and modernization of the rules.

Hearing Location(s): On April 13, 2018, at 10:00 a.m., at the Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: April 20, 2018.

Submit Written Comments to: Tami Thompson, P.O. Box 47890, Olympia, WA 98504-7890, email <https://fortress.wa.gov/doh/policyreview>, by April 13, 2018.

Assistance for Persons with Disabilities: Contact Tami Thompson, phone 360-628-0096, TTY 360-833-6388 or 711, email tami.thompson@doh.wa.gov, by April 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to clarify, streamline, and modernize the rules. The existing rules are outdated, and do not accurately reflect current standards of practice. Amendments are necessary to provide fair and consistent implementation of adjudicative proceedings conducted by health profession boards and commissions having disciplinary authority under the Uniform Disciplinary Act, chapter 18.130 RCW.

Reasons Supporting Proposal: The department adopted this rule chapter in the early 1990s and this is the first comprehensive review of the entire chapter. RCW 43.70.041, enacted in 2013, requires the department to review existing rules every five years to identify ways to clarify or simplify rules. This comprehensive chapter review is responsive to this legislative directive.

Statutory Authority for Adoption: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050.

Statute Being Implemented: RCW 34.05.413 through 34.05.476.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Tami Thompson, 101 Israel Road S.E., Tumwater, WA 98501, 360-628-0096; Implementation and Enforcement: Roman Dixon, 310 Israel Road S.E., Tumwater, WA 98501, 360-236-4686.

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. Under RCW 34.05.328(5) by definition the proposed rules are considered "procedural rules" and provide a process and procedure relating to agency hearings. The rules do not fall under the definition of significant legislative rules.

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 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.

March 1, 2018

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-001 Purpose and application of chapter. (1) This chapter contains model rules for adjudicative proceedings authorized to be conducted under the authority of a board having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW. Each board may adopt these rules as contained in this chapter or as modified.

(2) This chapter, as modified and adopted by the board, ~~((shall apply))~~ applies to adjudicative proceedings authorized to be conducted under the authority of the board.

(3) ~~((This chapter applies to adjudicative proceedings begun on or after the effective date of this chapter in programs administered by the board. For purposes of this section, "begun" shall mean the receipt by the appropriate office of an application for an adjudicative proceeding. These rules shall be))~~ The rules in this chapter are the exclusive rules governing adjudicative proceedings under the jurisdiction of the board.

(4) To the extent that these rules differ by inclusion, deletion, or content from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250, this chapter shall prevail in order to provide a process consistent with the organization of the department and the board.

(5) Where a provision of this chapter conflicts with another chapter of Title 246 WAC, the provision of this chapter shall prevail.

(6) Where a provision of this chapter conflicts with a provision of the Revised Code of Washington, the statute shall prevail.

AMENDATORY SECTION (Amending WSR 09-03-089, filed 1/20/09, effective 2/20/09)

WAC 246-11-010 Definitions. ~~((As used in these rules of practice and procedure, the following terms shall have the meaning set forth))~~ The definitions in this section apply throughout this chapter unless the context clearly ~~((indicates))~~ requires otherwise ~~((Other terms shall have their ordinary meaning unless defined elsewhere in this chapter)).~~

(1) "Adjudicative ~~((clerk))~~ clerk's office" ~~((shall))~~ means the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health
Adjudicative ~~((Clerk))~~ Clerk's Office
~~((310 Israel Rd. S.E.))~~
P.O. Box 47879
Olympia, WA 98504-7879

(2) "Adjudicative proceeding" or "hearing" ~~((shall))~~ means a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the board prior to the entry of a final order under this chapter.

(3) "Board" ~~((shall))~~ means a board or commission disciplining authority under RCW 18.130.040 (2)(b) ~~((and (3)))~~.

(4) "Brief adjudicative proceeding" ~~((shall))~~ means an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

(5) "Department" ~~((shall))~~ means the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

(6) "Docket" or "docketing" ~~((shall))~~ means the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative ~~((clerk))~~ clerk's office for the use of the department.

(7) "Filing" ~~((shall))~~ means receipt by the adjudicative ~~((clerk))~~ clerk's office.

(8) "Initiating document" ~~((shall))~~ means a written agency document which initiates action ~~((against a license holder or applicant for license))~~ and which creates the right to an adjudicative proceeding. ~~((It may be entitled))~~ Initiating documents may be a statement of charges, notice of intent to deny, or ~~((by))~~ any other ~~((designation))~~ document indicating the action or proposed action to be taken.

(9) "License" ~~((shall have the meaning set forth))~~ has the same meaning as defined in RCW 34.05.010 and includes license to practice the profession for which the board is the disciplining authority and any approval of school or curriculum required by law or rule to be obtained from the board.

(10) "Presiding officer" ~~((shall))~~ means the person who is assigned to conduct an adjudicative proceeding and who may either be a member of the board, an individual appointed pursuant to RCW 18.130.095(3), or an administrative law judge employed by the office of administrative hearings.

(11) "Presiding officer for brief adjudicative proceedings" ~~((shall))~~ means an employee of the department authorized by the board to conduct brief adjudicative proceedings.

(12) "Program" ~~((shall))~~ means the administrative unit within the department responsible for implementation of that

chapter of Title 18 RCW establishing the board or its powers and responsibilities.

(13) "Protective order" ~~((shall))~~ means an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

(14) "Respondent" ~~((shall))~~ means a license holder or applicant for license under the jurisdiction of the board who is named in an initiating document.

(15) "Secretary" ~~((shall))~~ means the secretary of the department of health or ~~((his/her))~~ his or her designee.

(16) "Show cause hearing" means a hearing authorized under RCW 18.130.135 and WAC 246-11-340 for the limited purpose of determining whether a summary action taken by the disciplining authority shall remain in effect pending a full administrative hearing.

(17) "Summary action" ~~((shall))~~ means an agency action to address an immediate ~~((danger))~~ threat to the public health, safety, or welfare and ~~((shall))~~ includes, but is not ~~((be))~~ limited to, an order of summary suspension, and an order of summary restriction of a license.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-020 Signature authority. (1) A person designated by the board shall sign all initiating documents issued under this chapter.

(2) All final orders shall be signed by a member of the panel of board members who heard the matter.

(3) All other orders shall be signed by the presiding officer conducting the proceeding.

(4) Authority to sign ~~((shall be))~~ is indicated by designation of the title of the person signing and shall not require any other affirmation, affidavit, or allegation.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-030 Appearance of parties. If a respondent requests an adjudicative proceeding to contest the action, that party shall appear at all stages of the proceeding except as otherwise provided in this section.

(1) If the respondent is represented as provided in this chapter, the respondent shall appear personally at the hearing and at any scheduled settlement conference but need not appear at the prehearing conference or at presentation of motions.

(2) Parties may be represented by counsel at all proceedings.

(3) ~~((The respondent may appear by telephone at any portion of the proceedings conducted by telephone, in the discretion of the presiding officer following reasonable advance notice to the presiding officer and to the opposing party.~~

(4)) The requirement of personal appearance may be waived for good cause ~~((it))~~ at the discretion of the presiding officer.

~~((5))~~ (4) Failure to appear as provided in this chapter ~~((shall be))~~ is grounds for taking ~~((final))~~ action by default.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-040 Computation of time. (1) When computing a period of time prescribed or allowed by an applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run ~~((shall not be))~~ is not included.

(2) The last day of the computed period ~~((shall be))~~ is included unless the last day is a Saturday, Sunday, or legal holiday.

(3) When the last day is a Saturday, Sunday, or legal holiday, the period ~~((shall run until the end of))~~ ends at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday.

(4) When the period of time prescribed or allowed is seven days or less, any intermediate Saturday, Sunday, and legal holiday ~~((shall be))~~ is excluded from the computation.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-050 ~~((Notarization,))~~ Certification(s) and authentication. (1) A person's ~~((sworn))~~ written statement, declaration, verification, certificate, or oath ~~((or affidavit))~~ may be authenticated by ~~((an unsworn))~~ a written statement which is executed in substantially the following form:

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

(Date and Place)

(Signature)

(2) Documents or records may be authenticated by a certification, as provided in subsection (1) of this section, from the custodian of the records or other qualified person that the documents or records are what they purport to be.

(3) Signature of any attorney ~~((shall))~~ must be accompanied by and authenticated by that attorney's Washington State Bar Association number.

(4) Documents prepared and submitted by a party who is not represented by an attorney ~~((shall))~~ must be signed and dated by that party and ~~((shall))~~ must include that party's current address.

(5) Signature by a party or an attorney on a document shall constitute a certificate by the party or attorney that ~~((he/she))~~ he or she has read the document, believes there are grounds to support it, and has not submitted the document for the purpose of delay, harassment, or needless increase in the cost of a proceeding.

(6) Compliance with certification requirements of subsections (1) and (2) of this section creates a rebuttable presumption that a document is authentic.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-070 Representation. (1) License holders, applicants for license, and recipients of benefits may be represented subject to the following conditions:

(a) A license holder or applicant for license may represent ~~((himself/herself))~~ himself or herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington~~((s))~~.

(b) Every attorney representing a license holder or applicant for license shall file a notice of appearance with the adjudicative ~~((clerk))~~ clerk's office upon commencing representation, and shall file a notice of withdrawal of counsel with the adjudicative ~~((clerk))~~ clerk's office upon terminating representation.

(c) No license holder or applicant may be represented in an adjudicative proceeding by an employee of the department.

(2) No current or former employee of the department may appear as an expert, character witness, or representative of any party other than the ~~((state of Washington if he/she))~~ department if the employee took an active part in investigating or evaluating the case or represented the agency in the matter, unless written permission of the secretary is granted.

(3) No current or former ~~((member))~~ employee of the attorney general's office ~~((staff))~~ who participated personally and substantially in investigating or evaluating the matter at issue while so employed may represent a party other than the department or otherwise participate in a related proceeding without first having obtained the written consent of the attorney general's office.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-080 Filing and service ~~((and filing))~~ of documents. ~~((1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.~~

~~(2) Unless otherwise provided by law, filing and service shall be made by personal service, first class, registered, or certified mail.~~

~~(3) Filing shall be complete upon actual receipt during normal business hours at the adjudicative clerk office, unless filing is directed in writing to be made to another address.~~

~~(4) Service shall be complete when personal service is made; mail is properly stamped, addressed, and deposited in the United States mail.~~

~~(5) Proof of service shall consist of filing as required by these rules, together with one of the following:~~

~~(a) An acknowledgement of service;~~

~~(b) A certificate of service including the date the papers were served, the parties upon whom served, the signature of the serving party, and a statement that service was completed by:~~

~~(i) Personal service; or~~

~~(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.)~~ (1) For purposes of this section "document" means pleadings, briefs, exhibits, or other materials requested or relevant to an adjudicative proceeding.

~~(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.~~

~~(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.~~

~~(b) Unless otherwise provided by law, documents must be filed by:~~

~~(i) Personal service;~~

~~(ii) First class, registered, or certified mail; or~~

~~(iii) Fax transmission where copies are mailed simultaneously.~~

~~(c) The date of filing is the date the documents are received by the adjudicative clerk's office.~~

~~(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.~~

~~(3) Service. Service is the act of delivering a document to a party or a party's designated representative.~~

~~(a) Unless otherwise provided by law, documents must be served by:~~

~~(i) Personal service;~~

~~(ii) First class, registered, or certified mail; or~~

~~(iii) Fax transmission where copies are mailed simultaneously.~~

~~(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.~~

~~(c) Service is complete when the documents are:~~

~~(i) Personally served;~~

~~(ii) Properly stamped, addressed, and deposited in the United States mail; or~~

~~(iii) Successfully transmitted by fax and properly stamped and addressed copies are deposited in the United States mail.~~

~~(d) A party may prove service by filing in compliance with this chapter any of the following:~~

~~(i) An acknowledgment of service; or~~

~~(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.~~

~~(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.~~

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-090 Jurisdiction. (1) The board has jurisdiction over all licenses issued by the board and over all holders of and applicants for licenses as provided in RCW 18.130.040 (2)(b) and (3). Such jurisdiction is retained even

if an applicant abandons or requests to withdraw the application, or a licensee ~~((surrenders or))~~ fails to renew a license.

(2) The department has jurisdiction over practice by unlicensed ~~((practice))~~ persons of any activity, profession or business for which a license is required unless otherwise prohibited by law.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-120 Good faith requirement. Good faith ~~((shall be))~~ is the standard for compliance with these rules. Failure to make a good faith effort to comply with these rules ~~((shall be))~~ is grounds for sanctions as provided in this chapter.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-130 Public records. (1) All papers, exhibits, transcripts, and other materials required by or submitted in accordance with this chapter ~~((shall be considered))~~ are public records.

(2) Release of information ~~((on))~~ upon a request for public records ~~((shall be))~~ is subject to the following limitations:

(a) Release of health care information ~~((shall))~~ must comply with chapter 70.02 RCW and any applicable statutes or rules ~~((promulgated thereunder)); and~~

(b) ~~((Protective orders issued pursuant to WAC 246-11-400 shall prevail; and~~

~~((Chapter 42.17 RCW shall))~~ Chapter 42.56 RCW governs the release of records.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-140 Expenses and witness fees. (1) The party requesting the appearance of a witness under a subpoena shall pay witness fees and expenses ~~((shall be paid))~~ at the following rates ~~((to witnesses appearing under subpoena by the party requesting the appearance))~~:

(a) Fees ~~((shall be paid))~~ at the daily rate established for jurors in district court of Thurston County; and

(b) Expenses ~~((shall be paid))~~ at the rate established for employees of the state of Washington, or as otherwise required by law.

(2) The party requesting service of an expert witness shall negotiate and pay fees for ~~((an))~~ the expert witness ~~((shall be negotiated by and paid by the party requesting services of the expert)).~~

(3) ~~((All))~~ The party incurring expenses ~~((incurred))~~ in connection with proceedings under this chapter shall ~~((be paid by the party incurring))~~ pay the expense.

(4) The program shall pay expenses associated with:

(a) The facility in which proceedings are conducted; and

(b) Recording of the proceedings.

(5) ~~((Expenses related to preparation and distribution of the transcript of proceedings shall be paid by))~~ The party filing a motion or request for review of an initial order or petition for reconsideration, appealing a final order, or otherwise requesting ~~((the))~~ a transcript of a proceeding shall pay all

expenses related to preparation and distribution of the transcript.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-170 Sanctions. (1) Orders may include sanctions against either party.

(2) Grounds for sanctions may include:

(a) Failure to comply with ~~((these rules))~~ this chapter or orders of the presiding officer; and

(b) Willful interference with the progress of proceedings.

(3) Sanctions may include:

(a) Dismissal of the matter;

(b) Proceeding in default; and

(c) Other sanctions as appropriate.

(4) The order ~~((shall))~~ must state the grounds upon which any sanctions are imposed.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-180 Intervention. (1) The presiding officer may grant a petition for intervention pursuant to RCW 34.05.443.

(2) A request to intervene ~~((shall))~~ will be handled as a prehearing motion and ~~((shall))~~ will be subject to the dates contained in the scheduling order. ~~((Within the sound exercise of discretion,))~~ The presiding officer may allow intervention if:

(a) The intervenor is not a party to the matter but has a substantial interest in the outcome of the matter and the interest of the intervenor is not adequately represented by a party, or other good cause exists; and

(b) Any representative of the intervenor meets the requirements of WAC 246-11-070.

(3) A person ~~((shall))~~ will not be allowed to intervene if that person had notice of the board's decision and, upon timely application, would have been able to appear as a party in the matter in which intervention is sought, but failed to make such timely application.

(4) If intervention is granted, the intervenor shall ~~((be subject to these rules))~~ comply with this chapter on the same basis as the other parties to the proceeding, unless otherwise limited in the order granting intervention.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-190 Form of pleadings and orders. (1) Pleadings, orders, and other papers filed, served, or entered under this chapter ~~((shall be))~~ must:

(a) ~~((Captioned))~~ Have a caption with the name of the state of Washington, the name of the board, and the title and cause number, if any, of the proceeding; and

(b) Be signed by the person filing, serving, or entering the document. When that person is an attorney representing a party, the signature block ~~((shall))~~ must include the attorney's Washington State Bar Association number.

(2) All orders ~~((shall))~~ must comply with RCW 34.05.-461 and the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-200 Notice to ~~((limited-English-speaking))~~ limited-English proficient parties. (1) "Limited-English proficiency" means, for purposes of this section and WAC 246-11-210, that a person is unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language. A person with limited-English proficiency may have difficulty speaking or reading English.

(2) The department shall ensure that when it serves an initiating document, it includes a notice that the respondent has the right to request an interpreter for the hearing if one is needed. The notice will be in the top ten primary languages in Washington state as determined pursuant to subsection (4) of this section.

(3) When ~~((the program or))~~ the adjudicative ~~((clerk))~~ clerk's office is notified ~~((or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding,))~~ by a party that he or she has limited-English proficiency, is a party to an adjudicative proceeding, and their non-English language is one of the top ten primary languages in Washington state as determined pursuant to subsection (4) of this section, the department shall ensure that notices concerning a hearing, including notices of hearing, continuance, and dismissal are translated into the person's primary language.

(4) The top ten primary languages will be reevaluated each year to respond to demographic changes using:

(a) U.S. Census data;

(b) Office of financial management limited-English proficiency population forecasts; and

(c) Department tracking of frequency of encounters with limited-English proficient persons.

(5) When the adjudicative clerk's office is notified by a party that he or she has limited-English proficiency, is a party to an adjudicative proceeding, and their non-English language is not a primary language addressed in subsection (4) of this section, the department shall make a reasonable effort to ensure that either all notices concerning the hearing, including notices of hearing, continuance, and dismissal, ~~((shall either be in the))~~ are in the person's primary language ~~((of the party or shall))~~ or include a notice in the party's primary language ~~((of the party))~~ which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-210 Interpreters for hearing or speech impaired persons and persons with limited-English proficiency. (1) A "hearing or speech impaired person" means a person who, because of a hearing or speech impairment ~~((or speech defect))~~ cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) ~~((A "limited-English-speaking person" means a person who because of a non-English speaking cultural back-~~

~~ground cannot readily speak or understand the English language.~~

~~((3))~~ If a hearing or speech impaired person or ~~((a limited-English-speaking))~~ person with limited-English proficiency is involved in an adjudicative proceeding and ~~((a))~~ notifies the adjudicative clerk's office of the need for an interpreter ~~((is made known to the adjudicative clerk office)),~~ the presiding officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the presiding officer shall select and appoint an interpreter.

~~((4))~~ (3) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation ~~((shall))~~ will be made to the ~~((impaired))~~ person using the interpreter of all the proceedings in a language or in a manner the ~~((impaired))~~ person understands; and

(b) The interpreter ~~((shall))~~ will repeat the statements of the ~~((impaired))~~ person using the interpreter to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

~~((5))~~ (4) When an interpreter is used in a proceeding:

(a) The interpreter shall ~~((translate))~~ interpret all statements made by other participants in the proceeding;

(b) The presiding officer shall ensure sufficient extra time is provided to permit ~~((translation))~~ interpretation; and

(c) The presiding officer shall ensure that the interpreter ~~((translates))~~ interprets the entire proceeding to the ~~((hearing impaired person or limited-English-speaking person to the extent))~~ person using the interpreter so that the person has the same opportunity to understand the statements made as ~~((would))~~ a person not requiring an interpreter.

~~((6))~~ (5) An interpreter appointed under this section ~~((shall be))~~ is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The program shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

~~((7))~~ (6) All proceedings ~~((shall))~~ must be conducted consistent with chapters 2.42 and 2.43 RCW.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-220 Subpoenas. (1) The board, through the presiding officer, or other designated person, and attorneys for parties may issue subpoenas to residents of the state of Washington, to license holders and applicants for license, and to other persons or entities subject to jurisdiction under RCW 4.28.185.

(2) The presiding officer shall issue subpoenas pursuant to RCW 34.05.446(1) for parties not represented by counsel upon request of the party and upon a showing of relevance and reasonable scope of the testimony or evidence sought. Requests for issuance of subpoenas must be made in writing to the presiding officer stating the relevance and the scope of testimony or evidence sought.

(3) The person on whose behalf the subpoena is issued shall pay any witness fees and expenses as provided in WAC 246-11-140 or costs for interpreters for such witnesses as provided in WAC 246-11-210.

(4) Attendance of persons subpoenaed and production of evidence may be required at any designated place in the state of Washington.

(5) Every subpoena ~~((shall))~~ must:

(a) Comply with WAC 246-11-190;

(b) Identify the party causing issuance of the subpoena; and

~~((State the title of the proceeding; and~~

~~((d)))~~ Command the person to whom the subpoena is directed to attend and give testimony ~~((and/or))~~ or produce designated items under the person's control at a specified time and place.

(6) A subpoena may be served by any suitable person eighteen years of age or older by:

(a) Giving a copy of the subpoena to the person to whom the subpoena is addressed;

(b) Leaving a copy of the subpoena with a person of suitable age and discretion at the residence of the person to whom the subpoena is addressed ~~((with a person of suitable age and discretion))~~;

(c) Sending a copy of the subpoena by mail to the current address on file with the program if the person is licensed by the board or has filed an application for a license with the board; or

(d) Sending a copy of the subpoena by certified mail with proof of receipt if the person is neither licensed by nor has applied for a license with the board.

(7) Proof of service may be made by:

(a) Affidavit or declaration of personal service;

(b) Certification by the person mailing the subpoena to a license holder or applicant; or

(c) Return or acknowledgment showing receipt by the person subpoenaed or ~~((his/her))~~ his or her representative. Any person accepting certified or registered mail at the last known address of the person subpoenaed ~~((shall))~~ will be considered an authorized representative.

(8) The presiding officer, upon motion made promptly and before the time specified for compliance in the subpoena, may:

(a) Quash or modify the subpoena if the subpoena is unreasonable or requires evidence not relevant to any matter at issue; or

(b) Condition denial of the motion upon just and reasonable conditions, including advancement of the reasonable cost by the person on whose behalf the subpoena is issued of producing the books, documents, or tangible things; or

(c) Issue a protective order under RCW 34.05.446 or WAC 246-11-400.

(9) The board may seek enforcement of a subpoena under RCW 34.05.588(1) or proceed in default pursuant to WAC 246-11-280.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-250 Form and content of initiating documents. (1) Initiating documents shall include a clear and concise statement of the:

(a) Identity and authority of the person issuing the document;

(b) Factual basis for the action or proposed action set forth in the document;

(c) Statutes and rules alleged to be at issue;

(d) Identity of the party against whom the action is taken or proposed to be taken;

(e) Action or proposed action or penalties, including the statutory or rule authority for those actions or penalties;

(f) Signature of the person issuing the document and the date signed; and

(g) Method by which an adjudicative proceeding may be requested.

(2) Initiating documents ~~((shall))~~ must be accompanied by the following documents:

(a) Notice that the respondent may defend against the action or proposed action; and

(b) Form for requesting adjudicative proceeding.

(3) Initiating documents ~~((shall))~~ must be served as described in WAC 246-11-080.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-260 Amendment of initiating documents. (1) Prior to the hearing date, initiating documents may be amended ~~((subject to the following conditions))~~:

(a) Subject to the following conditions:

~~((i))~~ (i) Amended initiating documents ~~((shall))~~ must meet the requirements of WAC 246-11-250(1)(c);

~~((b))~~ (ii) Amended initiating documents ~~((shall))~~ must be accompanied by the documents described in WAC 246-11-250(2)(c);

~~((e))~~ (e) Whenever amended initiating documents are issued, a new interval for response will begin, as described in WAC 246-11-270, unless the respondent requests the time periods set by the original initiating document; and

~~((d))~~ (d) Issuance of amended initiating documents ends all obligations of the parties under the prior initiating documents.

(2) On the hearing date, the initiating documents may be amended subject to the following conditions:

(a) The documents may be amended upon motion of the state;

(b) The documents may not be amended without the approval of the presiding officer; and

(c) Upon motion of a party or upon his/her own initiative, the presiding officer may grant a continuance on all or part of the matter if necessary to afford the respondent an opportunity to prepare a defense to the amended documents).

(b) Whenever amended initiating documents are served, a new interval for response will begin, as described in WAC 246-11-270. Whenever amended initiating documents are served, the respondent shall file an answer within the time

period specified in the amended initiating document, unless otherwise permitted to extend the filing period under WAC 246-11-270(3), or if the case is within thirty days of the scheduled hearing as described in subsection (c) of this section.

(c) If amended initiating documents are filed within thirty days of the scheduled hearing, the presiding officer will convene a status conference to discuss response deadlines and the case schedule. Upon motion of a party and a showing of good cause, or upon his or her own initiative, the presiding officer may grant a continuance on all or part of the matter and may modify the scheduling order as necessary.

(2) On the hearing date, the initiating documents may be amended subject to the following conditions:

(a) The documents may be amended upon motion of the state.

(b) The presiding officer will determine whether amendments are substantive and may grant a continuance on all or part of the matter if necessary to afford the respondent an opportunity to prepare a defense to the amended documents.

(3) For purposes of this section, motions may be made orally.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-270 Request for adjudicative proceeding. A respondent may respond to an initiating document by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

(a) An application for adjudicative proceeding must be filed in accordance with the following time periods:

(i) For matters under chapter 18.130 RCW, the Uniform Disciplinary Act, within twenty days of service of the initiating documents unless ~~((and))~~ an extension has been granted as provided in subsection (3) of this section; and

(ii) For all other matters, within twenty days of service of the initiating documents, unless otherwise provided by statute.

(b) The application for adjudicative proceeding ~~((shall))~~ must be made on the Request for Adjudicative Proceeding form accompanying the initiating documents or by a written document including substantially the same information.

(c) By filing a request for adjudicative proceeding, the responding party agrees to appear personally at the adjudicative proceeding or, if otherwise approved in advance by the presiding officer, by telephone, unless appearance is waived by the presiding officer as authorized in WAC 246-11-130(4).

(d) The application for adjudicative proceeding ~~((shall))~~ must contain a response to the initiating documents, indicating whether each charge is admitted, denied or not contested, and responses ~~((shall))~~ will be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it ~~((shall))~~ will be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

(f) The application for adjudicative proceeding ~~((shall))~~ must specify the representative, if any, designated pursuant to WAC 246-11-070 and any request for interpreter. The responding party shall amend the name of the representative and need for interpreter immediately if circumstances change prior to the hearing.

(g) The application for adjudicative proceeding ~~((shall))~~ must be filed at the adjudicative ~~((clerk))~~ clerk's office.

(2) A respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. Such waiver and documents shall be filed:

(a) In accordance with the timelines in subsection (1)(a) of this section; and

(b) ~~((At the address indicated))~~ As required in subsection (1)(g) of this section.

(3) For matters under RCW 18.130.180, if the twenty-day limit for filing an application for adjudicative proceeding results in a hardship to the respondent, the respondent may request an extension of not more than sixty days upon a showing of good cause.

(a) The request for extension ~~((shall))~~ must be filed within the twenty-day limit and ~~((shall))~~ include:

(i) The reason for the request and the number of days for which the extension is requested; and

(ii) Documentation of the circumstances creating the hardship.

(b) The request ~~((shall))~~ may be granted for a period not to exceed sixty days upon showing of:

(i) Illness of the respondent; or

(ii) Absence of the respondent from the county of residence or employment; or

(iii) Emergency in the respondent's family; or

(iv) Other good cause as determined by the presiding officer.

(c) If a request for extension is denied, the respondent shall have ten days from service of the order denying the extension or twenty days from service of the initiating documents, whichever is longer, to file an application for adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-280 Default. (1) If a party fails to respond to initiating documents according to WAC 246-11-270, that party will be deemed to have waived the right to a hearing, and the board shall enter a final order without further contact with that party.

(2) If a party requests an adjudicative proceeding but fails to appear, without leave to do so, at a scheduled prehearing conference, the presiding officer may issue an order of default. The order ~~((shall))~~ must include notice of opportunity to request that the default order be vacated pursuant to RCW 34.05.440(3). Unless vacated, a default order under this subsection ~~((shall))~~ will be grounds for the board to proceed to decide the matter in the absence of the respondent and with-

out additional notice to the respondent and to issue a final order.

(3) If a party requests an adjudicative proceeding but fails to appear at the hearing, the presiding officer may issue an order of default in the same manner as subsection (2) of this section, or may proceed to hear the matter in the absence of the party and issue a final order.

(4) Final orders entered under this section shall contain:

(a) Findings of fact and conclusions of law based upon prima facie proof of the allegations contained in the initiating documents;

(b) Proof of service of or a good faith attempt to serve initiating documents and appropriate notices;

(c) A finding that there is no reason to believe that the party in default is in active military service;

(d) The penalties or conditions imposed by the order; and

(e) Notice of the opportunity to request reconsideration of a final order pursuant to RCW 34.05.470.

(5) Final and default orders entered under this section ~~(shall)~~ will be served upon the parties in accordance with WAC 246-11-080.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-290 Scheduling orders. (1) Within thirty days after receipt of the application for adjudicative proceeding, the board or designee ~~((thereof,))~~ shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order or ~~((other scheduling mechanism))~~ initial conference order establishing timelines for discovery, settlement, and scheduled hearings; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) If a scheduling order is issued:

(a) The scheduling order ~~((shall))~~ must specify:

(i) The date, time, and place of ~~((a settlement conference,))~~ a prehearing conference~~(s))~~ and the hearing;

(ii) The deadlines for completion of discovery and submission of prehearing motions; and

(iii) The name, address, and telephone number of the assistant attorney general or other department representative who will represent the ~~((state))~~ department in the matter.

(b) The scheduling order may be modified by order of the presiding officer upon ~~((his/her))~~ his or her own initiative or upon motion of a party. Any request for change ~~((of the))~~ to the initial scheduling ~~((mechanism or))~~ order ~~((shall))~~ must be made by motion as provided in WAC 246-11-380.

(c) The presiding officer may waive establishing dates for the ~~((settlement conference,))~~ completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the presiding officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the presiding officer that any or all of the dates be set.

(d) Dates contained in the scheduling order may be changed by the adjudicative ~~((clerk))~~ clerk's office upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-11-380.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-300 Conduct of emergency adjudicative proceedings. (1) Except as otherwise required by law summary action may be taken only after a review by the board of such evidence, including affidavits or declarations, if appropriate, to establish:

(a) The existence of an immediate ~~((danger))~~ threat to the public health, safety, or welfare;

(b) The board's ability to address the ~~((danger))~~ threat through a summary action~~(s))~~; and

(c) The summary action is necessary to address the ~~((danger))~~ threat.

(2) No notice to any person potentially affected by a summary action ~~((shall be))~~ is required prior to issuance of a summary action.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-310 Effect of summary action. (1) Summary action takes effect upon entry of the order.

(2) No person ~~((shall))~~ will be required to comply with a summary action until service has been made or the person has knowledge of the order, whichever occurs first.

(3) A summary action ~~((shall))~~ must be served as promptly as practicable, in accordance with WAC 246-11-080.

(4) A summary action shall not be subject to the post hearing process provided in WAC 246-11-550 through 246-11-610, but a summary action may be appealed to superior court as provided by law.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-320 Form and content of summary actions. (1) A summary action ~~((shall))~~ must be entered in the form of an order containing findings of fact, conclusions of law, and the summary action imposed, as well as a statement of policy reasons for the decision.

(2) Except as otherwise required by law a summary action imposed by emergency adjudicative proceeding ~~((shall))~~ must be limited to those actions necessary to alleviate an immediate ~~((danger))~~ threat to the public health, safety, or welfare.

(3) Initiating documents, and all other documents required by WAC 246-11-250 ~~((shall))~~ or 246-11-260 must accompany a summary action order when served.

AMENDATORY SECTION (Amending WSR 09-03-089, filed 1/20/09, effective 2/20/09)

WAC 246-11-340 Opportunity for show cause hearing. (1) A license holder's request for a show cause hearing must be filed within twenty days of the service of the summary action. A license holder must also respond to the statement of charges by requesting a hearing or an extension of time as provided in RCW 18.130.090.

(2) The show cause hearing will be conducted by a panel of the board within fourteen days of the license holder filing the show cause hearing request.

(3) ~~((By noon on the fourth calendar day after filing the show cause hearing request))~~ Unless otherwise specified by the presiding officer, the license holder must file, and deliver a copy to the department's attorney, any documents or written testimony to be admitted into evidence at the show cause hearing by noon on the fourth business day after filing the show cause hearing request.

(4) ~~((By noon on the eighth calendar day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing))~~ Unless otherwise specified by the presiding officer, the department must file, and deliver a copy to the license holder's attorney or to the license holder if not represented by counsel, any rebuttal documents or written testimony to be admitted into evidence at the show cause hearing by noon on the seventh business day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing.

(5) The presiding officer may adjust the timelines in subsection (3) or (4) of this section in the interest of fairness, as long as the hearing is held within fourteen days of the license holder's request for a show cause hearing.

(6) In reviewing the order of summary action, the show cause hearing panel will consider the statement of charges, the motions and documents supporting the request for summary action, the license holder's answer to the statement of charges, ~~((any))~~ documentary evidence or written testimony presented by the license holder and department in rebuttal that is timely filed pursuant to subsections (3) and (4) of this section, and unless waived, the parties will be given an opportunity for oral argument.

~~((6) At the show cause hearing, the department has the burden of proving it is more probable than not that the license holder poses an immediate threat to the public health and safety.))~~

(7) In cases under RCW 18.130.050 (8)(a) and 18.130.370, the department has the burden of proving at the show cause hearing that the licensee is prohibited from practicing a health profession in another state, federal, or foreign jurisdiction and that the conduct is substantially equivalent to unprofessional conduct. A copy of the order, stipulation, or agreement from a competent authority in another state, federal, or foreign jurisdiction showing that a license is prohibited from practicing their health profession is prima facie evidence that the requirements of RCW 34.05.479 (1) and (2) have been met.

(8) In cases under RCW 18.130.050 (8)(b), the department has the burden of proving at the show cause hearing that the licensee is prohibited from employment in the care of vul-

nerable adults based upon a department of social and health service's final finding of abuse or neglect of a minor or abuse or abandonment, neglect, or financial exploitation of a vulnerable adult.

(9) The show cause panel will issue an order and may overturn, uphold or amend the summary suspension or restriction.

~~((8))~~ (10) Within forty-five days of a determination by the panel of the board to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-360 Settlement conference. (1) Following a request for an adjudicative proceeding, a settlement conference ~~((shall be conducted if provided in the scheduling order))~~ may be held if settlement is not achieved through written documents. The parties shall arrange the date, time and place of the settlement conference. If another scheduling mechanism is issued, a settlement conference may be scheduled and held at the discretion of the board or other settlement processes may be ~~((utilized))~~ used at the discretion of the board.

(2) The purpose of the settlement conference or other settlement process ~~((shall be))~~ is to attempt to reach agreement on the issues and on a proposed order to be entered. Any agreement of the parties is subject to final approval by the board.

(3) The respondent shall attend the settlement conference as scheduled and may also be represented as provided in WAC 246-11-070. Representatives of the board ~~((and/or))~~ and department will also attend. Other persons may attend by agreement of the parties. Attendance may be in person or by phone.

(4) Either party may bring documents or other materials to the settlement conference for the purpose of settlement negotiations. No testimony will be taken. No documents or information submitted at the settlement conference will be admitted at the adjudicative proceeding unless stipulated by the parties or otherwise admitted into evidence by the presiding officer.

(5) If a settlement offer has been made in writing to the respondent and it is signed and returned by the respondent to the board ~~((prior to the settlement conference)),~~ all subsequent dates set in the scheduling order or other scheduling mechanism are ~~((continued))~~ stayed pending final review of the settlement by the board.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-370 Discovery. The parties ~~((are encouraged to))~~ should exchange information and documents related to the case prior to the adjudicative proceeding. Formal discovery is obtained as follows:

(1) Methods, scope and limits:

(a) Parties may obtain discovery by production of records or things; deposition upon oral examination; requests for admission; or, if ordered by the presiding officer, written interrogatories.

(b) Unless otherwise limited by order of the presiding officer in accord with these rules, the scope of discovery (~~shall be~~) are as follows:

(i) Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter in the pending action. It is not grounds for objection that the information sought will be inadmissible at the adjudicative proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) The frequency or extent of use of the discovery methods (~~set forth~~) established in these rules shall be limited by the presiding officer if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; or

(B) The party seeking discovery has had an ample opportunity by discovery to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations of the parties' resources, and the importance of the issues at stake.

(iii) The presiding officer may limit discovery upon his or her own initiative after reasonable notice or pursuant to a motion submitted by a party.

(2) Production of records, documents, or things:

(a) Upon written request of a party the opposing party shall identify experts and other witnesses to be called at the hearing and shall provide other information necessary to enable the party to conduct depositions of the witnesses.

(b) Any party may serve on any other party a request, which must be signed by the party or designated representative:

(i) To produce and permit the party making the request or designee to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) To permit entry onto designated land or other property which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or designated object or operation thereon which is within the scope of discovery.

(c) Any party who produces documents for inspection shall produce them as they are kept in the usual course of business or may, if the parties agree, organize and label them to correspond with the categories in the request.

(d) The party upon whom a request is made may, by motion to the presiding officer, move for an order denying the request to produce or modify the conditions of the request. Denial of the request of change in the conditions of the request shall be within the discretion of the presiding officer and shall be made by written order.

(3) Depositions may be taken subject to the following conditions:

(a) Within the United States or a territory or insular possession subject to the dominion of the United States, depositions (~~shall~~) must be taken before an officer authorized to administer oaths by the state of Washington or of the place where the examination is held. A presiding officer may, in his or her discretion or following motion of a party, preside at the deposition. Within a foreign country, depositions (~~shall~~) must be taken before a secretary of an embassy or legation, consul general, vice-consul or consular agent of the United States, or a person designated by the presiding officer or agreed upon by the parties by stipulation in writing filed with the presiding officer, if any, and otherwise with the disciplining authority. Except by stipulation, no deposition (~~shall~~) may be taken before any person who is a party or a privy of a party, or a privy of a representative of a party, or who is financially interested in the proceeding.

(b) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice of not less than five days in writing to the person to be deposed and to the opposing party. The notice (~~shall~~) must state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a description sufficient to identify the person to be examined or the particular class or group to which the person to be examined belongs. On motion of a party upon whom the notice is served, the presiding officer may for good cause shown, lengthen or shorten the time.

(c) After notice is served for taking a deposition, or upon motion of the presiding officer, or upon motion reasonably made by any party or by the person to be examined, and upon notice and for good cause, the presiding officer may issue an order that the deposition (~~shall~~) may not be taken or that it be taken subject to specified restrictions, conditions, or limitations.

(d) Depositions (~~shall~~) must be recorded.

(i) The officer before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony.

(ii) The officer or person acting under the officer's direction shall transcribe the testimony at the request of any party, provided that any expenses (~~shall be~~) are paid by the requesting party.

(iii) The transcribed testimony (~~shall~~) must be submitted to the person deposed for review and signature, unless review and signature are waived by that person. The officer shall append to the transcript any changes in form or substance that may be submitted by the parties.

(iv) Copies of the transcribed and, unless review and signature has been waived, signed testimony (~~shall~~) will be served upon the person deposed and upon the parties.

(e) If the parties so stipulate in writing or on the record, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken, may be used as any other deposition.

(4) Following motion of a party and opportunity for response by the opposing party, the presiding officer may order a party to respond to written interrogatories and may

order that the interrogatories be subject to specified restriction, condition, or limitation.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-380 Motions. (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, ~~((shall))~~ must be made in writing ~~((and)),~~ filed ~~((prior to)),~~ and served on all other parties by the dates set in the scheduling order. Filing ~~((shall be at))~~ must be made with the adjudicative ~~((clerk))~~ clerk's office, unless filing is directed in writing to be made at another address.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits, declarations, and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, with the board's office and with the presiding officer, and shall serve the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the adjudicative ~~((clerk))~~ clerk's office, and serve upon the moving party, a responsive memorandum, and accompanying affidavits, declarations, and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer.

(8) The moving party may file with the adjudicative ~~((clerk))~~ clerk's office, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions ~~((shall))~~ must be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions ~~((shall))~~ must be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit, declaration, or ~~((a))~~ memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion ~~((shall))~~ must be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-11-080, ~~((then))~~ three days ~~((shall))~~ will be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (fax) upon each party is permitted upon agreement of the parties, with proof of confirmation of service to be filed with the presiding officer.

(13) All computations of time ~~((shall))~~ must be calculated pursuant to WAC 246-11-040.

(14) Departmental motions for summary actions are exempted from all requirements of this section.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-390 Prehearing conference. (1) If a scheduling order is issued, the parties ~~((shall))~~ will be notified of the time and place of the first prehearing conference in the scheduling order. If another scheduling mechanism is

issued, a prehearing conference will be held upon motion of either party, unless board policy provides otherwise.

(2) The presiding officer shall determine whether the prehearing conferences will be conducted in person or by telephone conference call.

(3) The presiding officer shall conduct the prehearing conference and shall issue rulings related to prehearing motions and evidentiary issues. The rulings ~~((shall))~~ must govern the conduct of subsequent proceedings.

(4) ~~((The))~~ A prehearing conference may be recorded as ordered by the presiding officer. All offers of proof and objections concerning matters raised at the prehearing conference must be made on the record at the prehearing conference.

(5) Following the final prehearing conference, the presiding officer shall issue a written prehearing order which will:

(a) Identify the issues to be considered at the hearing and indicate which party has the burden of proof on these issues;

(b) Specify the facts which are admitted or not contested by the parties;

(c) Identify those documents and exhibits that will be admitted at hearing and those which may be distributed prior to hearing;

(d) Identify expert and lay witnesses that may be called at hearing and the issues to which those witnesses may testify;

(e) Rule on motions;

(f) ~~((Accept amendments to the pleadings;~~

~~((g)))~~ Address such other issues or matters as may be reasonably anticipated to arise and which may aid in the disposition of the proceedings; and

~~((h)))~~ (g) Rule on objections made in any preserved testimony.

(6) Following the prehearing conference, the presiding officer may issue an order directing that the matter be heard as a brief adjudicative proceeding, pursuant to WAC 246-11-420 through 246-11-450.

(7) Documentary evidence not offered in the prehearing conference ~~((shall))~~ will not be received into evidence at the adjudicative proceeding in the absence of a clear showing that the offering party had good cause for failing to produce the evidence at the prehearing conference.

(8) Witnesses not identified during the prehearing conference ~~((shall))~~ will not be allowed to testify at the adjudicative proceeding in the absence of a clear showing that the party offering the testimony of such witness had good cause for failing to identify the witness at the prehearing conference.

(9) If the authenticity of documents submitted at the prehearing conference is not challenged at the prehearing conference, the documents ~~((shall))~~ will be deemed authentic. However, a party ~~((shall))~~ will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to object at the prehearing conference.

(10) Nothing in these rules ~~((shall))~~ prohibit the presiding officer from conducting a conference at any time, including during the hearing. The presiding officer shall state on the record the results of such conference.

(11) A party bound by a stipulation or admission of record may withdraw it in whole or in part only upon a determination by the presiding officer or hearing officer that:

(a) The stipulation or admission was made inadvertently or as a bona fide mistake of fact or law; and

(b) The withdrawal will not unjustly prejudice the rights of the other parties.

(12) In an appeal to superior court involving issues addressed in the prehearing order, the record of the prehearing conference, written motions and responses, the prehearing order, and any orders issued by the presiding officer pursuant to WAC 246-11-380, ~~((shall be))~~ are the record.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-400 Protective orders. (1) The presiding officer shall issue a protective order to preserve confidentiality related to health care records or provider-client information as required under state and federal law including, but not limited to, chapter 70.02 RCW; Public Law No. 104-191, 110 Statute 1936 (Health Insurance Portability and Accountability Act (HIPAA)); and 45 C.F.R. Part 164.

(2) The presiding officer may issue ~~((a))~~ additional protective orders at his or her discretion:

~~((+))~~ (a) To protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;

~~((2))~~ To preserve confidentiality related to health care records or provider-client information;

~~((3))~~ (b) To protect examination processes;

~~((4))~~ (c) To protect the identity of a person supplying information to the department or board where the person indicates a desire for nondisclosure unless that person testifies or has been called to testify at an adjudicative proceeding; or

~~((5))~~ (d) To comply with applicable state or federal law.

(3) Parties submitting exhibits for administrative proceedings are required to redact all exhibits in a manner consistent with any protective order issued by the presiding officer.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-420 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a license meets the minimum criteria for an unrestricted license and the board proposes to deny such a license or to issue a restricted license;

(b) A determination whether a person is in compliance with the terms and conditions of a final order previously issued by the board, except final orders under RCW 18.130.-110;

(c) Any approval of a school or curriculum when such approval by the board is required by statute or rule; ~~((and))~~

(d) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal;

(e) An action to suspend a credential under RCW 18.130.125 and 18.130.127;

(f) Issuance of written citation and assessment of a fine under RCW 18.130.230;

(g) A decision to withdraw a credential issued in error. For the purposes of this rule, "credential issued in error" means a credential issued to an individual who did not fully complete the application process or meet the credentialing requirements yet was inadvertently granted a credential; or

(h) A decision to deny a request for a list of applicants for professional licenses or for professional licensees for commercial purposes under RCW 42.56.070(8).

(2) If an adjudicative proceeding is requested in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief adjudicative proceeding; and

(c) The protection of the public interest does not require that the board provide notice and an opportunity to participate to persons other than the parties.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-425 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for a license or for approval of a school or curriculum (~~shall~~) must consist of:

(a) The application for the license or approval and all associated documents;

(b) All documents relied upon by the program in proposing to deny the application; and

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order (~~shall~~) must consist of:

(a) The previously issued final order;

(b) All reports or other documents submitted by the license holder, or at the direction of the license holder, in full or partial fulfillment of the terms of the final order; and

(c) All correspondence between the license holder and the program regarding compliance with the final order.

(3) The preliminary record with respect to an action to suspend a credential under RCW 18.130.125 or 18.130.127 shall consist of the report from the lending agency to the department of the licensee's nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(4) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW 18.130.230 shall consist of the citation, as described in RCW

18.130.230(2), the request by the disciplining authority to produce documents, records, or other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

(5) The preliminary record with respect to a decision to withdraw a credential issued in error shall consist of the application for credential and any associated documents, all documents relied on by the program in proposing to withdraw the credential, and all correspondence between the person to whom the credential was issued in error and the program regarding the application or credential.

(6) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-11-430 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings (~~shall be~~) are conducted by a presiding officer for brief adjudicative proceedings designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but (~~shall~~) may not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(6) The presiding officer for brief adjudicative proceedings (~~shall~~) may not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order in accordance with WAC 246-11-540.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-440 Effectiveness of orders on brief adjudicative proceedings. (1) Initial orders on brief adjudicative proceedings (~~shall~~) become final twenty-one days after service of the initial order unless:

(a) Administrative review has been requested pursuant to WAC 246-11-550; or

(b) On its own initiative, the board determines to review the matter and, within twenty-one days of service of the initial order, provides notice to the parties of the date by which a determination ~~((shall))~~ will be made.

(2) If review is taken under subsection (1) of this section, each party ~~((shall))~~ must be provided an opportunity to state its view of the matter, and a written order containing findings of fact, conclusions of law, and order ~~((shall))~~ must be entered and served upon the parties within twenty days of service of the initial order or the request for review, whichever is later.

(3) A request for review is deemed to be denied if the board does not act on the request within twenty days after the request is submitted.

(4) If administrative review is taken under subsection (1) of this section, the presiding officer may convert the matter to a full adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-450 Agency record in brief proceedings. The agency record of brief adjudicative proceedings ~~((shall))~~ must consist of:

- (1) The preliminary record as set forth in WAC 246-11-425;
- (2) All initiating documents including the notice of opportunity to defend;
- (3) The request for adjudicative proceeding;
- (4) All documents submitted in the proceeding;
- (5) Any transcript or recording of any testimony or arguments presented; and
- (6) All orders issued in the case.

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-470 Notice of adjudicative proceeding. Notice of an adjudicative proceeding ~~((shall))~~ must be issued pursuant to RCW 34.05.434.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-480 Conduct of adjudicative proceeding. (1) The adjudicative proceeding ~~((shall))~~ must be conducted as provided in RCW 34.05.449 through 34.05.455.

(2) The presiding officer may take the following actions to the extent not already determined in a prehearing order:

- (a) Conduct the hearing de novo;
- (b) Determine the order of presentation of evidence;
- (c) Administer oaths and affirmations;
- (d) Issue subpoenas;
- (e) Rule on procedural matters, objections, motions, and offers of proof;
- (f) Receive relevant evidence;
- (g) Interrogate witnesses called by the parties in an impartial manner to develop any facts necessary to fairly and adequately decide the matter;

(h) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(i) Take any appropriate action necessary to maintain order during the adjudicative proceeding;

(j) Determine whether to permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Permit photographic and recording equipment at hearing subject to conditions necessary to preserve confidentiality and prevent disruption;

(l) Permit a person to waive any right conferred upon that person by chapter 34.05 RCW or this chapter, except as precluded by law; and

(m) Take any other action necessary and authorized by applicable law or rule.

(3) The presiding officer shall:

(a) Apply as the first source of law governing an issue those statutes and rules deemed applicable to the issue;

(b) If there is no statute or rule governing the issue, resolve the issue on the basis of the best legal authority and reasoning available, including that found in federal and Washington Constitutions, statutes, rules, and court decisions; and

(c) Not declare any statute or rule invalid.

(4) If the validity of any statute or rule is raised as an issue, the presiding officer may permit arguments to be made on the record concerning the issue for the purpose of subsequent review.

(5) Members of the board hearing the matter may ask questions of any witness and may call additional witnesses.

(6) A party may move to disqualify the presiding officer or any member of the board pursuant to RCW 34.05.425(3).

AMENDATORY SECTION (Amending WSR 93-08-003, filed 3/24/93, effective 4/24/93)

WAC 246-11-490 Evidence. (1) The presiding officer shall rule on objections to the admissibility of evidence pursuant to RCW 34.05.452 unless those objections have been addressed in the prehearing order.

(2) The refusal of a witness to answer any question ruled proper ~~((shall be))~~ are grounds for the presiding officer, at ~~((his/her))~~ his or her discretion, to strike some or all prior testimony by that witness on related matters or to grant a continuance to allow a party to seek a court order to compel the witness to answer.

(3) Each person called as a witness in an adjudicative proceeding shall swear or affirm that the evidence about to be given in the adjudicative proceeding ~~((shall be))~~ is the truth under the provisions of RCW 5.28.020 through 5.28.060.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-510 Issuance of final order. If the adjudicative proceeding is heard by the board or a panel of the board the presiding officer and board or panel of the board shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the adjudicative ~~((clerk))~~ clerk's office to serve a copy of the order on each party and any designated representative of the party.

AMENDATORY SECTION (Amending WSR 08-14-137, filed 7/1/08, effective 8/1/08)

WAC 246-11-520 Standard of proof. (1) The order ~~((shall))~~ must be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden ~~((shall be))~~ is on the applicant to establish that the application meets all applicable criteria. In all other cases the burden is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise required by law, the burden in all cases is a preponderance of the evidence.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-530 Consolidated proceedings. (1) When two or more applications for adjudicative proceeding involve a similar issue, the applications may be consolidated by the presiding officer and the hearings conducted together. The presiding officer or hearings officer may consolidate on ~~((his/her))~~ his or her own motion or upon the request of a party.

(2) A party scheduled for a consolidated proceeding may request to withdraw from the consolidated proceeding in favor of an individual proceeding. The presiding officer may grant a motion to withdraw from a consolidated proceeding at any time when good cause is shown.

(3) Each respondent in a consolidated proceeding shall retain the right to representation.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-540 Initial order. (1) If the adjudicative proceeding is not heard by the board or panel of the board the presiding officer shall:

(a) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(b) Cause the adjudicative ~~((clerk))~~ clerk's office to serve a copy of the initial order on each party and any designated representative of a party; and

(c) Forward the initial order and record of the adjudicative proceeding to the adjudicative ~~((clerk))~~ clerk's office.

(2) Initial orders on brief adjudicative proceedings ~~((shall))~~ become final orders as provided in WAC 246-11-540.

(3) Following receipt of initial orders in matters other than brief adjudicative proceedings, the board shall review the initial order and the record as provided in RCW 34.05.-464, and issue a final order as provided in WAC 246-11-560.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-550 Appeal from initial order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-11-430 or 246-11-540 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative ~~((clerk))~~ clerk's office within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review as provided in this section. The response ~~((shall))~~ must be filed at the place specified in subsection (2) of this section. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-11-430, the response will be filed within ten days of service of the petition. In all other matters, the response will be filed within twenty days of service of the petition.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-560 Final orders. (1) The form and content of final orders ~~((shall be as follows))~~:

(a) ~~((Final orders shall))~~ Must contain findings of fact, conclusions of law, and an order. All final orders ~~((shall))~~ must be signed by a member of the panel of board members who heard the matter.

(b) ~~((Final orders))~~ May adopt by reference the initial order in whole or in part.

(c) ~~((Final orders))~~ May modify or revise the initial order in whole or in part.

(2) Final orders ~~((shall))~~ must be served upon the parties and their representatives as provided in WAC 246-11-080.

(3) Final orders ~~((shall))~~ must be issued following:

(a) A review of the record;

(b) A review of the initial order, if any;

(c) A review of any request for review of the initial order and any response thereto; and

(d) Consideration of protection of the public health and welfare.

(4) Unless a later date is stated in the final order, final orders ~~((shall))~~ will be effective when entered but a party ~~((shall))~~ is not ~~((be))~~ required to comply with a final order until the order is served upon that party.

(5) Final orders may contain orders that specified portions of the agency record ~~((shall not be))~~ are not disclosed as public records if necessary to protect privacy interests, the public welfare, or vital governmental functions. Such orders ~~((shall))~~ include but are not limited to protective orders issued during the proceeding or pursuant to WAC 246-11-400.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-580 Reconsideration of final orders. (1) Within ten days of service of a final order, either party may

file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration ~~((shall be))~~ are limited to:

- (a) Specific errors of fact or law; or
- (b) Implementation of the final order would require department activities inconsistent with current department practice; or
- (c) Specific circumstances render the person requesting the reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the adjudicative ~~((clerk))~~ clerk's office within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration ~~((shall))~~ must contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration ~~((shall))~~ must contain specific reference to the testimony. The presiding officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the presiding officer:

- (a) Denies the petition;
- (b) Does not act upon the petition; or
- (c) Does not serve the parties with notice of the date by which ~~((he/she))~~ he or she will act on the petition.
- (6) If the presiding officer determines to act upon the petition, the opposing party ~~((shall))~~ must be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration ~~((shall))~~ must be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-590 Agency record of adjudicative proceedings. (1) The department shall maintain an official record of each adjudicative proceeding.

- (2) The record shall include:
 - (a) Notices of all proceedings;
 - (b) Any prehearing order;
 - (c) Any motions, pleadings, briefs, petitions, and requests filed, and rulings thereon;
 - (d) Evidence received or considered;
 - (e) A statement of matters officially noted;
 - (f) Offers of proof and objections and rulings thereon;
 - (g) Any proposed findings, requested orders, and exceptions;
 - (h) Any recording of the adjudicative proceeding and any transcript of all or part of the adjudicative proceeding considered before final disposition of the matter;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record following an ex parte communication, if any.

(3) The record ~~((shall be))~~ is subject to disclosure as provided by ~~((RCW 42.17.250 through 42.17.340))~~ chapter 42.56 RCW, the Public Records Act, and by WAC 246-11-130, except as limited by protective orders and provisions contained in the final order.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-600 Judicial review. (1) Judicial review of actions taken under this chapter ~~((shall be as provided in))~~ comply with RCW 34.05.510 ~~((et seq))~~.

(2) Notice of the opportunity for judicial review ~~((shall))~~ must be provided in all final orders.

(3) Following a request for judicial review, the record forwarded to the reviewing court ~~((shall))~~ must be those portions of the agency record designated by the parties within the time period set by the board.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-610 Vacating an order for reason of default or withdrawal. (1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party ~~((by))~~ for good cause. The requesting party shall:

(a) ~~((Specifying))~~ Specify the grounds relied upon in the petition; and

(b) ~~((Filing))~~ File the petition at the adjudicative ~~((clerk))~~ clerk's office and with the opposing party within seven days of service of the default order.

(2) The presiding officer shall consider the petition and shall:

- (a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on licensure pending final adjudication; or
- (b) Deny the motion to vacate the default order.

NEW SECTION

WAC 246-11-700 Failure to comply with a disciplinary order. (1) If the disciplining authority alleges failure to comply with a disciplinary order, the board may file a motion for hearing with the adjudicative clerk's office and service a copy on the respondent.

(2) Upon receipt of the motion, the adjudicative clerk's office shall issue a notice of hearing on motion notifying the parties of the time, place and date of the administrative hearing.

(3) The sole issue at the hearing will be whether the respondent failed to comply with a disciplinary order.

(4) At the hearing, the department has the burden of proving it is more probable than not that the respondent failed to comply with a disciplinary order.

(5) The presiding officer will issue an order including findings of fact and conclusion of law.

(6) If the department has proven failure to comply with a disciplinary order, the sanction will be indefinite suspension until compliance is achieved as determined by the disciplining authority.

WSR 18-06-048
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed March 2, 2018, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-087.

Title of Rule and Other Identifying Information: WAC 182-550-3830 Adjustments to inpatient rates and 182-550-7300 OPPS—Payment limitations.

Hearing Location(s): On April 10, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 11, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 10, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by April 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-3830 Adjustments to inpatient rates, to make changes to the timing of adjusting inpatient rates. The agency is amending WAC 182-550-7300 OPPS—Payment limitations, to strike subsection (5) that limits the agency's payment to the total billed charges.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Grant Stromsdorfer, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-1678.

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 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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. The updates to WAC 182-550-3830 and 182-550-7300 do not impose additional compliance costs or requirements on providers.

March 2, 2018

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-014, filed 4/23/15, effective 5/24/15)

WAC 182-550-3830 Adjustments to inpatient rates.

(1) The medicaid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates ~~((between rebasing periods))~~ at rebase:

(a) ~~((Effective July 1st of each year, the agency updates all of the following:~~

~~((i)))~~ Wage index adjustment;

~~((ii)))~~ (b) Direct graduate medical education (DGME);

and

~~((iii)))~~ (c) Indirect medical education (IME).

~~((b)))~~ (2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

~~((2)))~~ (3) The agency does not update the statewide average DRG factor between rebasing periods, except:

(a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and

(b) When directed by the legislature.

~~((3)))~~ (4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

~~((4)))~~ (5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

~~((5))~~ (6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's web site as of May 1st of the rate-setting year.

~~((6))~~ (7)(a) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25 if the hospital meets the criteria in this subsection.

(b) The agency considers an in-state hospital to qualify for the rate enhancement if all of the following conditions apply. The hospital must:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation from the department of health as of January 1, 2014;

(iii) Have less than one hundred fifty acute care licensed beds in fiscal year 2011; and

(iv) Be owned and operated by the state or a political subdivision.

(v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

WAC 182-550-7300 OPPTS—Payment limitations. (1)

The medicaid agency limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient fee schedule published on the agency's web site, subject to the following limitations:

(a) To receive payment for services, providers must bill claims according to national correct coding initiative (NCCI) standards. When a unit limit for services is not stated in the outpatient fee schedule, the agency pays for services according to the program's unit limits stated in applicable WAC and published provider guides.

(b) The average resource, including units of service, are factored into the enhanced ambulatory patient group (EAPG) weight determination, and the allowable units of service for EAPGs is equal to one.

(2) The following service categories are included in the EAPG payment for significant procedure(s) on the claim and do not receive separate payments under EAPG:

(a) Services classified as the same or clinically related to the main significant procedure;

(b) Routine ancillary services;

(c) Chemotherapy services grouped as class I, class II, or minor; and

(d) Pharmacotherapy services grouped as class I, class II, or minor.

(3) The agency reduces the EAPG payment by fifty percent based on the default EAPG grouper settings for services subject to one or more of the following discounts:

(a) Multiple procedures;

(b) Repeat ancillary services; or

(c) A terminated procedure.

(4) The agency limits outpatient services billing to one claim per episode of care. If any line of the claim is denied, or a service that was provided was not stated on the initial sub-

mitted claim, the agency requires the entire claim to be adjusted.

~~((5) The agency limits payments to the total billed charges.)~~

WSR 18-06-049

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 2, 2018, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-019.

Title of Rule and Other Identifying Information: Chapter 246-10 WAC, Administrative procedure's adjudicative proceedings, a chapter review including: Clarification, streamlining, modernization, and implementation of ESHB 1381 (chapter 109, Laws of 2013).

Hearing Location(s): On April 13, 2018, at 10:00 a.m., at the Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: April 20, 2018.

Submit Written Comments to: Tami Thompson, P.O. Box 47890, Olympia, WA 98504-7890, email <https://fortress.wa.gov/doh/policyreview>, by April 13, 2018.

Assistance for Persons with Disabilities: Contact Tami Thompson, phone 360-628-0096, TTY 360-833-6388 or 711, email tami.thompson@doh.wa.gov, by April 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to clarify, streamline, modernize and implement statutory changes. The existing rules are outdated, and do not accurately reflect current standards of practice. Amendments are necessary to provide fair and consistent implementation of adjudicative proceedings conducted under the authority of the department of health (department).

The rules in this chapter apply to all proceedings before the department where the secretary of health is the final decision-maker. The rules that apply to health professions regulated by a board or commission are found in chapter 246-11 WAC.

Reasons Supporting Proposal: The department adopted this rule chapter in the early 1990s and this is the first comprehensive review of the entire chapter. RCW 43.70.041, enacted in 2013, requires the department to review existing rules every five years to identify ways to clarify or simplify rules. This comprehensive chapter review is responsive to this legislative directive.

The second objective in opening chapter 246-10 WAC is to implement ESHB 1381, enacted in 2013, which changed the department's administrative adjudicative process. The law created a new process allowing a party to request the secretary of health's review of a health law judge's decision. The health law judges now issue initial decisions in cases where the secretary of health has final decision-making authority.

Statutory Authority for Adoption: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050.

Statute Being Implemented: RCW 34.05.413 through 34.05.476.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Tami Thompson, 101 Israel Road S.E., Tumwater, WA 98501, 360-628-0096; Implementation and Enforcement: Roman Dixon, 310 Israel Road S.E., Tumwater, WA 98501, 360-236-4686.

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. Under RCW 34.05.328(5) by definition the proposed rules are considered "procedural rules" and provide a process and procedure relating to agency hearings. The rules do not fall under the definition of significant legislative rules.

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 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.

March 1, 2018

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-101 Application of chapter. (1) This chapter ~~((shall apply))~~ applies to adjudicative proceedings authorized to be conducted under the authority of the department of health.

~~((This chapter applies to adjudicative proceedings begun on or after the effective date of this chapter in programs administered by the department of health. For purposes of this section, "begun" shall mean the receipt by the appropriate office of an application for an adjudicative proceeding. These rules shall be))~~ The rules in this chapter are the exclusive rules governing adjudicative proceedings under the jurisdiction of the department.

(3) To the extent that these rules differ by inclusion, deletion, or content from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250, this chapter shall prevail in order to provide a process consistent with the organization of the department.

(4) Where a provision of this chapter conflicts with another chapter of this title, the provision of this chapter shall prevail.

(5) Where a provision of this chapter conflicts with a provision of the Revised Code of Washington, the statute shall prevail.

AMENDATORY SECTION (Amending WSR 09-03-089, filed 1/20/09, effective 2/20/09)

WAC 246-10-102 Definitions. ~~((As used in these rules of practice and procedure, the following terms shall have the~~

~~meaning set forth))~~ The definitions in this section apply throughout this chapter unless the context clearly ~~((indicates))~~ requires otherwise. ~~((Other terms shall have their ordinary meaning unless defined elsewhere in this chapter.))~~

(1) "Adjudicative ~~((clerk))~~ clerk's office" ~~((shall))~~ means the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health
Adjudicative ~~((Clerk))~~ Clerk's Office
~~((310 Israel Rd. S.E.))~~
P.O. Box 47879
Olympia, WA 98504-7879

(2) "Adjudicative proceeding" or "hearing" ~~((shall))~~ means a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the department prior to the entry of a ~~((final))~~ order under this chapter.

(3) "Adjudicative service unit" means the unit responsible for conducting adjudicative proceedings.

(4) "Brief adjudicative proceeding" ~~((shall))~~ means an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

(5) "Department" ~~((shall))~~ means the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

(6) "Docket" or "docketing" ~~((shall))~~ means the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative ~~((clerk))~~ clerk's office for the use of the department.

(7) "Filing" ~~((shall))~~ means receipt by the adjudicative ~~((clerk))~~ clerk's office.

(8) "Initiating document" ~~((shall))~~ means a written agency document which initiates action ~~((against a license holder or applicant for license or recipient of benefits))~~ and which creates the right to an adjudicative proceeding. ~~((It may be entitled))~~ Initiating documents may be a statement of charges, notice of intent to deny, order, or ~~((by))~~ any other ~~((designation))~~ document indicating the action or proposed action to be taken.

(9) "License" ~~((shall have the))~~ has the same meaning ~~((set forth))~~ as defined in RCW 34.05.010, and includes any license, certification, registration, permit, approval, or any similar form of authorization required by law to be obtained from the department.

~~(("Office of professional standards" shall mean the unit responsible for conducting adjudicative proceedings.))~~

(10) "Presiding officer" ~~((shall))~~ means the person who is assigned to conduct an adjudicative proceeding. The presiding officer may be an employee of the department who is authorized to issue ~~((a))~~ an initial or final decision as designee of the secretary, or an administrative law judge employed by the office of administrative hearings.

(11) "Presiding officer for brief adjudicative proceedings" ~~((shall))~~ means an employee of the department who is authorized to conduct brief adjudicative proceedings.

(12) "Program" ~~((shall))~~ means the administrative unit within the department responsible for implementation of a particular agency responsibility, statute, or rule.

(13) "Prompt adjudicative proceeding" ~~((or "prompt hearing" shall))~~ means a hearing conducted at the request of the respondent following summary action taken in accord with this chapter.

(14) "Protective order" ~~((shall))~~ means an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

(15) "Recipient of benefits" ~~((shall))~~ means an individual who has qualified for benefits administered by the department.

(16) "Respondent" ~~((shall))~~ means a person eligible to request an adjudicative proceeding in a program under the jurisdiction of the department who is named in an initiating document.

(17) "Review officer" means the person who is designated to issue final orders upon receiving a petition for review of an initial order pursuant to RCW 34.05.464, and final orders of default when the respondent has failed to timely respond to an initiating document.

(18) "Secretary" ~~((shall))~~ means the secretary of the department of health or ~~((his/her))~~ his or her designee.

(19) "Show cause hearing" means a hearing authorized under RCW 18.130.135 and WAC 246-10-307 for the limited purpose of determining whether a summary action taken by the disciplining authority shall remain in effect pending a full administrative hearing.

(20) "Summary action" ~~((shall))~~ means an agency action to address an immediate ~~((danger))~~ threat to the public health, safety, or welfare and shall include, but is not ~~((be))~~ limited to, a cease and desist order, an order of summary suspension, ~~((and))~~ or an order of summary restriction of a license.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-103 Signature authority. (1) A person designated by the program shall sign all initiating documents issued under this chapter.

(2) The presiding officer or review officer shall sign ~~((and))~~ orders issued under this chapter.

(3) Authority to sign ~~((shall be))~~ is indicated by designation of the title of the person signing and shall not require any other affirmation, affidavit, or allegation.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-104 Appearance of parties. If a respondent requests an adjudicative proceeding to contest the action, that party shall appear at all stages of the proceeding except as otherwise provided in this section.

(1) If the respondent is represented as provided in this chapter, the respondent shall appear personally at the hearing and at any scheduled settlement conference but need not appear at the prehearing conference or at presentation of motions.

(2) Parties may be represented by counsel at all proceedings.

(3) ~~((The respondent may appear by telephone at any portion of the proceedings conducted by telephone, in the discretion of the presiding officer following reasonable advance notice to the presiding officer and to the opposing party.~~

~~((4))~~ The requirement of personal appearance may be waived for good cause ~~((in))~~ at the discretion of the presiding officer.

~~((5))~~ (4) Failure to appear as provided in this chapter ~~((shall be))~~ is grounds for taking ~~((final))~~ action by default.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-105 Computation of time. (1) When computing a period of time prescribed or allowed by an applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run ~~((shall not be))~~ is not included.

(2) The last day of the computed period ~~((shall be))~~ is included unless the last day is a Saturday, Sunday, or legal holiday.

(3) When the last day is a Saturday, Sunday, or legal holiday, the period ~~((shall run until the end of))~~ ends at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday.

(4) When the period of time prescribed or allowed is seven days or less, any intermediate Saturday, Sunday, and legal holiday ~~((shall be))~~ is excluded from the computation.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-106 ~~((Notarization,))~~ Certification~~((s))~~ and authentication. (1) A person's ~~((sworn))~~ written statement, declaration, verification, certificate, or oath ~~((or affidavit))~~ may be authenticated by ~~((an unsworn))~~ a written statement which is executed in substantially the following form:

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

(Date and Place) _____
(Signature)

(2) Documents or records may be authenticated by a certification, as provided in subsection (1) of this section, from the custodian of the records or other qualified person that the documents or records are what they purport to be.

(3) Signature of any attorney ~~((shall))~~ must be accompanied by and authenticated by that attorney's Washington State Bar Association number.

(4) Documents prepared and submitted by a party who is not represented by an attorney ~~((shall))~~ must be signed and dated by that party and ~~((shall))~~ must include that party's current address.

(5) Signature by a party or an attorney on a document shall constitute a certificate by the party or attorney that ~~((he/she))~~ he or she has read the document, believes there are grounds to support it, and has not submitted the document for

the purpose of delay, harassment, or needless increase in the cost of a proceeding.

(6) Compliance with certification requirements of subsections (1) and (2) of this section creates a rebuttable presumption that a document is authentic.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-10-107 Persons who may request adjudicative proceedings. The following persons (~~(indicated)~~) or entities may request an adjudicative proceeding under this chapter.

(1)(a) With respect to the denial of applications made under (~~WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-100, 246-291-110, 246-291-120, 246-291-130, 246-291-140, and 246-295-040~~) chapters 246-290, 246-291, and 246-295 WAC, the denied applicant may request an adjudicative proceeding.

(b) A person whose application for the approval of a new public water system is denied under WAC 246-293-190, a purveyor whose license is adversely affected by a departmental decision under WAC 246-293-190 or the county legislative authority having jurisdiction in the area affected by the decision may request an adjudicative proceeding under this chapter.

(c) A purveyor affected by the decision of the department under WAC 246-293-430 or the county legislative authority having jurisdiction in the area may request an adjudicative proceeding with respect to a decision made under WAC 246-293-430.

(d) A person upon whom a civil penalty is imposed under RCW 70.119A.040 may request an adjudicative proceeding.

(2) (~~With respect to all other matters~~) Persons named in an initiating document under chapter 18.130 RCW involving the issuance, denial ((ef)), or ((adverse)) other action against((;)) a license, ((the applicant or licensee)) or alleging unlicensed practice, may request an adjudicative proceeding.

(3) With respect to matters involving receipt of benefits or application therefor, the recipient of or applicant for the benefits may request an adjudicative proceeding.

(4) With respect to an application for approval of a school or curriculum, or the withdrawal of such approval, the person or (~~(authority))~~ entity that applied for such approval may request an adjudicative proceeding.

(5) With respect to the department's final threshold determination that an environmental impact statement (EIS) is or is not necessary and with respect to the adequacy of a final EIS, any person may request an adjudicative proceeding who:

(a) Is seeking to protect an interest within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and

(b) Will be specifically and perceptibly harmed by the proposed action.

(6) Any other person or entity who has the right to request an adjudicative proceeding under RCW 43.70.115 or other applicable statute or rule.

(7) Any application for an adjudicative proceeding that on its face demonstrates that the person making the application does not have standing under this rule may be summarily dismissed by entry of a decision pursuant to RCW 34.05.416. A motion to dismiss a matter for lack of standing may be made at any time prior to entry of the final order.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-108 Representation. (1) Persons requesting an adjudicative proceeding may be represented subject to the following conditions:

(a) A person requesting an adjudicative proceeding may represent (~~(himself/herself))~~ himself or herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington(~~(;))~~.

(b) Every attorney representing a person requesting an adjudicative proceeding shall file a notice of appearance with the adjudicative (~~(clerk))~~ clerk's office upon commencing representation, and shall file a notice of withdrawal of counsel with the adjudicative (~~(clerk))~~ clerk's office upon terminating representation.

(c) No person requesting an adjudicative proceeding may be represented in an adjudicative proceeding by an employee of the department.

(2) No current or former employee of the department may appear as an expert, character witness, or representative of any party other than the (~~(state of Washington if he/she))~~ department if the employee took an active part in investigating or evaluating the case or represented the agency in the matter, unless written permission of the secretary is granted.

(3) No current or former (~~(member))~~ employee of the attorney general's office (~~(staff))~~ who participated personally and substantially in investigating or evaluating the matter at issue while so employed may represent a party other than the department or otherwise participate in a related proceeding without first having obtained the written consent of the attorney general's office.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-109 ((Service and)) Filing and service of documents. (~~(1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.~~

(2) ~~Unless otherwise provided by law, filing and service shall be made by personal service; by first class, registered, or certified mail; or by electronic telefacsimile transmission (fax) where copies are mailed simultaneously.~~

(3) ~~Filing shall be complete upon actual receipt during normal business hours at the adjudicative clerk office.~~

(4) ~~Service shall be complete when personal service is made; or mail is properly stamped, addressed, and deposited in the United States mail; or fax transmission is completed~~

and copies are deposited in the United States mail properly stamped and addressed:

(5) Proof of service shall consist of filing as required by these rules, together with one)) (1) For purposes of this section "documents" means pleadings, briefs, exhibits, or other materials requested or relevant to an adjudicative proceeding.

(2) **Filing.** Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

(i) Personal service;

(ii) First class, registered, or certified mail; or

(iii) Fax transmission where copies are mailed simultaneously.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) **Service.** Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) Personal service;

(ii) First class, registered, or certified mail; or

(iii) Fax transmission where copies are mailed simultaneously.

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) Personally served;

(ii) Properly stamped, addressed, and deposited in the United States mail; or

(iii) Successfully transmitted by fax and properly stamped and addressed copies are deposited in the United States mail.

(d) A party may prove service by filing in compliance with this chapter any of the following:

((a)) (i) An ((acknowledgement)) acknowledgment of service; or

((b)) (ii) A certificate of service including the date the ((papers)) documents were served, the parties upon whom served, the signature of the serving party, and a statement ((that service was completed by:

(i) Personal service; or

(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.

(6) For the purpose of) specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding((, service shall)) will be made at the last known address provided to the department in accordance with WAC ((246-01-100)) 246-12-310, unless

the program has actual knowledge of a different correct address for the person being served.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-110 Jurisdiction. (1) The department has jurisdiction over all licenses issued by the department and over all holders of and applicants for licenses. Such jurisdiction is retained even if an applicant abandons or requests to withdraw the application, or a licensee ((surrenders or)) fails to renew a license.

(2) The department has jurisdiction over practice by unlicensed ((practice)) persons of any activity, profession, or business for which a license is required unless otherwise prohibited by law.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-114 Public records. (1) All papers, exhibits, transcripts, and other materials required by or submitted in accordance with this chapter ((shall be considered)) are public records.

(2) Release of information upon request for public records ((shall be)) is subject to the following limitations:

(a) Release of health care information ((shall)) must comply with chapter 70.02 RCW and ((rules promulgated thereunder)) any applicable statute or rule; and

(b) ((Protective orders issued pursuant to WAC 246-10-405 shall prevail; and

(c) Chapter 42.17 RCW shall)) Chapter 42.56 RCW governs the release of records.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-115 Expenses and witness fees. (1) The party requesting the appearance of a witness under a subpoena shall pay the witness fees and expenses ((shall be paid)) at the following rates ((to witnesses appearing under subpoena by the party requesting the appearance)):

(a) Fees ((shall be paid)) at the daily rate established for jurors in district court of Thurston County; and

(b) Expenses ((shall be paid)) at the rate established for employees of the state of Washington, or as otherwise required by law.

(2) The party requesting services of an expert witness shall negotiate and pay fees for ((an)) the expert witness ((shall be negotiated by and paid by the party requesting services of the expert)).

(3) ((AH)) The party incurring expenses ((incurred)) in connection with proceedings under this chapter shall ((be paid by the party incurring)) pay the expense.

(4) The department shall pay expenses associated with:

(a) The facility in which proceedings are conducted; and

(b) Recording of the proceedings.

(5) ((Expenses related to preparation and distribution of the transcript of proceedings shall be paid by)) The party filing a motion or request for review of an initial order or petition for reconsideration, appealing a final order, or otherwise

requesting ~~((the))~~ a transcript of a proceeding shall pay all expenses related to preparation and distribution of the transcript.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-117 Official notice and agency expertise. (1) Official notice may be taken as provided in RCW 34.05.452(5).

(2) The department, through its designated presiding officer or review officer, may use its expertise and specialized knowledge to evaluate and draw inferences from the evidence presented to it.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-118 Sanctions. (1) Orders may include sanctions against either party.

(2) Grounds for sanctions may include:

(a) Failure to comply with ~~((these rules))~~ this chapter or orders of the presiding officer or review officer; and

(b) Willful interference with the progress of proceedings.

(3) Sanctions may include:

(a) Dismissal of the matter;

(b) Proceeding in default; and

(c) Other sanctions as appropriate.

(4) The order ~~((shall))~~ must state the grounds upon which any sanctions are imposed.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-119 Intervention. (1) The presiding officer may grant a petition for intervention pursuant to RCW 34.05.443.

(2) A request to intervene ~~((shall))~~ will be handled as a prehearing motion and ~~((shall))~~ will be subject to the dates contained in the scheduling order. ~~((Within the sound exercise of discretion;))~~ The presiding officer may allow intervention if:

(a) The intervenor is not a party to the matter but has a substantial interest in the outcome of the matter and the interest of the intervenor is not adequately represented by a party, or other good cause exists; and

(b) Any representative of the intervenor meets the requirements of WAC 246-10-108.

(3) A person ~~((shall))~~ will not be allowed to intervene if that person had notice of the agency's decision and, upon timely application, would have been able to appear as a party in the matter in which intervention is sought, but failed to make such timely application.

(4) If intervention is granted, the intervenor shall ~~((be subject to these rules))~~ comply with this chapter on the same basis as the other parties to the proceeding, unless otherwise limited in the order granting intervention.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-120 Form of pleadings and orders. (1) Pleadings, orders, and other papers filed, served, or entered under this chapter ~~((shall be))~~ must:

(a) ~~((Captioned))~~ Have a caption with the name of the state of Washington, department of health and the title of the proceeding; and

(b) Be signed by the person filing, serving, or entering the document. When that person is an attorney representing a party, the signature block ~~((shall))~~ must include the attorney's Washington State Bar Association number.

(2) All orders ~~((shall))~~ must comply with RCW 34.05.-461 and the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-121 Notice to ~~((limited-English-speaking))~~ limited-English proficient parties. (1) "Limited-English proficiency" means, for purposes of this section and WAC 246-10-122, that a person is unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language. A person with limited-English proficiency may have difficulty speaking or reading English.

(2) The department shall ensure that when it serves an initiating document, it includes a notice that the respondent has the right to request an interpreter for the hearing if one is needed. The notice shall be in the top ten primary languages in Washington state as determined pursuant to subsection (4) of this section.

(3) When the adjudicative clerk's office is notified by a party that he or she has limited-English proficiency, is a party to an adjudicative proceeding, and their non-English language is one of the top ten primary languages in Washington state as determined pursuant to subsection (4) of this section, the department shall ensure that notices concerning a hearing, including notices of hearing, continuance, and dismissal are translated into the person's primary language.

(4) The top ten primary languages will be reevaluated each year to respond to demographic changes using:

(a) U.S. Census data;

(b) Office of financial management limited-English proficiency population forecasts; and

(c) Department tracking of frequency of encounters with limited-English proficient persons.

(5) When ~~((the program or))~~ the adjudicative ~~((clerk))~~ clerk's office is notified ~~((or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding;))~~ by a party that he or she has limited-English proficiency, is a party to an adjudicative proceeding, and their non-English language is not a primary language addressed in subsection (4) of this section, the department shall make a reasonable effort to ensure that either all notices concerning the hearing, including notices of hearing, continuance, and dismissal, ~~((shall either be in the))~~ are in the person's primary language ~~((of the party or shall))~~ or include a notice in the party's primary language ~~((of the party))~~ which describes the significance of the notice and how the party

may receive assistance in understanding and, if necessary, responding to the notice.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-122 Interpreters for hearing or speech impaired persons and persons with limited-English proficiency. (1) A "hearing or speech impaired person" means a person who, because of a hearing (~~((impairment))~~) or speech (~~((defect))~~) impairment, cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

~~((2)) ((A "limited-English-speaking person" means a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.~~

~~((3))~~ If a hearing (~~((impaired))~~) or speech impaired person or ~~((a limited-English-speaking))~~ person with limited-English proficiency is involved in an adjudicative proceeding and ~~((#))~~ notifies the adjudicative clerk's office of the need for an interpreter (~~((is made known to the adjudicative clerk office))~~), the presiding officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the presiding officer shall select and appoint an interpreter.

~~((4))~~ (3) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation (~~((shall))~~) will be made to the ~~((impaired))~~ person using the interpreter of all the proceedings in a language or in a manner the ~~((impaired))~~ person understands; and

(b) The interpreter (~~((shall))~~) will repeat the statements of the ~~((impaired))~~ person using the interpreter to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

~~((5))~~ (4) When an interpreter is used in a proceeding:

(a) The interpreter shall (~~((translate))~~) interpret all statements made by other participants in the proceeding;

(b) The presiding officer shall ensure sufficient extra time is provided to permit (~~((translation))~~) interpretation; and

(c) The presiding officer shall ensure that the interpreter (~~((translates))~~) interprets the entire proceeding to the ~~((hearing impaired person or limited-English-speaking person to the extent))~~ person using the interpreter so that the person has the same opportunity to understand the statements made as ~~((would))~~ a person not requiring an interpreter.

~~((6))~~ (5) An interpreter appointed under this section (~~((shall be))~~) is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The program shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

~~((7))~~ (6) All proceedings (~~((shall))~~) must be conducted consistent with chapters 2.42 and 2.43 RCW.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-123 Subpoenas. (1) The presiding officer, the secretary or designee, and attorneys for parties may issue subpoenas to residents of the state of Washington, to license holders and applicants for license, and to other persons or entities subject to jurisdiction under RCW 4.28.185.

(2) The presiding officer shall issue subpoenas pursuant to RCW 34.05.446(1) for parties not represented by counsel upon request of the party and upon a showing of relevance and reasonable scope of the testimony or evidence sought. Requests for issuance of subpoenas must be made in writing to the presiding officer stating the relevance and the scope of testimony or evidence sought.

(3) The person on whose behalf the subpoena is issued shall pay any witness fees and expenses as provided in WAC 246-10-115 or costs for interpreters for such witnesses as provided in WAC 246-10-122.

(4) Attendance of persons subpoenaed and production of evidence may be required at any designated place in the state of Washington.

(5) Every subpoena (~~((shall))~~) must:

(a) Comply with WAC 246-10-120;

(b) Identify the party causing issuance of the subpoena; and

(c) ~~((State the title of the proceeding; and~~

~~((#))~~) Command the person to whom the subpoena is directed to attend and give testimony (~~((and/or))~~) or produce designated items under the person's control at a specified time and place.

(6) A subpoena may be served by any suitable person eighteen years of age or older by:

(a) Giving a copy of the subpoena to the person to whom the subpoena is addressed;

(b) Leaving a copy of the subpoena with a person of suitable age and discretion at the residence of the person to whom the subpoena is addressed (~~((with a person of suitable age and discretion))~~);

(c) Sending a copy of the subpoena by mail to the current address on file with the department if the person is licensed by the department or has filed an application for a license with the department; or

(d) Sending a copy of the subpoena by certified mail with proof of receipt if the person is neither licensed by nor has applied for a license with the department.

(7) Proof of service may be made by:

(a) Affidavit or declaration of personal service;

(b) Certification by the person mailing the subpoena to a license holder or applicant; or

(c) Return or acknowledgment showing receipt by the person subpoenaed or (~~((his/her))~~) his or her representative. Any person accepting certified or registered mail at the last known address of the person subpoenaed (~~((shall))~~) will be considered an authorized representative.

(8) The presiding officer, upon motion made promptly and before the time specified for compliance in the subpoena, may:

(a) Quash or modify the subpoena if the subpoena is unreasonable or requires evidence not relevant to any matter at issue; or

(b) Condition denial of the motion upon just and reasonable conditions, including advancement of the reasonable cost by the person on whose behalf the subpoena is issued of producing the books, documents, or tangible things; or

(c) Issue a protective order under RCW 34.05.446 or WAC 246-10-405.

(9) The department may seek enforcement of a subpoena under RCW 34.05.588(1) or proceed in default pursuant to WAC 246-10-204.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-10-124 Preliminary requirements. (1) An applicant for an initial license or renewal of an existing license ~~((shall not be))~~ is not entitled to an adjudicative proceeding unless the applicant has submitted:

(a) A completed initial application or renewal application, as appropriate; and

(b) All applicable application, examination, or renewal fees payable in connection with such application or license.

(2) An aggrieved applicant ~~((shall not be))~~ is not entitled to an adjudicative proceeding with respect to the denial of an application submitted under ~~((WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-100, 246-291-110, 246-291-120, 246-291-130, 246-291-140, or 246-295-040,))~~ chapter 246-290, 246-291, or 246-295 WAC unless the applicant has submitted to the district engineer or other departmental employee responsible for reviewing the submittal, a certification that, to the best of the applicant's knowledge and belief, the submittal is complete and demonstrates compliance with the state's drinking water regulations. Certification with respect to water system plans, project reports, construction documents and other submittals requiring preparational review by a licensed professional engineer ~~((shall))~~ must be provided on behalf of the applicant by the licensed professional engineer preparing or reviewing the submittal. Failure to comply with these preliminary requirements ~~((shall))~~ will result in the denial of the application for adjudicative proceeding without further review.

(3) An affected party ~~((shall not be))~~ is not entitled to an adjudicative proceeding with respect to a decision made under WAC 246-293-190 unless:

(a) Except with respect to a county legislative authority, the applicant ~~((shall have))~~ has complied with all preliminary requirements established under the coordinated water system plan approved by the county legislative authority and the department or, if the critical water supply service area's external boundaries have been approved but a coordinated water system plan has not been approved and adopted, then with any interim requirements imposed by the county legislative authority; and

(b) Within sixty days of the department's receipt of the request for an adjudicative proceeding, the applicant submits copies of the complete record of all proceedings conducted under the applicable coordinated water system plan or interim requirements. If such proceedings were taped or otherwise recorded, the record submitted to the department ~~((shall))~~ must include a transcript of the hearing or hearings

which ~~((shall))~~ must be prepared and certified as correct by a registered professional court reporter.

~~((e))~~ (4) Failure to comply with the preliminary requirements outlined ~~((herein shall))~~ in subsection (3)(a) and (b) of this section will result in a denial of the hearing application without further review.

~~((4))~~ (5) Proceedings under WAC 246-293-430.

(a) An adjudicative proceeding ~~((shall))~~ will not be conducted with respect to a departmental decision made under WAC 246-293-430 unless, within sixty days of the department's receipt of the request for an adjudicative proceeding, the applicant has, at his or her own expense, submitted a transcript of the hearing conducted under WAC 246-293-430 from tapes or other record of the hearing which the department shall make available for that purpose. The transcript ~~((shall))~~ will be prepared and certified as correct by a registered professional court reporter. Failure to comply with preliminary requirements established under this section shall result in the dismissal of the hearing application without further review.

(b) If a request for an adjudicative proceeding has been timely filed under this section and a transcript of the record has been timely submitted, the department shall promptly provide the presiding officer with copies of all documents and exhibits admitted at the hearing conducted under WAC 246-293-430.

(c) The departmental employee responsible for the department's decision under WAC 246-293-430 shall provide a copy of his or her decision to the presiding officer and may submit documents or evidence not made part of the record at the hearing conducted under WAC 246-293-430. Copies of all such documents shall be provided to all other parties involved in the proceeding.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-202 Amendment of initiating documents. (1) Prior to the hearing date, initiating documents may be amended ~~((subject to the following conditions))~~:

(a) Subject to the following conditions:

(i) Amended initiating documents ~~((shall))~~ must meet the requirements of WAC 246-10-201(1)(~~(e)~~).

~~((b))~~ (ii) Amended initiating documents ~~((shall))~~ must be accompanied by the documents described in WAC 246-10-201(2)(~~(e)~~).

~~((c))~~ (e) ~~Whenever amended initiating documents are issued, a new interval for response will begin, as described in WAC 246-10-203, unless the respondent requests the time periods set by the original initiating document; and~~

~~((d))~~ (d) ~~Issuance of amended initiating documents ends all obligations of the parties under the prior initiating documents.~~

~~((2))~~ (2) ~~On the hearing date, the initiating documents may be amended subject to the following conditions:~~

~~((a))~~ (a) ~~The documents may be amended upon motion of the state;~~

~~((b))~~ (b) ~~The documents may not be amended without the approval of the presiding officer; and~~

~~(e) Upon motion of a party or upon his/her own initiative, the presiding officer may grant a continuance on all or part of the matter if necessary to afford the respondent an opportunity to prepare a defense to the amended documents).~~

(b) Whenever amended initiating documents are served, a new interval of response will begin, as described in WAC 246-10-203. Whenever amended initiating documents are served, the respondent shall file an answer within the time period specified in the amended initiating document, unless otherwise permitted to extend the filing period under WAC 246-10-203(3), or if the case is within thirty days of the scheduled hearing as described in (c) of this subsection.

(c) If amended initiating documents are filed within thirty days of the scheduled hearing, the presiding officer will convene a status conference to discuss response deadlines and the case schedule. Upon motion of a party and a showing of good cause, or upon his or her own initiative, the presiding officer may grant a continuance on all or part of the matter and may modify the scheduling order as necessary.

(2) On the hearing date, the initiating documents may be amended subject to the following conditions:

(a) The documents may be amended upon motion of the state.

(b) The presiding officer will determine whether amendments are substantive and may grant a continuance on all or part of the matter if necessary to afford the respondent an opportunity to prepare a defense to the amended documents.

(3) For purposes of this section, motions may be made orally.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-203 Request for adjudicative proceeding. A respondent may respond to an initiating document by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

(a) An application for adjudicative proceeding must be filed in accordance with the following time periods:

(i) For matters under chapter 18.130 RCW, the Uniform Disciplinary Act, within twenty days of service of the initiating documents unless an extension has been granted as provided in subsection (3) of this section; and

(ii) For all other matters in which the program proposes to deny, suspend, revoke, or modify a license, or proposes to impose a civil fine, within twenty-eight days of receipt of the initiating documents, unless otherwise provided by statute; and

(iii) For all other matters, within twenty days of service of the initiating documents, unless otherwise provided by statute.

(b) The application for adjudicative proceeding ~~((shall))~~ must be made either on the Request for Adjudicative Proceeding Form accompanying the initiating documents or by a written document containing at least the following information:

(i) Name and address of the party requesting an adjudicative proceeding;

(ii) Name and address of the attorney representing the party, if any;

(iii) Identification of the portion or portions of the initiating documents contested;

(iv) Summary of the party's position on the portion or portions contested;

(v) Statement of the party's standing to request an adjudicative proceeding under WAC 246-10-107; and

(vi) For matters not under chapter 18.130 RCW and in which the department proposes to deny, suspend, revoke, or modify a license, or proposes to impose a civil fine, the application shall include a copy of the initiating document containing the adverse notice.

(c) By filing a request for adjudicative proceeding, the responding party agrees to appear personally at the adjudicative proceeding or, if otherwise approved in advance by the presiding officer, by telephone, unless appearance is waived by the presiding officer as authorized in WAC 246-10-104~~((4))~~ (3).

(d) The application for adjudicative proceeding shall contain a response to the initiating documents, indicating whether each charge is admitted, denied, or not contested, and responses shall be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it ~~((shall))~~ will be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

(f) The application for adjudicative proceeding shall specify the representative, if any, designated pursuant to WAC 246-10-108 and any request for interpreter. The responding party shall amend the name of the representative and need for interpreter immediately if circumstances change prior to the hearing.

(g) The application for adjudicative proceeding ~~((shall))~~ must be filed at the adjudicative ~~((clerk))~~ clerk's office at the address specified in WAC 246-10-102.

(2) A respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. Such waiver and documents shall be filed:

(a) In accordance with the timelines in subsection (1)(a) of this section; and

(b) ~~((At the address indicated))~~ As required in subsection (1)(g) of this section.

(3) For matters under RCW 18.130.180, if the twenty-day limit for filing an application for adjudicative proceeding results in a hardship to the respondent, the respondent may request an extension of not more than sixty days upon a showing of good cause.

(a) The request for extension ~~((shall))~~ must be filed within the twenty day limit and ~~((shall))~~ include:

(i) The reason for the request and the number of days for which the extension is requested; and

(ii) Documentation of the circumstances creating the hardship.

(b) The request (~~(shall)~~) may be granted for a period not to exceed sixty days upon showing of:

- (i) Illness of the respondent; or
- (ii) Absence of the respondent from the county of residence or employment; or
- (iii) Emergency in the respondent's family; or
- (iv) Other good cause as determined by the presiding officer.

(c) If a request for extension is denied, the respondent shall have ten days from service of the order denying the extension or twenty days from service of the initiating documents, whichever is longer, to file an application for adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-10-204 Default. (1) If a party fails to respond to initiating documents according to WAC 246-10-203, that party will be deemed to have waived the right to a hearing, and the secretary shall enter a final order without further contact with that party.

(2) If a party requests an adjudicative proceeding but fails to appear, without leave to do so, at a scheduled prehearing conference, the presiding officer may issue an order of default. The order (~~(shall)~~) must include notice of opportunity to request that the default order be vacated pursuant to RCW 34.05.440(3). Unless vacated, a default order under this subsection shall be grounds for the presiding officer to proceed to decide the matter in the absence of the respondent and without additional notice to the respondent and to issue (~~(a final)~~) an initial order.

(3) If a party requests an adjudicative proceeding but fails to appear at the hearing, the presiding officer may issue an order of default in the same manner as subsection (2) of this section, or may proceed to hear the matter in the absence of the party and issue (~~(a final)~~) an initial order.

(4) Initial and final orders entered under this section shall meet the requirements of WAC 246-10-702 and shall contain:

(a) Findings of fact and conclusions of law based upon prima facie proof of the allegations contained in the initiating documents;

(b) Proof of service of or a good faith attempt to serve initiating documents and appropriate notices;

(c) A finding that there is no reason to believe that the party in default is in active military service;

(d) The penalties or conditions imposed by the order; and

(e) Notice of the opportunity to request;

(i) Reconsideration of a final order pursuant to RCW 34.05.470; or

(ii) Administrative review of an initial order pursuant to RCW 34.05.464.

(5) Initial and final (~~(and)~~) default orders entered under this section shall be served upon the parties in accordance with WAC 246-10-109.

(6) Notwithstanding subsections (1) through (5) of this section, if a party fails to respond to an initiating document issued consistent with the requirements of RCW 43.70.095 or 43.70.115, the initiating document shall become a final order

upon its effective date unless the initiating document otherwise provides.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-205 Scheduling orders. (1) Within thirty days after receipt of the application for adjudicative proceeding, (~~(the office of professional standards, or other designee of the secretary,)~~) the secretary's designee shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order specifying the course of the proceeding; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) For matters under chapter 18.130 RCW, the scheduling order (~~(shall contain)~~) must specify:

(a) The date, time, and place of (~~(a settlement conference,)~~) a prehearing conference(~~(s)~~) and the hearing;

(b) The deadlines for completion of discovery and submission of prehearing motions; and

(c) The name, address, and telephone number of the assistant attorney general or other department representative who will represent the (~~(state))~~ department in the matter.

(3) The scheduling order may be modified by order of the presiding officer upon (~~(his/her))~~ his or her own initiative or upon motion of a party. Any request for a change (~~(in the))~~ to the initial scheduling order (~~(shall))~~ must be made by motion as provided in WAC 246-10-403.

(4) The presiding officer may waive establishing dates for the (~~(settlement conference,))~~ completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the presiding officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the presiding officer that any or all of the dates be set.

(5) Dates contained in the scheduling order may be changed by the adjudicative (~~(clerk))~~ clerk's office upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-10-403.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-301 Conduct of emergency adjudicative proceedings. (1) Except as otherwise required by law, summary action may be taken only after a review by the secretary or designee of such evidence, including affidavits or declarations, if appropriate, to establish:

(a) The existence of an immediate (~~(danger))~~ threat to the public health, safety, or welfare;

(b) The department's ability to address the (~~(danger))~~ threat through a summary action; and

(c) The summary action is necessary to address the (~~(danger))~~ threat.

(2) No notice to any person potentially affected by a summary action ~~((shall be))~~ is required prior to issuance of a summary action.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-303 Form and content of summary actions. (1) A summary action ~~((shall))~~ must be entered in the form of an order containing findings of fact, conclusions of law, and the summary action imposed, as well as a statement of policy reasons for the decision.

(2) Except as otherwise required by law, a summary action imposed by emergency adjudicative proceeding ~~((shall))~~ must be limited to those actions necessary to alleviate an immediate ~~((danger))~~ threat to the public health, safety, or welfare.

(3) Initiating documents, and all other documents required by WAC 246-10-201~~((shall))~~ or 246-10-202, must accompany a summary action order when served.

AMENDATORY SECTION (Amending WSR 09-03-089, filed 1/20/09, effective 2/20/09)

WAC 246-10-304 Adjudicative proceedings upon summary action. (1) Except as identified in subsection (2) of this section, following a summary action taken by the department, the respondent may:

(a) Request a prompt adjudicative proceeding conducted in accordance with this chapter; or

(b) Waive the prompt adjudicative proceeding and request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(c) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

(d) Waive the opportunity to be heard.

(2) For summary actions to suspend, restrict, or limit the practice of a license holder of a secretary profession, the respondent may:

(a) Request a hearing as provided in RCW 18.130.090 and request a show cause hearing conducted in accordance with RCW 18.130.135 and WAC 246-10-307; or

(b) Request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(c) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

(d) Waive the opportunity to be heard.

(3) In this section, "secretary profession" means a health care profession for which the secretary of health is the disciplining authority under RCW 18.130.040 (2)(a).

AMENDATORY SECTION (Amending WSR 09-03-089, filed 1/20/09, effective 2/20/09)

WAC 246-10-305 Opportunity for prompt adjudicative proceeding. Except as provided in WAC 246-10-304(2), ~~((any))~~ a respondent affected by a summary action ~~((shall))~~ will be provided the opportunity to request a prompt adjudicative proceeding.

(1) Notice of the opportunity ~~((shall))~~ will be provided in the notice of opportunity to defend against the allegations that are the basis for the summary action. The form for requesting an adjudicative proceeding ~~((shall))~~ must include the option of requesting a prompt adjudicative proceeding.

(2) ~~((Any))~~ A respondent affected by a summary action may request a prompt adjudicative proceeding, may elect a regularly scheduled adjudicative proceeding instead of a prompt adjudicative proceeding, or may waive the opportunity for adjudicative proceeding in accordance with WAC 246-10-203.

(3) ~~((Any))~~ A request for a prompt adjudicative proceeding must be filed within ten days of the service of the summary action.

(4) If requested by the respondent, a prompt adjudicative proceeding ~~((shall))~~ must be conducted within twenty days of service of a summary action.

(5) Regardless of whether a prompt adjudicative proceeding is requested, the matter ~~((shall))~~ must be resolved as quickly as feasible in accordance with all other applicable rules.

AMENDATORY SECTION (Amending WSR 09-03-089, filed 1/20/09, effective 2/20/09)

WAC 246-10-307 Show cause hearing. (1) A license holder's request for a show cause hearing must be filed within twenty days of the service of the summary action. A license holder must also respond to the statement of charges by requesting a hearing or an extension of time as provided in RCW 18.130.090.

(2) The show cause hearing will be conducted within fourteen days of the license holder filing the show cause hearing request.

(3) ~~((By noon on the fourth calendar day after filing the show cause hearing request))~~ Unless otherwise specified by the presiding officer, the license holder must file, and deliver a copy to the department's attorney, any documents or written testimony to be admitted into evidence at the show cause hearing by noon on the fourth business day after filing the show cause hearing request.

(4) ~~((By noon on the eighth calendar day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing))~~ Unless otherwise specified by the presiding officer, the department must file, and deliver a copy to the license holder's attorney or to the license holder if not represented by counsel, any rebuttal documents or written testimony to be admitted into evidence at the show cause hearing by noon on the seventh calendar day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing.

(5) The presiding officer may adjust the timelines in subsection (3) or (4) of this section in the interest of fairness, as long as the hearing is held within fourteen days of the license holder's request for a show cause hearing.

(6) In reviewing the order of summary action, the presiding officer will consider the statement of charges, the motions and documents supporting the request for summary action, the license holder's answer to the statement of charges,

~~((any))~~ documentary evidence or written testimony presented by the license holder and department in rebuttal that is timely filed pursuant to subsections (3) and (4) of this section, and unless waived, the parties will be given an opportunity for oral argument.

~~((6))~~ ~~At the show cause hearing, the department has the burden of proving it is more probable than not that the license holder poses an immediate threat to the public health and safety.~~

(7) In cases under RCW 18.130.050 (8)(a) and 18.130.370, the department has the burden of proving at the show cause hearing that the licensee is prohibited from practicing a health profession in another state, federal, or foreign jurisdiction and that the conduct is substantially equivalent to unprofessional conduct. A copy of the order, stipulation, or agreement from a competent authority in any state, federal, or foreign jurisdiction showing that a license is prohibited from practicing their health profession is prima facie evidence that the requirements of RCW 34.05.479 (1) and (2) have been met.

(8) In cases under RCW 18.130.050 (8)(b), the department has the burden of proving at the show cause hearing that the licensee is prohibited from employment in the care of vulnerable adults based upon a department of social and health services' final finding of abuse or neglect of a minor or abuse or abandonment, neglect, or financial exploitation of a vulnerable adult.

(9) The presiding officer will issue an order, and may overturn, uphold, or amend the summary suspension or restriction.

~~((8))~~ (10) Within forty-five days of a determination by the secretary to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-401 Settlement conference. (1) Following a request for an adjudicative proceeding, a settlement conference may be ~~((scheduled as provided in WAC 246-10-205))~~ held if settlement is not achieved through written documents. The parties shall ~~((be notified of))~~ arrange the date, time, and place of the settlement conference.

(2) The purpose of the settlement conference ~~((shall be))~~ is to attempt to reach agreement on the issues and on a proposed order to be entered. Any agreement of the parties is subject to final approval by the presiding officer or review officer.

(3) The respondent shall attend the settlement conference as scheduled and may also be represented as provided in WAC 246-10-108. Representatives of the department will also attend. Other persons may attend by agreement of the parties. Attendance may be in person or by phone.

(4) Either party may bring documents or other materials to the settlement conference for the purpose of settlement negotiations. No testimony will be taken. No documents or

information submitted at the settlement conference will be admitted at the adjudicative proceeding unless stipulated by the parties or otherwise admitted into evidence by the presiding officer.

(5) If a settlement offer has been made in writing to the respondent and it is signed and returned by the respondent to the adjudicative ~~((clerk office prior to the settlement conference))~~ clerk's office, all subsequent dates set in the scheduling order are ~~((continued))~~ stayed pending final review of the settlement by the presiding officer.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-402 Discovery. The parties ~~((are encouraged to))~~ should exchange information and documents related to the case prior to the adjudicative proceeding. Formal discovery is obtained as follows:

(1) Methods, scope and limits:

(a) Parties may obtain discovery by production of records or things; deposition upon oral examination; requests for admission; or, if ordered by the presiding officer, written interrogatories.

(b) Unless otherwise limited by order of the presiding officer in accord with these rules, the scope of discovery shall be as follows:

(i) Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter in the pending action. It is not grounds for objection that the information sought will be inadmissible at the adjudicative proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) The frequency or extent of use of the discovery methods ~~((set forth))~~ established in these rules shall be limited by the presiding officer if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; or

(B) The party seeking discovery has had an ample opportunity by discovery to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations of the parties' resources, and the importance of the issues at stake.

(iii) The presiding officer may limit discovery upon his or her own initiative after reasonable notice or pursuant to a motion submitted by a party.

(2) Production of records, documents or things:

(a) Upon written request of a party the opposing party shall identify experts and other witnesses to be called at a hearing and shall provide other information necessary to enable the party to conduct depositions of the witnesses.

(b) Any party may serve on any other party a request, which must be signed by the party or designated representative:

(i) To produce and permit the party making the request or designee to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) To permit entry onto designated land or other property which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or designated object or operation thereon which is within the scope of discovery.

(c) Any party who produces documents for inspection shall produce them as they are kept in the usual course of business or may, if the parties agree, organize and label them to correspond with the categories in the request.

(d) The party upon whom a request is made may, by motion to the presiding officer, move for an order denying the request to produce or modifying the conditions of the request. Denial of the request or change in the conditions of the request shall be within the discretion of the presiding officer and shall be made by written order.

(3) Depositions may be taken subject to the following conditions:

(a) Within the United States or a territory or insular possession subject to the dominion of the United States, depositions ~~((shall))~~ must be taken before an officer authorized to administer oaths by the state of Washington or of the place where the examination is held. A presiding officer may, in his or her discretion or following motion of a party, preside at the deposition. Within a foreign country, depositions ~~((shall))~~ must be taken before a secretary of an embassy or legation, consul general, vice-consul or consular agent of the United States, or a person designated by the presiding officer or agreed upon by the parties by stipulation in writing filed with the ~~((office of professional standards))~~ adjudicative clerk's office. Except by stipulation, no deposition shall be taken before any person who is a party or a privy of a party, or a privy of any representative of a party, or who is financially interested in the proceeding.

(b) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice of not less than five days in writing to the person to be deposed and to the opposing party. The notice ~~((shall))~~ must state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a description sufficient to identify the person to be examined or the particular class or group to which the person to be examined belongs. On motion of a party upon whom the notice is served, the presiding officer may for good cause shown, lengthen or shorten the time.

(c) After notice is served for taking a deposition, or upon motion of the presiding officer or upon motion reasonably made by any party or by the person to be examined, and upon notice and for good cause, the presiding officer may issue an order that the deposition ~~((shall))~~ may not be taken or that it be taken subject to specified restrictions, conditions, or limitations.

(d) Depositions ~~((shall))~~ must be recorded.

(i) The officer before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under the officer's direction and in the officer's presence, record the testimony.

(ii) The officer or person acting under the officer's direction shall transcribe the testimony at the request of any party,

provided that any expenses ~~((shall be))~~ are paid by the requesting party.

(iii) The transcribed testimony ~~((shall))~~ must be submitted to the person deposed for review and signature, unless review and signature are waived by that person. The officer shall append to the transcript any changes in form or substance that may be submitted by the parties.

(iv) Copies of the transcribed and, unless review and signature has been waived, signed testimony ~~((shall))~~ will be served upon the person deposed and upon the parties.

(e) If the parties so stipulate in writing or on the record, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken, may be used as any other deposition.

(4) Following motion of a party and opportunity for response by the opposing party, the presiding officer may order a party to respond to written interrogatories and may order that the interrogatories be subject to specified restriction, condition, or limitation.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-403 Motions. (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, ~~((shall))~~ must be made in writing and filed with the adjudicative ~~((clerk office prior to))~~ clerk's office and served on all other parties by the dates set in the scheduling order.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits, declarations, and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, with the adjudicative ~~((clerk))~~ clerk's office and shall serve the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the adjudicative ~~((clerk))~~ clerk's office, and serve upon the moving party, a responsive memorandum, and accompanying affidavits, declarations, and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer.

(8) The moving party may file with the adjudicative ~~((clerk))~~ clerk's office, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions ~~((shall))~~ must be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions ~~((shall))~~ must be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit, declarations, or ~~((a))~~ memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion ~~((shall))~~ must be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-10-109, ~~((then))~~ three days ~~((shall))~~ will be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (fax) upon each party is permitted upon agreement of the

parties, with proof of confirmation of service to be filed with the presiding officer.

(13) All computations of time ~~((shall))~~ must be calculated pursuant to WAC 246-10-105.

(14) Departmental motions for summary actions are exempted from all requirements of this rule.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-404 Prehearing conference. (1) As provided in WAC 246-10-205, the presiding officer may schedule ~~((a))~~ one or more prehearing conferences to be held prior to the hearing. Parties ~~((shall))~~ will be notified of the time and place of the first prehearing conference in the scheduling order.

(2) The presiding officer shall conduct prehearing conferences and shall issue rulings related to prehearing motions and evidentiary issues. The rulings shall govern the conduct of subsequent proceedings.

(3) ~~((The))~~ A prehearing conference may be recorded as ordered by the presiding officer. All offers of proof and objections concerning matters raised at the prehearing conference must be made on the record at the prehearing conference.

(4) Following the final prehearing conference, the presiding officer shall issue a written prehearing order which will:

(a) Identify the issues to be considered at the hearing and indicate which party has the burden of proof on these issues;

(b) Specify the facts which are admitted or not contested by the parties;

(c) Identify those documents and exhibits that will be admitted at hearing, and those which may be distributed prior to the hearing;

(d) Identify expert and lay witnesses that may be called at hearing and the issues to which those witnesses may testify;

(e) Rule on motions;

(f) ~~((Accept amendments to the pleadings;~~

~~((g)))~~ Address such other issues or matters as may be reasonably anticipated to arise and which may aid in the disposition of the proceedings; and

~~((h)))~~ (g) Rule on objections made in any preserved testimony.

(5) Following the prehearing conference, the presiding officer may issue an order directing that the matter be heard as a brief adjudicative proceeding, pursuant to WAC 246-10-501~~((et seq))~~ through 246-10-504.

(6) Documentary evidence not offered in the prehearing conference ~~((shall))~~ will not be received into evidence at the adjudicative proceeding in the absence of a clear showing that the offering party had good cause for failing to produce the evidence at the prehearing conference.

(7) Witnesses not identified during the prehearing conference ~~((shall))~~ will not be allowed to testify at the adjudicative proceeding in the absence of a clear showing that the party offering the testimony of such witness had good cause for failing to identify the witness at the prehearing conference.

(8) If the authenticity of documents submitted at the prehearing conference is not challenged at the prehearing conference, the documents shall be deemed authentic. However, a party (~~shall~~) will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to object at the prehearing conference.

(9) Nothing in these rules (~~shall~~) prohibit the presiding officer from conducting a conference at any time, including during the hearing. The presiding officer shall state on the record the results of such conference.

(10) A party bound by a stipulation or admission of record may withdraw it in whole or in part only upon a determination by the presiding officer or hearing officer that:

(a) The stipulation or admission was made inadvertently or as a bona fide mistake of fact or law; and

(b) The withdrawal will not unjustly prejudice the rights of the other parties.

(11) In an appeal to superior court involving issues addressed in the prehearing order, the record of the prehearing conference, written motions and responses, the prehearing order, and any orders issued by the presiding officer pursuant to WAC 246-10-403, shall be the record.

AMENDATORY SECTION (Amending WSR 93-13-005, filed 6/3/93, effective 7/4/93)

WAC 246-10-405 Protective orders. (1) The presiding officer shall issue a protective order to preserve confidentiality related to health care records or provider-client information as required under state and federal law including, but not limited to, chapter 70.02 RCW; Public Law No. 104-191, 110 Statute 1936 (Health Insurance Portability and Accountability Act (HIPAA)); and 45 C.F.R. Part 164.

(2) The presiding officer may issue ((#)) additional protective orders at his or her discretion:

((4)) (a) To protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;

((2) To preserve confidentiality related to health care records or provider-client information;

((3)) (b) To protect examination processes;

((4)) (c) To protect the identity of a person supplying information to the department where the person indicates a desire for nondisclosure unless that person testifies or has been called to testify at an adjudicative proceeding; or

((5)) (d) To comply with applicable state or federal law.

(3) Parties submitting exhibits for administrative proceedings are required to redact all exhibits in a manner consistent with any protective order issued by the presiding officer.

AMENDATORY SECTION (Amending WSR 14-13-101, filed 6/17/14, effective 7/18/14)

WAC 246-10-501 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria

for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC 246-291-100 or 246-291-110;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC 246-291-130;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW 70.119A.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111(8) and 70.38.115(13);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department, except final orders under RCW 18.130.110;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal;

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050;

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW; ~~((#))~~

(u) A civil penalty imposed against a health carrier or third-party administrator under RCW 70.290.060;

(v) A decision to deny or revoke a credential under RCW 18.108.085(3);

(w) An action to suspend a credential under RCW 18.130.125 or 18.130.127;

(x) Issuance of written citation and assessment of a fine under RCW 18.130.230;

(y) An action to invalidate a credential that was issued to a person who failed to meet credentialing requirements;

(z) A decision to withdraw a credential issued in error. For the purposes of this rule, "credential issued in error" means a credential issued to an individual who did not fully

complete the application process or meet the credentialing requirements yet was inadvertently granted a credential; or

(aa) A decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes under RCW 42.56.070(8).

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-10-502 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for a professional, business, or facility license, or for approval of a school or curriculum (~~shall~~) must consist of (~~the following~~):

(a) The application for the license or approval and all associated documents;

(b) All documents relied on by the program in proposing to deny the application;

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) Preliminary record.

(a) The preliminary record with respect to decisions made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, (~~246-291-100, 246-291-110, 246-291-120, 246-291-130~~) 246-291-120, 246-291-125, 246-291-280, and 246-291-140 (~~shall~~) must consist of the decision document, all documents constituting the applicant's submittal and such other documents as the applicant or the (~~departmental employee reviewing the submittal~~) department may wish to include in the preliminary record.

(b) The preliminary record with respect to decisions made under WAC 246-293-190.

(i) If proceedings are required and have been conducted by local agencies under the applicable coordinated water system plan, the preliminary record shall consist of the record submitted to the department under WAC 246-10-124(3).

(ii) If hearings are not required or have not been conducted by local agencies under the applicable coordinated water system plan or if the external boundaries of the coordination act area have been approved but a coordinated water system plan has not been adopted, then the preliminary record shall consist of such documents as the presiding officer may solicit from the affected parties.

(c) The preliminary record with respect to a decision made under WAC 246-293-430 shall consist of the record submitted to the presiding officer under WAC 246-10-124(4).

(d) The preliminary record with respect to a decision under WAC 246-294-050 shall consist of:

(i) The permit, if any;

(ii) All documents relied upon by the program in proposing to deny, modify, or impose conditions upon the permit; and

(iii) The decision document.

(e) The preliminary record with respect to decisions made under WAC 246-295-040 shall consist of the decision document, all documents constituting the applicant's submittal, comments submitted by the county, and such other documents as the applicant or the department may wish to include in the preliminary record.

(f) The preliminary record with respect to civil penalties imposed under RCW 70.119A.040 shall consist of the notice of imposition of penalties, the departmental order, if any, all documentation of communication between the program and the person or persons incurring the civil penalties regarding the violation or violations for which the civil penalties were imposed, and such other documents as the person or persons incurring the civil penalties or the department may wish to include in the preliminary record.

(g) The preliminary record with respect to an action to deny or revoke a credential under RCW 18.108.085(3) shall consist of a certified copy of the court documents reflecting a conviction, any documentation regarding a certification of restoration of opportunity under RCW 9.97.020, and such other documents as the person making the request and the department may wish to include in the preliminary record which are relevant to the issue of the applicant's or licensee's identity.

(h) The preliminary record with respect to an action to suspend a credential under RCW 18.130.125 or 18.130.127 shall consist of the report from the lending agency to the department of the licensee's nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(i) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW 18.130.230 shall consist of the citation, as described in RCW 18.130.230(2), the request by the disciplining authority to produce documents, records, or other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

(j) The preliminary record with respect to a decision to withdraw a credential issued in error shall consist of the application for credential and any associated documents, all documents relied on by the program in proposing to withdraw the credential, and all correspondence between the person to whom the credential was issued in error and the program regarding the application or credential.

(k) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person

making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(3) The preliminary record with respect to compliance with prior department orders shall consist of:

(a) The official department file of the proceeding in which the order was issued;

(b) All matters submitted by the person to whom the order is directed purporting to demonstrate compliance with the order;

(c) All documents relied on by the department in asserting noncompliance; and

(d) All correspondence between the department and the person to whom the order is directed respecting compliance.

(4) The preliminary record with respect to matters submitted to a brief adjudicative proceeding under WAC 246-10-501(2) shall be as agreed by the parties.

(5) For the purposes of this section, "decision document" shall mean one or more documents that provide notice to the affected party of the department's action, and that contain(s) the information provided by an initiating document.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-504 Effectiveness of orders on brief adjudicative proceedings. (1) Initial orders on brief adjudicative proceedings (~~shall~~) become final twenty-one days after service of the initial order unless:

(a) Administrative review has been requested pursuant to WAC 246-10-701; or

(b) On his or her own initiative, a designee of the secretary authorized to issue final orders determines to review the matter and, within twenty-one days of service of the initial order, provides notice to the parties of the date by which a determination (~~shall~~) will be made.

(2) If administrative review is taken under subsection (1) of this section, each party (~~shall~~) must be provided an opportunity to state its view of the matter, and the (~~presiding~~) review officer shall issue a written order containing findings of fact, conclusions of law, and order (~~which shall~~) must be entered and served upon the parties within twenty days of service of the initial order or the request for review whichever is later.

(3) A request for review is deemed to be denied if the (~~presiding~~) review officer does not act on the request within twenty days after the request is submitted.

(4) If administrative review is taken under subsection (1) of this section, the (~~presiding~~) review officer may convert the matter to a full adjudicative proceeding.

NEW SECTION

WAC 246-10-6035 Evidence in a certificate of need case. When a party contests the approval or denial of an application for a certificate of need, the evidence at hearing is limited to information and materials:

(1) Provided to the certificate of need program (program) during the application process by the applicant or an interested or affected party;

(2) Collected by the program during the application process;

(3) Timely submitted and meeting the grounds for reconsideration of a program decision under WAC 246-310-560; or

(4) Intended to clarify, explain, or correct evidence admitted under subsection (1) through (3) of this section. Evidence will be admitted under this subsection only if:

(a) The evidence is of consequence to the determination of approving or denying the application; and

(b) The evidence relates to facts in existence prior to whichever of the following occurred last:

(i) The conclusion of a public hearing held in accordance with WAC 246-310-180; or

(ii) The end of the public comment period.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-605 Issuance of final order. If the adjudicative proceeding is conducted by a presiding officer or review officer authorized to make the final decision, the presiding officer or review officer shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the adjudicative (~~clerk~~) clerk's office to serve a copy of the order on each party and any designated representative of the party.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-608 Initial order. If the adjudicative proceeding is conducted by a presiding officer who is not authorized to make the final decision, the presiding officer shall:

(1) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(2) Cause the adjudicative (~~clerk~~) clerk's office to serve a copy of the initial order on each party and any designated representative of a party; and

(3) Forward the initial order and record of the adjudicative proceeding to the adjudicative (~~clerk~~) clerk's office.

AMENDATORY SECTION (Amending WSR 14-03-049, filed 1/9/14, effective 2/9/14)

WAC 246-10-701 Appeal from initial order and initial order becoming a final order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-10-503 or 246-10-608 stating the specific grounds upon which exception is taken and the relief requested.

(2) The secretary, upon his or her own motion, may petition for administrative review of an initial order.

(3) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative (~~clerk~~) clerk's office within twenty-one days of service of the initial order.

(4) The opposing party may file a response to a petition for administrative review filed as provided in this section. The response shall be filed at the adjudicative (~~clerk~~) clerk's

office. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-10-503, the response shall be filed within ten days of service of the petition. In all other matters, the response shall be filed within twenty days of service of the petition.

(5) If a party or the secretary does not request timely administrative review of an initial order as described ~~((above))~~ in this section, or a request for administrative review is dismissed, an initial order becomes a final order at 5:00 p.m. on the twenty-first calendar day after the adjudicative ~~((clerk))~~ clerk's office serves the initial order.

NEW SECTION

WAC 246-10-70105 Requesting a clerical clarification or correction of an initial order. (1) Prior to an initial order becoming a final order, any party may file a request with the presiding officer who issued the initial order seeking clarification of a term of the initial order or correction of a clerical error.

(2) The request for clarification or correction must be filed and served on the opposing party within five days of the service of the initial order. The opposing party must respond within five days of service of the request for clarification or correction. Both parties must follow the service and filing requirements in WAC 246-10-109.

(3) Filing a request for clarification or correction of an initial order freezes the timelines for filing a petition for administrative review with the review officer.

(4) For purposes of this section:

(a) A clerical clarification is a request to clarify an unclear or ambiguous term of the initial order to facilitate implementation of the order and does not change the intent of the initial order.

(b) A clerical error is a mistake that when corrected does not change the intent of the initial order.

(5) The presiding officer corrects clerical errors in the initial order by entering and serving a second decision referred to as a corrected initial order.

(6) Nothing in this section affects a party's right to file a petition for administrative review of the initial order as allowed for under this chapter.

(7) The presiding officer's response to the request for clarification or correction, if the request is denied, must be part of the record on review.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-702 Final orders. (1) The form and content of final orders ~~((shall be as follows))~~:

(a) ~~((Final orders shall))~~ Must contain findings of fact, conclusions of law, and an order, and ~~((shall))~~ must be signed by the presiding officer or review officer.

(b) ~~((Final orders))~~ May adopt by reference the initial order in whole or in part.

(c) ~~((Final orders))~~ May modify or revise the initial order in whole or in part.

(2) Final orders ~~((shall))~~ must be served upon the parties and their representatives as provided in WAC 246-10-109.

(3) Final orders ~~((shall))~~ must be issued following:

(a) A review of the record;

(b) A review of the initial order, if any;

(c) A review of any request for administrative review of the initial order and any response thereto; and

(d) Consideration of protection of the public health and welfare.

(4) Unless a later date is stated in the final order, final orders ~~((shall))~~ will be effective when entered but a party ~~((shall not be))~~ is not required to comply with a final order until the order is served upon that party.

(5) Final orders may contain orders that specified portions of the agency record ~~((shall not be))~~ are not disclosed as public records if necessary to protect privacy interests, the public welfare, or vital governmental functions. Such orders ~~((shall))~~ include, but are not limited to, protective orders issued during the proceeding or pursuant to WAC 246-10-405.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-704 Reconsideration of final orders. (1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration ~~((shall be))~~ are limited to:

(a) Specific errors of fact or law; or

(b) Implementation of the final order would require department activities inconsistent with current department practice; or

(c) Specific circumstances render the person requesting reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the adjudicative ~~((clerk))~~ clerk's office within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration ~~((shall))~~ must contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration ~~((shall))~~ must contain specific reference to the testimony. The presiding officer or review officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the presiding officer or review officer:

(a) Denies the petition;

(b) Does not act upon the petition; or

(c) Does not serve the parties with notice of the date by which ~~((he/she))~~ he or she will act on the petition.

(6) If the presiding officer or review officer determines to act upon the petition, the opposing party ~~((shall))~~ must be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration ~~((shall))~~ must be in the form of a written order denying the petition,

granting the petition, and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-705 Agency record of adjudicative proceedings. (1) The department shall maintain an official record of each adjudicative proceeding.

(2) The record shall include:

- (a) Notices of all proceedings;
- (b) Any prehearing order;
- (c) Any motions, pleadings, briefs, petitions, and requests filed, and rulings thereon;
- (d) Evidence received or considered;
- (e) A statement of matters officially noted;
- (f) Offers of proof and objections and rulings thereon;
- (g) Any proposed findings, requested orders, and exceptions;
- (h) Any recording of the adjudicative proceeding and any transcript of all or part of the adjudicative proceeding considered before final disposition of the matter;
- (i) Any final order, initial order, or order on reconsideration; and
- (j) Matters placed on the record following an ex parte communication, if any.

(3) The record ~~((shall be))~~ is subject to disclosure as provided by chapter ~~((42.17))~~ 42.56 RCW, the Public Records Act, and by WAC 246-10-114, except as limited by protective orders and provisions contained in the final order.

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-707 Vacating an order for reason of default or withdrawal. (1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party ~~((by))~~ for good cause. The requesting party shall:

(a) ~~((Specifying))~~ Specify the grounds relied upon in the petition; and

(b) ~~((Filing))~~ File the petition at the adjudicative ~~((clerk))~~ clerk's office and with the opposing party within seven days of service of the default order.

(2) The presiding officer shall consider the petition and shall:

(a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on licensure pending final adjudication; or

(b) Deny the motion to vacate the default order.

NEW SECTION

WAC 246-10-708 Failure to comply with a disciplinary order. (1) If the disciplining authority alleges failure to comply with a disciplinary order, the department may file a motion for hearing with the adjudicative clerk's office and serve a copy on the respondent.

(2) Upon receipt of the motion, the adjudicative clerk's office shall issue a notice of hearing on motion notifying the

parties of the time, place and date of the administrative hearing.

(3) The sole issue at the hearing shall be whether the respondent failed to comply with a disciplinary order.

(4) At the hearing, the department has the burden of proving it is more probable than not that the respondent failed to comply with a disciplinary order.

(5) The presiding officer will issue an order including findings of fact and conclusion of law.

(6) If the department has proven failure to comply with a disciplinary order, the sanction will be indefinite suspension until compliance is achieved as determined by the disciplining authority.

WSR 18-06-050

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Rehabilitation Administration)

[Filed March 2, 2018, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-098.

Title of Rule and Other Identifying Information: The department is proposing to repeal chapter 388-891 WAC, Vocational rehabilitation services for individuals with disabilities; and create sections in a new chapter 388-891A WAC, Vocational rehabilitation services for individuals with disabilities.

The proposed new chapter of Washington Administrative Code (WAC) regulates the scope and provision of vocational rehabilitation services to individuals with disabilities by the division of vocational rehabilitation (DVR). A cross-walk table of existing and new WAC sections is available upon request.

Hearing Location(s): On May 8, 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 May 9, 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., May 8, 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 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS, DVR is proposing to repeal rules contained in chapter 388-891 WAC, Vocational rehabilitation services for individuals with disabilities, and replace those rules with new chapter 388-891A WAC. The proposed new chapter supports DVR's purpose,

which is to empower people with disabilities to achieve a better quality of life by obtaining and maintaining employment. The rules are intended to inform the public about DVR's vocational rehabilitation (VR) services and the conditions under which DVR provides them.

DVR proposes the repeal of one hundred forty-five existing WAC sections, to be replaced by a new chapter with one hundred fifty-nine WAC sections. Of the repealed sections, one hundred forty-three are being amended and moved into new sections in the newly created chapter. DVR WAC must comply with federal VR regulations requiring written policy (WAC) that defines the nature and scope of VR services, the criteria under which each service is provided or paid for, and the reasons for closing a case service record. The state Administrative Procedures [Procedure] Act (chapter 34.05 RCW) requires WAC when a state agency regulates the public or affects the rights or ability of the public to get services from a state agency. DVR is repealing existing WAC and creating new WAC to meet federal and state requirements. The proposed chapter 388-891A WAC is intended to clarify the scope of VR services and the conditions for DVR to provide or pay for them, as well as increase understanding of customer rights and customer confidentiality.

Reasons Supporting Proposal: DVR has not revised WAC since June 2007. Since that time, guidance has been added to the DVR customer services manual (division procedures) and these changes will better align WAC with standard operating practices. DVR is making changes to WAC in order to comply with new requirements resulting from the reauthorization of the federal Rehabilitation Act and to increase the ease of locating WAC concerning payment for VR services. Several WAC sections are being moved from the "vocational rehabilitation services" section to the "paying for services" section.

Statutory Authority for Adoption: 34 Code of Federal Regulations (C.F.R.), Parts 361, 363, 397; RCW 74.29.020 (8).

Statute Being Implemented: 29 U.S.C. 701 (Rehabilitation Act of 1973).

Rule is necessary because of federal law, the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act (WIOA)—29 U.S.C. 701.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Mulhern, P.O. Box 45340, Olympia, WA 98504, 360-725-3621.

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 Michele Mulhern, P.O. Box 45340, Olympia, WA 98504, phone 360-725-3621, email mulhemi@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 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not

adopted: All changes in the scope of services follow from amendments to the Rehabilitation Act of 1973 following WIOA, and its implementing regulation at 34 C.F.R. Parts 361, 363, and 397.

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. Any nonexempt changes in this proposed rule regulate the provision of VR services to individuals, and provide for the rights an individual with a disability has with respect to their progress through and access to services while participating in the VR process. There are no substantive changes to the regulations affecting any small businesses with which DVR does business, such as those found under chapter 388-892 WAC.

March 1, 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 18-08 issue of the Register.

WSR 18-06-053

PROPOSED RULES

THE EVERGREEN STATE COLLEGE

[Filed March 2, 2018, 1:32 p.m.]

Supplemental Notice to WSR 17-18-096.

Preproposal statement of inquiry was filed as WSR 17-14-040.

Title of Rule and Other Identifying Information: Weapons prohibited.

Hearing Location(s): On April 12, 2018, 12:15 - 1:00 p.m., at The Evergreen State College, 2700 Evergreen Parkway N.W., Purce Hall, Lecture Hall 2, Olympia, WA 98505.

Date of Intended Adoption: April 19, 2018.

Submit Written Comments to: John Carmichael, 2700 Evergreen Parkway N.W., Library 3200, Olympia, WA 98505, email carmichj@evergreen.edu, fax 360-867-6577, by April 12, 2018.

Assistance for Persons with Disabilities: Contact Andrew Corn, phone 360-867-6296, fax 360-867-6886, email corna@evergreen.edu, by April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule defines circumstances when weapons, as defined by the rule, are prohibited or allowed on the college's campus and at college-sponsored events.

Reasons Supporting Proposal: Appropriate regulation of weapons on college campuses and at college-sponsored events is necessary for the safety of the campus.

Statutory Authority for Adoption: RCW 28B.40.120.

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

Name of Proponent: The Evergreen State College, governmental.

Name of Agency Personnel Responsible for Drafting: Andrew Corn, The Evergreen State College, 2700 Evergreen Parkway N.W., Library 3009, Olympia, WA 98505, 360-

867-6296; Implementation: Wendy Endress, The Evergreen State College, 2700 Evergreen Parkway N.W., Library 3009, Olympia, WA 98505, 360-867-6296; and Enforcement: Ed Sorger, The Evergreen State College, 2700 Evergreen Parkway N.W., Sem 2150, Olympia, WA 98505, 360-867-4832.

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 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. No costs or other impacts on businesses were identified.

March 2, 2018
J. P. Carmichael
Rules Coordinator

NEW SECTION

WAC 174-136-043 Weapons prohibited. (1) Possession, display, storage, wearing, or use of firearms, explosives (including fireworks), dangerous chemicals or other weapons are prohibited on the college campus, college-owned property, college-approved housing, and at college-sponsored events, unless prior written approval has been obtained consistent with subsection (6) of this section.

(2) Firearm means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.

(3) Weapon includes, but is not limited to:

(a) Any weapon that it is unlawful to possess under Washington law including, but not limited to, slungshot, sand club, metal knuckles, or spring blade knife;

(b) Stun guns, electroshock weapons, longbows, hunting bows, throwing weapons, air guns, pellet guns, paint ball guns, or other pneumatic propellant;

(c) Any other object or instrument apparently capable of producing bodily harm that is carried, exhibited, displayed or drawn in a manner, under circumstances, and at a time and place that manifests an intent to intimidate another or that warrants alarm for the safety of other persons including, but not limited to, daggers, swords, weapon replicas, knives or other cutting or stabbing instruments with blades longer than three inches, clubs, or bats.

(4) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or securing their pistol with Evergreen police services under subsection (6) of this section.

(5) Individuals authorized to carry firearms or other weapons on the college campus, college-owned property, college-approved housing, and at college-sponsored events include, but are not limited to:

(a) Bank-related security personnel required by their office to carry such firearms or weapons;

(b) Duly appointed and commissioned law enforcement officers in the state of Washington, or commissioned by

agencies of the United States government while on duty and engaged in their regular duties. A law enforcement agent must notify Evergreen police services of their presence on campus on arrival.

(6) Individuals seeking to bring a firearm or other weapon onto campus, college-owned property, or a college-sponsored event for display or demonstration purposes directly related to a legitimate pedagogical and/or other authorized or educational activity, must obtain prior written authorization from Evergreen police services, or any other person designated by the president of the college. Evergreen police services, or authorized designees, will review any such request and, if it is granted, may establish conditions to the authorization. If the request is denied, the requestor will be informed of the available appeal process, if any.

Other than individuals referenced in subsection (5) of this section, individuals who bring firearms or other weapons to campus must immediately place the firearms or weapons in the college provided storage facility. The storage facility is located at Evergreen police services.

Weapons that are owned by the college for use in organized recreational activities or by special groups, such as college-sponsored clubs or teams, must be stored in a location approved by the Evergreen police services. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

Individuals may possess a personal protection spray device, as authorized by RCW 9.91.160, when possessed and/or used for self-defense while on college-owned property.

(7) Violations of the subsections of this section are subject to appropriate disciplinary or legal action including, but not limited to, exclusion from campus or expulsion.

WSR 18-06-056
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed March 5, 2018, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-005.

Title of Rule and Other Identifying Information: Chapter 196-12 WAC, Registered professional engineers; specifically, WAC 196-12-010, 196-12-045 and new WAC 196-12-047.

Hearing Location(s): On April 10, 2018, at 10:00 a.m., at the Department of Licensing, 405 Black Lake Boulevard, Conference Room 2108, Olympia, WA 98502; and on April 12, 2018, at 3:30 p.m., at the Hilton Garden Inn Spokane, Airport Hotel, 9015 West Highway 2, Spokane, WA 99224-9413.

Date of Intended Adoption: April 13, 2018.

Submit Written Comments to: Julie Konnersman, Management Analyst, Board of Registered Professional Engineers and Land Surveyors (BORPELS), P.O. Box 9012,

Olympia, WA 98507-9012, email engineers@dol.wa.gov, fax 360-570-7098, by April 12, 2018.

Assistance for Persons with Disabilities: Contact Jenni Lingle, administrative assistant, phone 360-664-1564, fax 360-570-7098, TTY 711, email engineers@dol.wa.gov, by April 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Editing this chapter has multiple parts: (1) It would allow out-of-state applicants who have passed the national board exam that are not licensed in another state to apply for initial licensure in Washington; (2) there are policies put in place by the board that need to be codified in rule; and (3) it would identify experience requirements for licensure as a structural engineer and have them outlined in rule.

Reasons Supporting Proposal: Restructuring requirements for licensure will make it easier for out-of-state applicants to become licensed. Defining the experience requirements for structural engineers will make it easier for applicants to correctly complete the license application.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 18.43.040.

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

Name of Proponent: BORPELS, governmental.

Name of Agency Personnel Responsible for Drafting: Shanah Gillespie, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1570; Implementation and Enforcement: Ken Fuller, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1565.

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. There is no economic impact to licensees.

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 (1)(a) and 19.85.020 (2), this rule will impose no costs to business.

March 5, 2018
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-08-064, filed 3/27/15, effective 4/30/15)

WAC 196-12-010 Registration requirements. ~~((The requirements))~~ To become licensed as a professional engineer ((are)), you must meet the requirements below:

(1) Have eight years of experience in engineering work of a character satisfactory to the board.

(a) ~~((These))~~ The eight years ((must be of broad based, progressive experience to include gaining knowledge and comprehension of engineering subjects and applying engineering principles)) of experience may be a combination of education and practice work experience. Under selected circumstances a maximum of five years of education (baccalaureate and master's degrees) can be granted toward the eight-year requirement.

(b) ~~The eight years of experience ((may be a combination of education and practical work experience. Under selected circumstances a maximum of five years of education (baccalaureate and masters degrees) can be granted toward the eight-year requirement))~~ must be broad based, progressive experience to include gaining knowledge and comprehension of engineering subjects and applying engineering principles.

(2) ~~((Obtaining))~~ Receive a passing score on the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals-of-engineering (FE) examination. Or, have a current license as a Canadian professional engineer (P.Eng), and having received a passing score on the Engineers Canada Professional Practice Examination (PPE);

(3) ~~((Obtaining))~~ Receive a passing score on the NCEES principles and practice of engineering (PE) examination;

(4) ~~((Obtaining))~~ Receive a passing score on the ((boards)) Washington law review;

(5) Be of good character and reputation; and

(6) Payment of applicable fees.

Exam results must be independently verified by the NCEES member board, or engineers Canada constituent association that granted approval to write the exam.

AMENDATORY SECTION (Amending WSR 08-11-100, filed 5/20/08, effective 7/1/08)

WAC 196-12-045 ((Comity)) Registration of applicants ((qualified)) licensed in other jurisdictions. Licenses ~~((will))~~ may be issued ((by comity)) only in the branches of engineering offered by the board. ~~((Applicants for registration as a professional engineer by comity must:))~~ The board has discretion to issue a license to an out-of-state licensee who meets the following requirements:

(1) Completes an application on forms provided by the board and ((be accompanied by)) pays the appropriate fee((-);

(2) Holds a currently valid license in a board recognized licensing jurisdiction in a state, territory, possession, district, or foreign country((-); and

(3) ~~((Have been qualified to))~~ Meets minimum requirements for licensure as determined by the board under WAC 196-12-010, including testing that adequately measures the fundamentals and principles and practice of engineering.

NEW SECTION

WAC 196-12-047 Structural licensing requirements. The branch of structural engineering requires specialized work experience to protect the public health, safety, and welfare. To be licensed as a structural engineer, an applicant must:

(1) Be licensed as a professional engineer in Washington state;

(2) Have at least two years of progressive responsibility in structural engineering experience in addition to the eight years of engineering experience required to be registered as a professional engineer. The structural experience should:

(a) Demonstrate the applicant's ability to design building structures or nonbuilding structures integrated within "significant structures" as defined in RCW 18.43.020(11) and

located in International Building Code (IBC) Seismic Design Category D or above;

- (b) Be progressive in difficulty and magnitude;
 - (c) Demonstrate breadth and depth of seismic design subject matter;
 - (d) Incorporate two of the four common construction materials (steel, concrete, wood, and masonry);
 - (e) Reflect ability to design and apply structural engineering principles that show sound judgment on projects involving public health, safety, and welfare;
 - (f) Be supervised by a licensed professional engineer in the branch of structural engineering or a licensed professional engineer with substantial structural engineering work experience; and
- (3) Pass a board approved structural exam.

WSR 18-06-057
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY

[Filed March 5, 2018, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-115.

Title of Rule and Other Identifying Information: Revising chapter 172-137 WAC, Use of university facilities.

Hearing Location(s): On April 25, 2018, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 201, Showalter Hall, Cheney, WA 99004.

Date of Intended Adoption: May 11, 2018.

Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by April 25, 2018.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by April 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to chapter 172-137 WAC are needed to update university standards and processes to better reflect current practices regarding the use of university facilities.

Reasons Supporting Proposal: Modifications are being made to the processes and standards regarding the use of university facilities due to changes in practice.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

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. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i),

this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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).

March 5, 2018

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-010 Purpose. Eastern Washington University is an educational institution established and maintained by the citizens of Washington state in order to carry out the mission of teaching, research and public service. University facilities exist for the primary purpose of supporting that mission and related educational activities.

The university may ~~((also permit the use of facilities for other purposes so long as the use does not interfere with university activities. In such cases, the university may))~~ impose reasonable conditions on the time, place, and manner in which facilities are used.

~~((This chapter establishes standards and procedures for use of university facilities by individuals and entities other than the university itself, including university employees, students, and registered student organizations, as well as individuals and groups that are not related to or affiliated with the university.))~~ The purpose of these regulations is to facilitate the effective use and enjoyment of university facilities on the Cheney campus. Orderly procedures are necessary to promote the use of facilities by students and university-affiliated groups, to conserve and protect facilities for educational use, and to prevent interference with university operations.

NEW SECTION

WAC 172-137-015 Scope. This chapter establishes standards and procedures for use of university facilities on the Cheney campus by individuals and entities other than the university itself, such as university employees, students, university-affiliated groups, nonaffiliated groups, and outside community members. The use of facilities for university activities is not subject to the requirements of this chapter. Use of open, outdoor areas on university property for first amendment activities is governed by chapter 172-138 WAC.

Use of university facilities is subject to all university regulations and policies. For example, in addition to these regulations, the university has specific rules about alcohol on campus (chapter 172-64 WAC), parking (chapter 172-100 WAC), drones and model aircraft (chapter 172-110 WAC), pets (chapter 172-115 WAC), recreational equipment (chapter 172-118 WAC), weapons (WAC 172-122-120), and use of tobacco, electronic cigarettes, and related products (WAC 172-122-310).

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-020 Definitions. (1) "Facility" or "facilities" includes all buildings ~~((and grounds owned or controlled by the university and the streets, sidewalks, malls, parking lots, and roadways within the boundaries of property owned or controlled by the university. Specific rules also apply to parking lots, recreational equipment, and commercial activities (chapters 172-116, 172-118, and 172-139 WAC))), athletic fields, and parking lots owned or controlled by the university.~~

(2) "First amendment activities" includes, but ~~((are))~~ is not necessarily limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints.

(3) ~~((("Nonuniversity groups" are groups that are neither a university group nor a university affiliate. Nonuniversity groups include employee union organizations, businesses, nonprofit organizations, and individuals who are not currently enrolled students, current university employees, or employees of a university affiliate.~~

(4) "University affiliates" are external entities that have formal relationships with the university, including: The EWU Foundation, the EWU Alumni Association, and the office of the attorney general. University affiliates also includes the officers, agents, and employees of such an entity.

(5) "University groups" include: The ASEWU, student groups that are officially recognized by the ASEWU, the faculty organization, the academic senate, and any other group that is formally recognized by the university as a group that is directly associated with and a part of the university organization. University group also includes individual members of these groups ~~when acting on behalf of the group, as well as currently enrolled students and current employees.~~

(6) "Use of facilities" includes the holding of any event or forum, the posting of signs, all forms of advertising, commercial solicitation or the conduct of other commercial activities, the distribution of pamphlets or similar written materials, and the charitable solicitation or the conduct of other charitable activities ~~on or using university facilities.~~) "Non-affiliated groups" is groups that are not affiliated with the university. Nonaffiliated groups include employee union organizations, businesses, nonprofit organizations, advocacy groups, and religious entities, as well as the individuals belonging to such groups.

(4) "Students" includes all people currently enrolled in classes at the university.

(5) "Outside community members" means individuals who are not employees, students, or part of a university-affiliated group.

(6) "University-affiliated groups" includes any group formally recognized by or a part of the university, such as ASEWU, student groups officially recognized by ASEWU, The Easterner, the faculty organization, academic senate, and any other group formally recognized by or directly associated with and a part of the university. It also includes external enti-

ties that have a close relationship with the university, including the EWU foundation, the EWU alumni association, and the attorney general's office. University-affiliated groups also include the individual members or employees of such groups when acting on behalf of the group.

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-030 University priority. First priority for the use of campus facilities shall be given to regularly scheduled university activities. ~~((Additionally,))~~ A facility may only be reserved by someone other than the university when the facility is not needed for a university activity. Use of university facilities may be subject to reasonable time, place, and manner restrictions that take into account, among other considerations, the general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods, and the general public. In reviewing conflicting requests to use university facilities, primary consideration is given to activities specifically related to the university's mission.

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-040 Conditions of use. Use of university facilities by employees, students, university-affiliated groups, nonaffiliated groups, and community members is subject to the following restrictions:

(1) **Restriction of access.** The president of Eastern Washington University may restrict access to university facilities and may establish rules of conduct for persons while on university facilities, as prescribed under WAC 172-122-210.

(2) **No disruption to normal activities.** University facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. No activity may obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles. The use of university facilities and any first amendment activities engaged in within university facilities must not substantially and materially interfere with university activities or otherwise prevent the university from fulfilling and achieving its primary purpose of educating students. Activities must not substantially and materially infringe on the rights and privileges of university employees, students, or university-affiliated groups.

(3) **Sound amplification.** The use of electronic sound amplification is only permitted in facilities designated by the VP-BF or designee. Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of university affairs. ~~((Sound amplification equipment is not permitted within the university's public forum areas.))~~ Use of sound amplification equipment must comply with all local ordinances.

(4) Overnight use.

(a) No person may use university facilities to camp, except as provided in subsection (b) of this section. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) Exceptions:

(i) The use and occupancy of university housing in accordance with housing rules;

(ii) The use of facilities by a university employee or agent who remains overnight to fulfill the responsibilities of his or her position;

(iii) The use of facilities by a university student who remains overnight to fulfill the responsibilities of his or her course of study;

(iv) The use of facilities where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university, such as during home football games, commencement, and special weekends.

~~(5) ((Prohibited users.))~~ **Accessibility.** The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act ~~((ADA, 42 U.S.C. secs. 12132 and 12182))~~ and the Rehabilitation Act of 1973 ~~((RA, 29 U.S.C. 794))~~ while using university facilities. ~~((Uses))~~ Users must not impose restrictions nor alter facilities in a manner which would violate the ~~((ADA or RA))~~ Americans with Disabilities Act or Rehabilitation Act.

~~((The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where the organizations have been exempted from provisions of applicable state or federal laws or regulations.~~

~~(6) Demands on university resources.~~ University facilities may not be used where the use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); ~~except that the use of public forum areas for a first amendment activity may not be halted simply because the event may require additional university security or police costs.~~

(6) Harassment. EWU is committed to providing an educational and work environment in accordance with federal law. As such, EWU prohibits individuals and groups who are using its facilities from engaging in harassment while using university facilities. Harassment is defined as conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(7) Prohibited items and authority to inspect. Within the limits of applicable laws, Eastern Washington University is committed to establishing and maintaining safe conditions for persons attending events in university facilities. Accord-

ingly, some events have restrictions on items that may be brought into the event (i.e., beverage containers, noisemakers). Individuals possessing such items will not be admitted to, or will be removed from, university facilities until the items have been properly removed, discarded, or stored. All persons entering events at university facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(8) Cleanup and repairs. All facilities must be left in their original condition and may be subject to inspection by a university representative after the activity. Reasonable charges may be assessed against an individual or group for the costs of cleaning up the condition of the property beyond reasonable wear and tear or for the repair of damaged property. If a nonaffiliated group or outside community member is sponsored by a university-affiliated group or department, the sponsoring group is responsible for the costs of repairs if the nonaffiliated group or outside community member fails to pay the costs.

(9) Violations and trespass. Individuals who violate the university's ~~((use of facilities rules and approved users))~~ regulations and/or who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities.

Under WAC 172-122-200, the university president, or designee, may prohibit access to university facilities, give notice against trespass, and/or order any person or group to leave university facilities.

Failure to comply with a request to leave university property could subject the individuals to arrest and criminal prosecution under the provisions of WAC 172-122-200 and other applicable state, county, and city laws.

~~((9))~~ **(10) Safety and liability.**

(a) Users must comply with all applicable university policies, procedures, rules and regulations; local, state and federal laws; and fire, health and safety regulations, to include any special regulations specified for the event by the university and/or government authorities.

(b) Users assume full responsibility for any loss, damage or claims arising out of ~~((the))~~ use of a university facility.

(c) University facilities may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, or invitees.

(d) University facilities may not be used in any manner that creates a hazard or results in damage to university facilities.

(e) Users shall complete a risk assessment as required or directed by the event planning office. Depending on the nature of the proposed event, the requestor may be required to provide its own liability insurance coverage at an amount determined by the VP-BF/designee naming Eastern Washington University as additionally insured for any events held in a university facility.

(f) University facilities may not be used in furtherance of or in connection with illegal activity.

~~((g)) Users are responsible for the appropriate care of facilities being used. Facilities may be inspected by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.~~

~~(h) When the event involves physical activity, the serving of alcohol, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least one million dollars per occurrence must be provided to the VP-BF/designee before approval for the requested use will be granted.)~~

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-050 Authorized and prohibited uses.

~~(1) ((Public forum/free speech areas. Use of university facilities for first amendment/free speech activities is governed by the rules set forth in WAC 172-137-080.~~

~~(2) **Private or**) Commercial activities.~~

(a) University facilities may not be used for ~~((private or))~~ commercial gain, including: Commercial advertising; solicitation and merchandising of any food, goods, wares, service, or merchandise of any nature whatsoever; or any other form of sales or promotional activity; except as allowed under chapter 172-139 WAC or in the following cases:

(i) By special permission granted by the university president, or designee, if an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity; or

(ii) To the extent it represents the regular advertising, promotional, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at university events;

(b) University facilities may not be used by faculty or staff in connection with compensated outside service, except that faculty or staff may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may other private citizens.

(c) Commercial advertising and/or solicitation which is deceptive or concerns an illegal product or service is prohibited on university facilities.

~~((3)) (2) **Political activities.** University facilities may be used for political activities when such use complies with chapter 42.52 RCW, Ethics in Public Service Act. Permitted activities may include:~~

~~(a) University departments, ~~((student government organizations))~~ ASEWU, or ~~((registered))~~ recognized student organizations may sponsor candidate forums as well as issue forums regarding ballot propositions;~~

~~(b) Candidates for office and proponents or opponents of ballot propositions may rent university facilities on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;~~

~~(c) Candidates for office and proponents or opponents of ballot propositions may use ~~((public forum areas))~~ outdoor spaces pursuant to chapter 172-138 WAC, to the same extent and on the same basis as may other individuals or groups; and~~

(d) A registered student organization may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 172-137-070.

(e) Restrictions:

(i) When an event under this section involves the rental of a university facility, the full rental cost of the facility must be paid and ~~((state))~~ university funds may not be used to pay rental costs or any other costs associated with the event.

(ii) University facilities may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(iii) All candidates who have filed for office for a given position, regardless of party affiliation, must be given equal access to the use of facilities within a reasonable time.

(iv) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(v) Use of university facilities for political activities, as described in this section, must have prior approval of the vice president for business and finance or designee.

~~((EXCEPTION: Use of public forum areas for first amendment activities does not require VP-BF/designee approval but must comply with all other applicable requirements of this chapter.~~

~~(4)) (3) **Charitable organization use.** University facilities may be used to benefit a charitable organization when such use complies with chapter 42.52 RCW, Ethics in Public Service Act. Examples of permitted use include, but are not limited to, the following:~~

(a) Charities that are licensed in the state of Washington may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may private citizens;

(b) Charities that are licensed in the state of Washington may use facilities without charge by special permission granted by the university president, or designee, or the vice president for business and finance where the university has determined that the charitable activity or use will serve an educational or public service purpose related to the university's mission; and

~~(c) ~~((Student government organizations))~~ ASEWU, registered student organizations, and university units that have followed university policies and procedures to conduct fundraising activities and have adhered to all scheduling requirements and other university policies.~~

~~(4) **Prohibited speech.** The following types of speech or materials are prohibited in university facilities or on university property:~~

~~(a) Obscene material, as defined by state and federal law;~~

~~(b) Defamation or libelous material, as defined by state law;~~

~~(c) Incitement of imminent lawlessness;~~

~~(d) True threats, as defined by federal law;~~

~~(e) Fighting words, as defined by federal law; and~~

~~(f) Speech or conduct that will cause a material and substantial disruption of university activities.~~

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-060 Solicitation, visual displays and advertising. (1) **Solicitation, handbills, pamphlets, and similar materials.**

(a) Anyone may personally distribute noncommercial announcements, handbills, pamphlets, or materials in any outdoor area of campus consistent with the orderly conduct of university operations, maintenance of university property, and the free flow of vehicular and pedestrian traffic. Efforts must be made to avoid litter. Solicitation, or distribution of handbills, pamphlets, and similar materials by anyone ~~(whether a member of the university community or of the general public)~~ is not permitted in those areas of campus to which access by the public is restricted or where the solicitation or distribution would significantly impinge upon the primary business being conducted.

(b) No person shall place in or on any vehicle parked on the university campus, any solicitation devices.

(c) For the purposes of this chapter, the following definition applies: A "solicitation device" is any printed or written matter, sample, or device which:

(i) Advertises for sale any merchandise, product, service, or commodity; or

(ii) Directs attention, either directly or indirectly, to any business or mercantile or commercial establishment, or other activity, for the purpose of promoting an interest in sales or use; or

(iii) Directs attention to or advertises any meeting, performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit.

(2) **Signs, posters, tables, and visual displays.** To ensure that goals and objectives relating to the appearance of the campus are maintained, the university regulates the content, location, dimensions, and period of display time of posted materials. Posters must be approved by PUB administration, in accordance with university policy, prior to their placement in any campus location. Specific regulations are available to the public in the PUB administration office. An individual or organization must reserve space within a facility before setting up a table in such location.

AMENDATORY SECTION (Amending WSR 12-04-065, filed 1/30/12, effective 3/1/12)

WAC 172-137-070 Procedures for ~~(other than first amendment/free speech activities)~~ reserving university facilities. This section prescribes procedures for the use of university facilities, by individuals and entities other than the university itself ~~(for other than first amendment/freedom of expression activities)~~.

(1) **Scheduling and reservation practices.**

(a) The primary purpose of university facilities is to serve the university's instructional, research, and public service activities. However, designated facilities, when not required for scheduled university use, may be available for rental by the public in accordance with current fee schedules and other relevant terms and conditions. Not all university facilities are available for reservation or request for non-

instructional purposes. Information concerning reservation and request procedures for designated facilities available for non-instructional use may be obtained from events planning.

(b) Designated university facilities and services may be reserved in accordance with the procedures below. No university facilities may be used by individuals or groups unless the facilities ~~(including buildings, equipment, and land)~~ have been reserved ~~(as required under)~~ in accordance with this section. Reservations shall be made at least forty-eight hours in advance, excluding weekends and holidays, to events planning or another appropriate university office.

(c) The VP-BF/designee may deny a request to use university facilities when it is determined that the use would violate any of the limitations set forth in this chapter ~~(or)~~, when the request is for a space previously reserved, where the requestor is unwilling to comply with university requirements for the use of facilities, ~~(as authorized by these rules)~~ or for any other content neutral, legitimate business or educational reason.

(2) **Requests.** Requests for use of university facilities must be directed to the event planning office.

(3) **Approval authority.**

(a) University employees and university-affiliated groups may use university facilities to hold events for faculty, staff, and students without sponsorship by an academic or administrative unit, or approval by the VP-BF/designee, so long as the use complies with this policy and the policies of the specific facilities involved.

(b) University employees and university-affiliated groups may use university facilities to hold events to which the general public is invited when the event is sponsored by an academic or administrative unit and approved by the VP-BF or designee.

(c) All requests for the use of university facilities by ~~(university affiliates or nonuniversity groups)~~ students, nonaffiliated groups, and outside community members, whether sponsored or not, must be approved by the VP-BF or designee. Such requests are subject to the following additional limitations:

(i) Use of the facility must benefit the university;

(ii) The use must be pursuant to a written agreement setting forth the terms and conditions of the proposed use;

(iii) The use by the requestor must be occasional rather than frequent;

(iv) The use must not interfere with any organized university activity or event;

(v) Students or other organizations/individuals with a campus affiliation shall be granted priority over other nonaffiliated groups and outside community members;

(vi) Consideration must be given to the availability of comparable nonuniversity facilities and services which could accommodate the proposed use.

(4) **Facility rental/use fees.**

(a) The university assesses fees based upon the actual cost, direct and indirect, of using a university facility. Fees for the use of most facilities are set forth on a schedule available on the event planning office web site. The university reserves the right to make changes to fees without prior written notice, except that fee changes do not apply to facility use agreements already approved by the university.

(b) In the event that the fee for the use of a particular facility has not been placed on the schedule, and if the university determines to allow the use of the facility, the university will assess a fee based upon the full cost, direct and indirect, of using the facility.

(c) ~~((Student government organizations))~~ ASEWU and ~~((registered))~~ university recognized student organizations may be allowed to use space in many university facilities at no charge or at a reduced rate. The fees charged to ~~((student government))~~ ASEWU and ~~((registered))~~ university recognized student organizations for facilities are available through the event planning office.

(5) Nontransferability of authorization. A university-affiliated group must reserve university facilities or request services through one of its officers or authorized representatives. A university-affiliated group that reserves a facility or requests services on behalf of the group assumes responsibility for costs associated with the use of those facilities or services and for damage to the facility by group members or other attendees of the event. No group other than the reserving group may use the facility reserved. The reserving group may not transfer control of the event for which the facilities were reserved or the services requested to any other group or individual.

(6) Denial of facility reservation. Any applicant who is denied a reservation for use of a university facility may appeal in writing to the vice president for business and finance or designee. Any applicant who is denied a request on the basis that the event will include prohibited speech shall be offered the opportunity for prompt review upon submission of an appeal in writing to the president or designee.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-137-080 Facility use rules for first amendment/free speech activities.

WSR 18-06-058

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 5, 2018, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-115.

Title of Rule and Other Identifying Information: Creating new chapter 172-141 WAC, Use of outdoor areas for first amendment activities.

Hearing Location(s): On April 25, 2018, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 201, Showalter Hall, Cheney, WA 99004.

Date of Intended Adoption: May 11, 2018.

Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by April 25, 2018.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by April 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: While revisions were being made to chapter 172-137 WAC, it was determined that first amendment activities described therein, would be separated and a new chapter created. The new chapter 172-141 WAC, Use of outdoor areas for first amendment activities, is being created to update university standards and processes to better reflect current practices regarding the use of outdoor areas for first amendment activities.

Reasons Supporting Proposal: New chapter 172-141 WAC is being created to better reflect and expand current practices regarding the use of outdoor areas for first amendment activities.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

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. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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).

March 5, 2018

Joseph Fuxa

Labor Relations Manager

Chapter 172-141 WAC

USE OF OUTDOOR AREAS FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 172-141-010 Commitment and purpose. Eastern Washington University is committed to freedom of expression and first amendment principles. Active participation in dialogue and expression is a vital part of higher education. Listening to and engaging with various viewpoints transforms students into informed citizens. Thus, the university believes freedom of expression is indispensable and is committed to respecting and promoting first amendment rights.

As an educational institution, the university's property and facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of university groups, student activities, and activities directly related to the educational mission of the university. The public character of the university does not grant individuals the right to substantially interfere with, or otherwise disrupt, the normal activities for and to which the university's facilities and property are dedicated. Accordingly, the university's outdoor areas are designated as a public forum for the purposes identified in this chapter and subject to the time, place and manner provisions set forth below.

The time, place, and manner regulations set forth in this chapter establish procedures and reasonable controls for the use of university property. It is intended to balance the university's responsibility to fulfill its mission as a state educational institution with the interest of persons and groups who are interested in using the campus for constitutionally protected expression. Due to the nature of its purpose, the university prioritizes use for university employees, students, and university-affiliated groups. The university intends to open its outdoor spaces to nonuniversity affiliated groups and persons to the extent such usage does not conflict with the rights of university employees, students, and university-affiliated groups or substantially disrupt the university's operations and functions.

NEW SECTION

WAC 172-141-020 Scope. The regulations contained in this chapter apply to all first amendment activities, as defined below, occurring in open areas on university property. These regulations do not apply to first amendment activities inside of a university facility or off campus. University buildings, rooms, and athletic fields may be rented and/or reserved for nonuniversity purposes in accordance with chapter 172-137 WAC.

This chapter does not apply to the area surrounding the university house. The university house is primarily a personal residence and is not open to the public. It is accessible by invitation only and is not a designated area for public expression. Rallies, demonstrations, and other forms of public expression are not permitted at any time on the grounds of the university house. Given the nature of the university house as a residential home, any assembly or advocacy may not occur within the fenced area surrounding the university house or within one hundred feet of any door on the house.

NEW SECTION

WAC 172-141-030 Definitions. "Employees" includes all people currently employed by the university.

"First amendment activities" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints. The following types of expression are not permitted under this chapter and are not protected by the first amendment:

- (a) Obscene material, as defined by state and federal law;
- (b) Defamation or libelous material, as defined by state law;
- (c) Incitement of imminent lawlessness;
- (d) True threats, as defined by federal law;
- (e) Fighting words, as defined by federal law; and
- (f) Speech or conduct that causes a material and substantial disruption of university activities.

"Nonaffiliated groups" is groups that are not affiliated with the university. Nonaffiliated groups include employee union organizations, businesses, nonprofit organizations, advocacy groups, and religious entities, as well as the individuals belonging to such groups.

"Outside community members" means individuals who are not employees, students, or part of a university-affiliated group.

"Students" includes all people currently enrolled in classes at the university.

"University-affiliated groups" includes any group formally recognized by or a part of the university, such as associated students of Eastern Washington University (ASEWU), student groups officially recognized by ASEWU, *The Easterner*, the faculty organization, academic senate, and any other group formally recognized by or directly associated with and a part of the university. It also includes external entities that have a close relationship with the university, including the EWU foundation, the EWU alumni association, and the attorney general's office. University-affiliated groups also include the individual members or employees of such groups when acting on behalf of the group.

NEW SECTION

WAC 172-141-040 Use of outdoor space and notification. (1) Use of outdoor space. University employees, students, university-affiliated groups, nonaffiliated groups, and outside community members may engage in first amendment activities in open, outdoor spaces on the university's Cheney campus between the hours of 6:00 a.m. and 10:00 p.m. and subject to the restrictions identified in WAC 172-141-050.

(2) Notification. Individuals and groups who are planning on engaging in first amendment activities on campus are encouraged to notify the university police at 509-359-4021 at least twenty-four hours in advance of the activity to ensure adequate safety measures are in place, to acknowledge receipt of these rules, and to ensure there are no scheduling conflicts for the area they are planning to use. This notice does not involve an application or approval process. When providing the notification, groups are encouraged to provide the name of their organization, a contact person, the date, time, and location of the proposed activity, and the estimated number of people expected to participate in the activity. Additional rules apply to large groups as set forth in subsection (3) of this section.

(3) Large groups. If an activity is likely to attract one hundred or more attendees or counter-protestors, individuals and groups are required to contact university police at 509-359-4021 at least three days in advance of the activity. Advanced notice is required in such situations because large groups require additional safety and security planning. The purpose and elements of this notice are the same as those specified in subsection (2) of this section.

(4) Other campuses. The use of public spaces on the Spokane campus is governed by Washington State University pursuant to chapter 504-33 WAC. The use of public spaces on the Bellevue campus is governed by Bellevue College under chapter 132H-142 WAC.

NEW SECTION

WAC 172-141-050 Restrictions on use of university property. Use of university property for first amendment activities by university employees, students, university-affiliated groups, nonaffiliated groups, and outside community members is subject to the following restrictions:

(1) Obstruction. No activity may obstruct or disrupt university operations or functions. No activity may obstruct freedom of movement, including, but not limited to, obstructing entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles.

(2) Sound amplification. Any sound amplification device may only be used at a volume that does not disrupt or disturb the normal use of university classrooms, offices, laboratories, meeting space, or any previously scheduled university activity.

(3) Overnight use. No person may camp on university property, except for attendees of special events designated by the university, such as during home football games, commencement or special student activities. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. This does not include use of university housing or employees who are required to work at night.

(4) Clean-up and repairs. All sites used for first amendment activities must be left in their original condition and may be subject to inspection by a university representative after the activity. Reasonable charges may be assessed against an individual or group for the costs of cleaning up the condition of the property beyond reasonable wear and tear or for the repair of damaged property.

(5) Harassment. EWU is committed to providing an educational and work environment in accordance with federal law. As such, EWU prohibits people who are using campus property from engaging in harassment. Harassment is defined as conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(6) Safety. People using university property must comply with all applicable university policies, procedures, rules and regulations; local, state, and federal laws; and fire, health

and safety regulations. Any first amendment activities must not create safety hazards or pose safety risks to others.

(7) Noninterference. First amendment activities must not substantially and materially interfere with university activities or otherwise prevent the university from fulfilling and achieving its primary purpose of educating students. Activities must not substantially and materially infringe on the rights and privileges of university employees, students, or university-affiliated groups.

(8) Time limitations. To ensure space is available for everyone, use of the campus for first amendment activities may be limited to not more than eight hours per day and for not more than five days during any two-week period when there is a competing request to use the same space or if continuing use of the space conflicts with an existing reservation for the space.

(9) Reservations. University employees, students, and university-affiliated groups may reserve outdoor space on campus for university-sponsored activities. Reservation of university facilities is governed by chapter 172-137 WAC. If space is reserved for a university-sponsored activity, other persons and groups may be prohibited from engaging in first amendment activities in the reserved space. In such cases, a university representative will suggest another area on campus for the first amendment activities.

(10) Termination of license. These regulations grant people and groups a limited license to use university property. The university president or designee may, at any time, terminate, cancel, or prohibit the use of facilities or campus property if an activity is violating these regulations or substantially and materially disrupting or interfering with university operations and functions. Such determinations will be made without consideration to the content of the message communicated by the activity. If a person or group is violating these regulations or any other regulations governing conduct on university property, the person will be advised of the specific nature of the violation, and if they persist in the violation, they may be asked to leave campus in accordance with WAC 172-122-200 and their license to remain on campus is terminated.

NEW SECTION

WAC 172-141-060 Distribution of materials. Information that falls within the definition of "first amendment activities" as set forth in WAC 172-141-030, may be distributed in open spaces on campus. The distributor is encouraged, but not required, to include its name and address on the distributed information. All individuals and groups may distribute information in outdoor space. Anyone may personally distribute noncommercial announcements, handbills, pamphlets, or materials in any outdoor area of campus consistent with the orderly conduct of university operations, maintenance of university property, and the free flow of vehicular and pedestrian traffic. Efforts must be made to avoid litter. Materials may not be posted or affixed to any university property unless such posting is done in accordance with the university's poster policy. A copy of the poster policy is available on the university's web site.

WSR 18-06-061
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed March 5, 2018, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-151.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-823-1096 What requirements must my home or community-based service setting meet?

Hearing Location(s): On April 10, 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 11, 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 10, 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 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule updates settings requirements to align with federal regulations. All of the developmental disabilities administration's 1915(c) medicaid waivers must comply with settings-based requirements under 42 C.F.R. Section 441.301 (c)(4).

Reasons Supporting Proposal: All of the developmental disabilities administration's 1915(c) medicaid waivers must comply with settings-based requirements under 42 C.F.R. Section 441.301 (c)(4).

Statutory Authority for Adoption: RCW 71A.12.030.

Rule is necessary because of federal law, 42 C.F.R. Section 441.301 (c)(4).

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: Bob Beckman, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1555.

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 will impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required.

March 2, 2018
 Katherine I. Vasquez
 Rules Coordinator

NEW SECTION

WAC 388-823-1096 What requirements must my home or community-based service setting meet? If you receive home or community-based services under 42 C.F.R. Section 440.180, the setting must meet requirements under 42 C.F.R. Section 441.301 (c)(4).

WSR 18-06-067
PROPOSED RULES
EVERETT COMMUNITY COLLEGE

[Filed March 5, 2018, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-080.

Title of Rule and Other Identifying Information: WAC 132E-108-050 Brief adjudicative procedures.

Hearing Location(s): On May 15, 2018, at 5:00 p.m., at Everett Community College, Jackson Senate Room, 2000 Tower Street, Everett, WA 98201.

Date of Intended Adoption: June 18, 2018.

Submit Written Comments to: Stephen Smith, Interim Executive Director of Human Resources, 2000 Tower Street, email stesmith@everettcc.edu, 425-259-8933, by May 14, 2018.

Assistance for Persons with Disabilities: Contact Stephen Smith, interim executive director of human resources, phone 425-259-8933, email stesmith@everettcc.edu, by May 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify a conflict in WAC with respect to student conduct proceedings. This WAC is superseded by WAC 132E-122-290.

Reasons Supporting Proposal: Clarity is necessary for effective implementation.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Stephen Smith, interim executive director of human resources, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Howard, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-388-9232; Implementation and Enforcement: Stephen Smith, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-259-8933.

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 cost impacts.

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.

March 5, 2018
Jennifer L. Howard
Vice President
Administrative Services

AMENDATORY SECTION (Amending WSR 90-09-006, filed 4/5/90, effective 5/6/90)

WAC 132E-108-050 Brief adjudicative procedures. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
- (2) Challenges concerning education records consistent with state and federal law;
- (3) ~~((Student conduct proceedings. The procedural rules in WAC 132E-108-010 apply to these proceedings.~~
- (4)) Parking violations. The procedural rules in WAC 132E-108-010 apply to these proceedings;
- ~~((5))~~ (4) Outstanding debts owed by students or employees;
- ~~((6))~~ (5) Loss of eligibility for participation in institution-sponsored athletic events(-);
- ~~((7))~~ (6) Appeals associated with the use of human subjects.

WSR 18-06-068
PROPOSED RULES
EVERETT COMMUNITY COLLEGE

[Filed March 5, 2018, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-084.

Title of Rule and Other Identifying Information: WAC 132E-133-020 Organization—Operation—Information (location addresses).

Hearing Location(s): On May 15, 2018, at 5:00 p.m., at Everett Community College, Jackson Senate Room, 2000 Tower Street, Everett, WA 98201.

Date of Intended Adoption: June 18, 2018.

Submit Written Comments to: Stephen Smith, Interim Executive Director of Human Resources, 2000 Tower Street, email stsmith@everettcc.edu, 425-259-8933, by May 14, 2018.

Assistance for Persons with Disabilities: Contact Stephen Smith, interim executive director of human resources, phone 425-259-8933, email stsmith@everettcc.edu, by May 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college provides instruction in a facility that is not currently listed in our information for "educational opportunities." This change adds "AMTEC," the Advanced Manufacturing Training and Education Center location.

Reasons Supporting Proposal: Accuracy in reporting the locations for Everett Community College.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Stephen Smith, interim executive director of human resources, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Howard, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-388-9232; Implementation and Enforcement: Stephen Smith, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-259-8933.

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 cost impacts.

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.

March 5, 2018
Jennifer L. Howard
Vice President
Administrative Services

AMENDATORY SECTION (Amending WSR 16-08-121, filed 4/6/16, effective 5/7/16)

WAC 132E-133-020 Organization—Operation—Information. (1) Organization. Everett Community College is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

President's Office
Everett Community College
2000 Tower Street
Everett, WA 98201-1352

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

Everett Community College
Aviation Maintenance Technician School
9711 - 31st Place W.
Building C-80
Paine Field

Everett, WA 98204
Everett Community College
Corporate & Continuing Education Center
2333 Seaway Blvd.
Everett, WA 98204

Everett Community College
Advanced Manufacturing Training and
Education Center (AMTEC)
909 N. Broadway Avenue
Everett, WA 98201

Everett Community College
School of Cosmetology
9315 G State Avenue
Marysville, WA 98270

Everett Community College
Early Learning Center
820 Waverly Avenue
Everett, WA 98201

Everett Community College
Walt Price Student Fitness Center
2206 Tower Street
Everett, WA 98201

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

Everett Community College
2000 Tower Street
Everett, WA 98201-1352

WSR 18-06-069
PROPOSED RULES
EVERETT COMMUNITY COLLEGE

[Filed March 5, 2018, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-081.

Title of Rule and Other Identifying Information: WAC 132E-130-030 Seniority.

Hearing Location(s): On May 15, 2018, at 5:00 p.m., at Everett Community College, Jackson Senate Room, 2000 Tower Street, Everett, WA 98201.

Date of Intended Adoption: June 18, 2018.

Submit Written Comments to: Stephen Smith, Interim Executive Director of Human Resources, 2000 Tower Street, email stesmith@everettcc.edu, 425-259-8933, by May 14, 2018.

Assistance for Persons with Disabilities: Contact Stephen Smith, interim executive director of human resources, phone 425-259-8933, email stesmith@everettcc.edu, by May 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify a conflict between the existing faculty union collective bargaining

agreement process for seniority, and the existing WAC. The revised WAC references the collective bargaining agreement, so if there are changes, readers will be directed to the most current language.

Reasons Supporting Proposal: Clarity is necessary for effective implementation.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Stephen Smith, interim executive director of human resources, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Howard, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-388-9232; Implementation and Enforcement: Stephen Smith, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-259-8933.

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 cost impacts.

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.

March 5, 2018
Jennifer L. Howard
Vice President
Administrative Services

AMENDATORY SECTION (Amending WSR 82-18-068, filed 9/1/82)

WAC 132E-130-030 Seniority. Seniority shall be determined by establishing the beginning date (~~(of the signing)~~) of the first full-time contract for continuous full-time professional services for Community College District V and continuous professional services for the Everett school district prior to July 1967. Continuous service shall include leaves of absence, professional leaves, and periods of layoffs. The longest term of employment as thus established shall be considered the highest level of seniority. In instances where faculty members have the same contract beginning date of full-time professional service, seniority shall be determined ~~((in the following order:~~

- ~~(1) First date of signature of an employment contract.~~
- ~~(2) First date of signature of letter of intent.~~
- ~~(3) First date of application for employment)) as described in the collective bargaining agreement.~~

WSR 18-06-079
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed March 6, 2018, 9:28 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-440-030 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 18-06-080
PROPOSED RULES
HEALTH CARE AUTHORITY
 [Filed March 6, 2018, 9:58 a.m.]

Supplemental Notice to WSR 18-02-088.

Preproposal statement of inquiry was filed as WSR 17-11-029.

Title of Rule and Other Identifying Information: WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Hearing Location(s): On April 10, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 11, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 10, 2018.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.loughheed@hca.wa.gov, by April 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, to align with new credentialing for ABA providers through the Washington state department of health (DOH) under chapter 246-805 WAC. The agency added requirements for providers to be recognized by the agency as centers of excellence (COE).

This supplemental notice to WSR 18-02-088 removes advanced registered nurse practitioners (ARNP) from subsection (2), which lists professionals that automatically qualify as COEs because of provider specialty. ARNPs are currently listed in subsection (3), which lists professionals that require additional experience and training to qualify as COEs.

Reasons Supporting Proposal: The new credentialing requirements for ABA providers are required under SSB 5488 of 2015. The information regarding COEs is being added to clarify requirements.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5488, 64th legislature, 2015 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 64th legislature, 2015 regular session.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Rebecca Peters, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1194.

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 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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. The agency determined that these rules do not impose more-than-minor costs on businesses. Most of the new rules are being revised to comply with legislative requirements and align with DOH credentialing requirements. The training and form requirements for COEs do not impose more than a minor cost to businesses. The required training applies to certain physicians and ARNPs (one employee per COE) and is provided at no cost and in several locations.

March 6, 2018
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

- (i) ~~(An advanced registered nurse practitioner (ARNP);~~
- ~~(ii))~~ A developmental pediatrician;
- ~~((iii))~~ (ii) A neurologist;
- ~~((iv))~~ (iii) A pediatric neurologist;
- ~~((v))~~ (iv) A pediatric psychiatrist;
- ~~((vi))~~ (v) A psychiatrist; or
- ~~((vii))~~ (vi) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section and who has been designated by the agency as a COE.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

- (i) Using a validated diagnostic tool;
- (ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or
- (iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) To be recognized as a COE by the agency, the provider must submit a signed COE Attestation form, HCA 13-009, to the agency.

(5) The COE must be enrolled with the agency or the client's managed care organization (, unless the client has third-party insurance) to be reimbursed for services.

((5)) (6) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

((6)) (7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

((7)) (8) The lead behavior analysis therapist (LBAT) must ((be)):

(a) Be licensed by the department of health (DOH) to practice independently as ((an ARNP, physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,)) a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) ((Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or

(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC)). Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed

psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-008, regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.

((8)) (9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) A ((board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB))) DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

(b) ((Eligible to sit for board certification under standards set by the BACB; or

(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB)) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

((9)) (10) If the LBAT's role is filled by a ((BCaBA)) LABA, the responsibilities below must be fulfilled by both the ((BCaBA)) LABA and the supervising ((BCBA)) LBA or licensed psychologist, as required by ((the BACB)) DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the ((therapy assistant)) certified behavior technician per week.

((Therapy assistant.

(10) The therapy assistant (TA) must be:

(a) Able to practice independently by being licensed))

Certified behavior technician.

(11) The certified behavior technician (CBT) must:

(a) Be certified by DOH as a ((licensed mental health practitioner or credentialed as a counselor)) CBT under ((Title 18)) chapter 18.380 RCW in good standing with no license restrictions; or

(b) ((Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;

((11)) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a

signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency.

~~(12)~~ The ~~((TA))~~ CBT must enroll as a ~~((performing or))~~ servicing provider ~~((and have:~~

~~(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and~~

~~(b) A letter of attestation signed by the lead LBAT, documenting that the ~~((TA))~~ CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services:~~

~~(12))~~ under chapter 182-502 WAC.

~~(13)~~ The ~~((TA))~~ CBT must:

(a) Deliver services according to the ABA therapy treatment plan; ~~((and))~~

(b) Be supervised by ~~((an LBAT))~~ a DOH-licensed professional who meets the requirements under ~~((subsection (7), (8), and (9) of this section))~~ WAC 246-805-330; and

(c) Review the client's progress with the ~~((LBAT))~~ supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the ~~((LBAT))~~ supervisor.

Facility-based day program.

~~((13))~~ ~~(14)~~ All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following ~~((licensure))~~ requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;

~~(b) ((A clinic or nonhospital based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~

~~(c) A) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; ~~((and~~~~

~~(d))~~ (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.

WSR 18-06-084

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed March 6, 2018, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-044 on November 8, 2017.

Title of Rule and Other Identifying Information: The department is creating new and amending existing hunting and fishing rules that apply to individuals with disabilities to include the following: Amending WAC 220-200-160 Defini-

tion of a person with a disability, 220-200-170 Special use permits, 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability and 220-413-140 Hunting of game birds and animals by persons with a disability; and new WAC 220-200-180 Suspension of a special use permit—Appeal hearing, 220-200-190 Disability designation, and 220-413-210 Trapping of furbearing animals by persons with a disability.

Hearing Location(s): On April 13-14, 2018, at 8:00 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

Date of Intended Adoption: On or after June 15, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by April 10, 2018.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the new and amended rules is to better clarify hunting and fishing regulations for individuals with disabilities and ensure consistency with state law.

Reasons Supporting Proposal: The department seeks to better define hunting and fishing privileges that apply to the disabled and designated hunter companions.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400.

Statute Being Implemented: RCW 77.12.045, 77.12.047, and 77.04.020.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dolores Noyes, 1111 Washington Street S.E., Olympia, WA 98504 [98501], 360-902-2349; and Enforcement: Chief Steve Bear, 1111 Washington Street, Olympia, WA 98501, 360-902-2373.

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 proposed rule changes do not affect hydraulics.

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; and rule content is explicitly and specifically dictated by statute.

March 6, 2018

Scott Bird

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-200-160 Definition of a person with a disability. (1) "Person with a disability" for purposes of eligibility under disability designation means a person who has a permanent ~~((physical))~~ disability ~~((or permanent developmental disability))~~ which substantially impairs ~~((their))~~ the person's ability to participate in recreational activities or to access department lands ~~((and))~~ including, but not limited to:

(a) "Lower extremity disability," which means ~~((a))~~ the person ~~((who))~~ has a permanent lower extremity impairment and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently use a medically prescribed assistive device every time for mobility including, but not limited to, a wheelchair, crutch, walker, or oxygen bottle; or

(b) "Upper extremity disability," which means ~~((a))~~ the person ~~((who))~~ has a permanent upper extremity impairment and is physically limited in their ability to hold and safely operate a legal hunting or harvesting device ~~((or))~~.

These definitions include, but are not limited to, persons with a permanent upper or lower extremity impairment who have lost the use of one or both upper or lower extremities, or who have a severe physical limitation in the use of one or both upper or lower extremities, or who have a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities.

(2) "Blind" or "visually impaired," which means:

(a) ~~((Blindness is))~~ Having a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed twenty degrees; or

(b) ~~((Low vision is))~~ Having a severe loss of visual acuity ranging from 20/70 to 20/200 while retaining some visual function; or

(c) Having inoperable visual impairments ~~((may include))~~ including, but are not limited to: Albinism, aniridia, aphakia, cataracts, glaucoma, macular degeneration, or other similar diagnosed disease or disorder.

(3) "Developmental disability," which means a cognitive intellectual disability such as: Cerebral palsy, down syndrome, epilepsy, autism, or another neurological condition of an individual found to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-200-170 Special use permits. (1) ~~((The director may develop conditions and criteria for administering and issuing special use permits to allow for reasonable accommodations for persons with disabilities.~~

~~((2) The hunters and fishers with disabilities advisory committee established in RCW 77.04.150 may assist the~~

~~department in evaluating requests and criteria for issuing special use permits.~~

~~((3) Special use permits must be carried on the person acting under or using devices authorized by the special use permit.~~

~~((4) The terms for use granted by a special use permit, when provided as a reasonable modification, supersede department rules that conflict with the terms of the special use permit.~~

~~((5) Failure to abide by the conditions of a special use permit is punishable under RCW 77.15.400, 77.15.430, or 77.15.750;))~~ A special use permit issued by the department sets forth terms and conditions to allow for reasonable accommodations for persons granted disability designation.

(2) A special use permit must be carried on the person acting under or using devices authorized by the special use permit.

(3) The terms for use granted by a special use permit, when provided as a reasonable modification, supersede department rules that conflict with the terms of the special use permit.

(4) It is unlawful to fail to abide by the conditions of a special use permit. Violation of this subsection is punishable under RCW 77.15.160 (6)(b), 77.15.230, or 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

NEW SECTION

WAC 220-200-180 Suspension of a special use permit—Appeal hearing. (1) The department may suspend a person's special use permit for the following reasons and corresponding lengths of time:

(a) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is found to have committed an infraction under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for two years;

(b) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of a misdemeanor or gross misdemeanor under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for five years;

(c) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department, the department shall suspend the person's special use permit for life;

(d) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that

continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of a felony violation under Title 77 RCW for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for life;

(e) If the person has a hunting or fishing license revoked or has hunting or fishing license privileges suspended in another state, the department shall suspend the person's special use permit for the duration of the underlying suspension or revocation;

(f) If the person is cited, or charged by complaint, for an offense under Titles 76, 77, 79, 79A, 9, and 9A RCW; or for unlawful use of a department permit, trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department for an act committed while the person is using the special use permit, the department shall immediately suspend the person's special use permit until the offense has been adjudicated; or

(g) If the person submits fraudulent information to the department related to the person's special use permit, the department shall suspend the person's special use permit for five years.

(2) The department may suspend a person's special use permit for two years if the person fails to abide by the terms or conditions of the special use permit issued to that person.

(3) Any person with a disability issued a special use permit, who is notified of an intended suspension may request an appeal hearing under chapter 34.05 RCW. A written request for hearing must be received within twenty days of the notice of suspension.

NEW SECTION

WAC 220-200-190 Disability designation. (1) A person meeting the definition of "person with a disability" under WAC 220-200-160, and who submits the required application and accompanying documentation shall be granted a disability designation by the department.

(2) A person whose application for a disability designation is denied by the department may request a hearing to contest the denial. A written request for a hearing must be received within twenty days of the notice of suspension.

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability. (1) Definitions:

(a) "Harvester with a disability" means a person ~~((with a permanent))~~ who has been granted a disability designation and who possesses a valid disabled harvester ~~((permit))~~ endorsement issued by the department;

(b) "Disabled harvester ~~((permit))~~ endorsement" means ~~((a permit, card, or))~~ an endorsement to a license issued by the department to ~~((any))~~ a person ~~((with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability))~~ who has been granted a disability designation;

~~((i) A designated harvester companion card will be issued to the holder of a disabled harvester permit along with the issuance of a harvesting license.))~~

(c) "Designated harvester companion" means a designated person who only assists with that physical function the harvester with a disability is unable to perform during his or her recreational activity in the taking of shellfish, food fish, or game fish;

(d) "Designated harvester companion card" means an identification card issued by the department to a harvester with a disability for use by another person in assisting or acting on the behalf of the harvester with a disability while engaging in fishing or harvesting activities.

(2) A designated harvester companion card will be issued to the holder of a disabled harvester endorsement along with the issuance of a harvesting license.

(3) It is unlawful for a harvester with a disability to fail to obtain all licenses, permits and catch record cards prior to fishing.

~~((3))~~ (4) The designated harvester companion, when accompanied by the harvester with a disability, may assist the harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the harvester with a disability.

~~((4))~~ (5) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the harvester with a disability is present and participating in the fishing activity, except:

~~((a))~~ The harvester with a disability is not required to be present at the location where the designated harvester companion is harvesting shellfish for the harvester with a disability. The harvester with a disability is required to be in the direct line of sight of the designated harvester companion who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the harvester with a disability is required to be within one-quarter mile of the designated harvester companion who is harvesting shellfish for him or her and must have a form of reliable and direct communication.

~~((5))~~ (6) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion ~~((is licensed and has the designated harvester companion card on his or her person))~~ has a valid equivalent harvesting license issued by Washington state or another state.

(7) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion is licensed and has the designated harvester companion card on his or her person.

~~((6))~~ (8) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a harvester with a disability becomes part of the harvester with a disability's ~~((bag))~~ daily or possession limit, and must be kept separate from the designated harvester companion's ~~((bag))~~ daily or possession limit.

~~((7) A violation of this section is punishable under RCW 77.15.380.)~~ (9) It is unlawful for a harvester with a disability to utilize spin casting gear during fly fishing only

season, unless the harvester with a disability has been issued a special use permit from the department.

(a) Such person may use spin casting gear with a casting bubble and monofilament line with no limit on breaking strength; and

(b) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150, apply to both conventional fly fishing and spin casting fly fishing.

(10) A violation of this section is punishable under RCW 77.15.380, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-413-140 Hunting of game birds and animals by persons with a disability. (1) Definitions:

(a) "Hunter with a disability" means a person ~~((with a permanent))~~ who has been granted a disability designation and who possesses a valid disabled hunter ((permit)) endorsement issued by the department.

(b) "Disabled hunter ~~((permit))~~ endorsement" means ~~((a permit, card, or))~~ an endorsement to a license issued by the department to ((any)) a person ((with a permanent)) granted a disability ((who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability.

~~(i) Upon approval of the application, the department will issue a vehicle identification placard.~~

~~(ii) A designated hunter companion card will be issued to the holder of a disabled hunter permit along with the issuance of a hunting license))~~ designation.

(c) "Designated hunter companion" means a designated person who only assists with that physical function the hunter with a disability is unable to perform, such as stalking, shooting, tracking, retrieving, or the tagging of game birds and game animals.

(d) "Designated hunter companion card" means an identification card issued by the department to a hunter with a disability for use by another person in assisting or acting on the behalf of the hunter with a disability while engaging in hunting activities.

(e) "Accompany" means the hunter with a disability and the designated hunter companion are in the physical presence of each other, not to exceed a 1/4-mile separation. While stalking or shooting an animal, the hunter with a disability and the designated hunter companion must have a form of reliable and direct communication.

(2) A designated hunter companion card will be issued to the holder of a disabled hunter endorsement upon purchase of a hunting license.

(3) It is unlawful for a hunter with a disability to fail to obtain all required licenses, tags, or stamps before hunting.

~~((3))~~ (4) It is unlawful for a designated hunter companion to assist a hunter with a disability unless the designated hunter companion has the designated hunter companion card on his or her person. A designated hunter companion must have a valid hunting license issued by Washington state or another state.

(a) The designated hunter companion must accompany the hunter with a disability when stalking or shooting game on behalf of the hunter with a disability.

(b) The designated hunter companion does not need to accompany the hunter with a disability while tracking an animal wounded by either hunter, or while tagging or retrieving a downed animal on behalf of the hunter with a disability.

~~((4))~~ (5) It is unlawful for the hunter with a disability or the designated hunter companion to fail to:

(a) Immediately cut, notch, or date any required tag upon harvesting a game bird or animal; and

(b) Affix the tag to the carcass of the game bird or animal as soon as reasonably possible after killing the game.

~~((5) A violation of subsection (2), (3), or (4) of this section is punishable under RCW 77.15.400, 77.15.410, 77.15.430, or 77.15.750 or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.))~~

(6) Game birds or game animals killed, tagged or retrieved by a designated hunter companion on behalf of a hunter with a disability do not count against the designated hunter companion's bag or possession limit.

(7) It is unlawful for a hunter with a disability to possess a loaded firearm in a motor vehicle, or shoot from a motor vehicle, unless the ~~((vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off. A disabled hunter vehicle identification placard must be displayed and visible))~~ hunter with a disability has been issued a special use permit from the department, and:

(a) The vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off; and

(b) A valid blue disabled hunter "shooting from a vehicle" identification placard must be displayed and visible.

(8) It is unlawful for a hunter with a disability to utilize a crossbow in archery or muzzleloader season, unless the hunter with a disability has been issued a special use permit from the department.

(9) A violation of this section is punishable under RCW 77.15.400, 77.15.410, 77.15.430, or 77.15.750 or other statutes under chapter 77.15 RCW, depending on the circumstances of the violation.

NEW SECTION

WAC 220-413-210 Trapping of furbearing animals by persons with a disability. (1) Definitions:

(a) "Trapper with a disability" means a person who has been granted a disability designation and who possesses a valid disabled trappers endorsement issued by the department.

(b) "Disabled trapper endorsement" means an endorsement to a license issued by the department to a person granted a disability designation.

(c) "Designated trapper companion" means a designated person who only assists with that physical function the trapper with a disability is unable to perform, such as trap placement, baiting, patrolling, retrieving, or the tagging of furbearing animals during trapping season.

(d) "Designated trapper companion card" means an identification card issued by the department to a trapper with a disability for use by another person in assisting or acting on the behalf of the trapper with a disability while engaging in trapping activities.

(e) "Accompany" means the trapper with a disability and the designated trapper companion are in the physical presence of each other, not to exceed a 100-foot separation. The trapper with a disability and the designated trapper companion must have a form of reliable and direct communication.

(2) A designated trapper companion card will be issued to the holder of a disabled trapper endorsement upon purchase of a trapping license.

(3) It is unlawful for a trapper with a disability to not follow all agency rules and to fail to possess all required licenses and permits before trapping.

(4) It is unlawful for a designated trapper companion to assist a trapper with a disability unless the designated trapper companion has the designated trapper companion card on his or her person. A designated trapper companion must have a valid trapper license issued by Washington state or another state.

(a) The designated trapper companion must accompany the trapper with a disability during trap placement, baiting, and patrolling on behalf of the trapper with a disability.

(b) The designated trapper companion does not need to accompany the trapper with a disability while retrieving the catch on behalf of the trapper with a disability.

(5) Furbearing animals killed or retrieved by a designated trapper companion on behalf of a trapper with a disability do not count against the designated trapper companion's bag, daily, or possession limit.

(6) A violation of this section is punishable under WAC 220-417-010, 220-417-020, 220-417-030, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

WSR 18-06-085
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 6, 2018, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-085.

Title of Rule and Other Identifying Information: Amends WAC 181-86-180 concerning voluntary revocation. The primary change is the format requirements and clarification.

Hearing Location(s): On May 17, 2018, at 8:30, at the Hampton Inn, 486 Bradley Boulevard, Richland, WA 99352.

Date of Intended Adoption: May 17, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by May 10, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by May 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of professional practice offers voluntary surrender of a license. This WAC change clarifies and simplifies the requirements.

Reasons Supporting Proposal: Streamlines and clarifies rule, does not make significant policy changes.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, Catherine Slagle, director of OPP, office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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.

March 6, 2018

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-180 Voluntary surrender of certificates. A holder of a certificate who has not received a final order for revocation of his or her certificate may voluntarily surrender his or her certificate to the superintendent of public instruction if the certificate holder believes that he or she is or might be ineligible to hold a certificate for any reason which is or might constitute grounds for ~~((revocation of))~~ disciplinary action for the certificate holder other than conviction of a felony crime stated within WAC 181-86-013(1).

A certificate holder voluntarily surrendering a certificate shall provide the superintendent of public instruction the following affidavit(=):

"I(~~(,.....,))~~) have reason to believe that I am or might be ineligible to hold a certificate(s) for reasons ~~((which))~~ that do or might constitute grounds for ~~((revocation of the certificate(s)). Accordingly, I hereby voluntarily surrender the following certificate(s):~~

- (1) Cert. No.
- (2) Cert. No.

I have not been to the best of my knowledge convicted of any felony crime listed within WAC 181-86-013(1).

I agree, if I request reinstatement of the certificate(s) I have voluntarily surrendered, to provide the superintendent of public instruction with an affidavit describing in full the reasons for my voluntary surrender of the certificate(s) listed above. I further understand that the superintendent of public

~~instruction will notify other states and public and private school officials within the state of Washington that I have voluntarily surrendered my)) disciplinary action on the certificate(s). I further understand that the superintendent of public instruction will notify other states and public and private school officials with the state of Washington that I have voluntarily surrendered my certificate(s)."~~

Name: _____ Certificate Number: _____

Upon request for reinstatement of such certificate, the applicant must comply with chapter 181-77 or 181-79A WAC and, in addition, must disclose in full the reasons for the voluntary surrender of the certificate. In the event the surrendered certificate would have expired or lapsed but for the surrendering of the certificate, the applicant must meet all requirements for reinstating an expired or lapsed certificate.

WSR 18-06-086
WITHDRAWAL OF PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 (by Code Reviser's Office)
 [Filed March 6, 2018, 12:45 p.m.]

WAC 392-400-325, 392-401-005, 392-401-010, 392-401-015, 392-401-020 and 392-401-030, proposed by the superintendent of public instruction in WSR 17-17-167, appearing in issue 17-17 of the Washington State Register, which was distributed on September 6, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 18-06-087
PROPOSED RULES
SECRETARY OF STATE
 [Filed March 6, 2018, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-10-038.

Title of Rule and Other Identifying Information: Elections related to ballot declaration, ballot postmark, security, replacement ballots, recounts, voter intent, ballot signatures, initiative signatures, validation statistics, recounts, and other related subjects.

Hearing Location(s): On April 12, 2018, at 10:00 a.m., at the Secretary of State Elections Office, 520 Union Avenue S.E., Olympia, WA 8501 [98501].

Date of Intended Adoption: April 13.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504-0229, email sheryl.moss@sos.wa.gov, fax 360-664-4619, by March 26, 2018.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4180, fax 360-664-4619, email sheryl.moss@sos.wa.gov, by March 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments provide statewide consistency in election administration and voter registration. The [This] includes clarification of a voter's signature for ballots and state petitions, the ballot declaration, ballot postmark, recounts, voter intent, replacement ballots, ballot processing, testing of tabulation programming and accessible voting units, validation statistics, secure storage and locations.

Reasons Supporting Proposal: Changes clarify procedures for the improvement of election administration, voter registration, and the initiative process for statewide consistency.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sheryl Moss, Miriam Campbell, P.O. Box 40229, Olympia, WA 98504, 360-902-4180; and Enforcement: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, 360-902-4180.

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.

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

March 6, 2018
 Mark Neary
 Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-230-015 Ballots and instructions. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A citizen of the United States;

A legal resident of the state of Washington;

At least 18 years old on election day;

Voting only once in this election;

Not under the authority of the Department of Corrections for a Washington felony conviction; ~~((and))~~

Not disqualified from voting due to a court order~~((:))~~;

Not voting in any other jurisdiction in the United States for this election; and

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

~~((t))~~ (d) Explain how the voter may make a mark, witnessed by two other people, if the voter is unable to ~~((sign the declaration))~~ write their signature;

(e) Explain that a power of attorney cannot be used to sign a ballot for someone else;

(f) Explain how to place the ballot in the security envelope and place the security envelope in the return envelope;

~~((g))~~ (g) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

~~((g))~~ (h) If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;

~~((h))~~ (i) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

~~((i))~~ (j) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

~~((j))~~ (k) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

~~((k))~~ (l)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice president appear on the general election ballot, the following must be added to the statement required by (k)(i) of this subsection:

"The election for president and vice president is different. Candidates for president and vice president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6)(a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) Counties may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

Counties may use ballot envelopes and instruction in stock until December 31, 2018.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-080 Replacement ballots. The county auditor ~~((may))~~ shall issue a replacement ballot, as authorized by RCW 29A.40.070, if the request is received prior to 8:00 p.m. on election day. Requests may be made in person, in writing, by telephone, or electronically, by the voter, a family member, or a registered domestic partner.

Each county auditor shall allow access to an electronic ballot system to both active and inactive voters for replacement ballots no later than the eighth day prior to election day.

If a voter appears in person at a county auditor's office before 8:00 p.m. election day and requests a ballot, the county auditor must determine if the voter is registered to vote in Washington.

(1) If the voter is registered in the same county, issue a replacement ballot.

(2) If the voter is registered in another county, access and print a replacement ballot from that county, if the electronic ballot system is available.

(3) If the voter is not registered within the state or the electronic ballot system is not available, the county auditor must offer the voter a provisional ballot.

Replacement ballots or the original ballot, whichever is received first, shall be credited to the voter's registration file and tabulated if the ballot meets all requirements for tabulation. If the auditor receives additional ballots from a voter, as indicated by the fact that the voter is already credited with voting, the additional ballots shall not be counted and shall be forwarded to the county canvassing board for rejection.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

(a) Verification of the signature and postmark on the ballot declaration;

(b) Removal of the security envelope from the return envelope;

(c) Removal of the ballot from the security envelope;

(d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;

(e) Duplication of damaged and write-in ballots;

(f) Scanning and resolution of ballots on a digital scan voting system; and

(g) Other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an optical scan voting system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ballots.

If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ballots.

(5) Initial processing of voted ballots ~~((, which may include scanning and resolving ballots on a digital scan voting system;))~~ may begin as soon as voted ballots are received. Initial processing includes digital scanning and resolution of ballots where tabulation does not take place. All ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor follows a security plan that has been submitted by the county auditor and approved by the secretary of state to prevent tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all overvotes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted if:

(a) The ballot declaration is signed with a valid signature. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter.

(i) If the voter is unable to sign his or her name, the voter may make a mark or symbol with two witnesses' signatures. A signature stamp accompanied by two witness signatures is an acceptable mark.

(ii) A power of attorney cannot be used as a signature for a voter;

(b) The signature has been verified pursuant to WAC 434-379-020 ~~((, or if the voter is unable to sign his or her~~

name, two other persons have witnessed the voter's mark)); and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The postmark on the envelope is the official date of mailing. If there are two postmarks, the earlier postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) The ballot is received by fax or email no later than 8:00 p.m. on election day. If the ballot is from a voter who is neither a service nor overseas voter, a hard copy of the ballot and ballot declaration must also be received no later than the day before certification of the election.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4)(a) For ballots returned by fax or email, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted ballots returned by email may be returned with multiple attachments or as multiple emails.

(b) If the ballot is from a voter who is neither a service nor overseas voter, the voter must also return a hard copy of the ballot and ballot declaration no later than the day before certification.

(i) Consistent with WAC 434-250-080, the first valid ballot and declaration received is counted; subsequently received versions are not counted.

(ii) In order to maintain secrecy of the ballot, the hard copy ballot may not be compared to the ballot received electronically.

(iii) Voted ballots returned electronically no later than 8:00 p.m. on election day are timely even if the hard copy subsequently returned contains a postmark after election day.

(c) Ballots returned electronically with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(5) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-261-045 Secure storage. ~~((Received ballots and ballot images must be maintained))~~ Secure storage is a container or room that stores voted ballots and electronic data containing voted ballot images. Secure storage must employ the use of numbered seals and logs, or other security measures, that document each individual's access to the voted ballots or voted ballot images, and detect inappropriate access to the secure storage. Voted ballots and voted electronic ballot images must remain in secure storage except during processing, duplication, resolution, inspection by the canvassing board, or tabulation. ((Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials. Ballots and)) Unsecured ballots must be accompanied by at least two county auditor staff at all times.

A secure location is a room or other facility where programming and equipment used for ballot tabulation are stored. A secure location must use the same security measures as for voted ballots and voted ballot images.

Use of numbered seals requires:

(1) A seal log that documents the numbers of the seals and the individuals applying or removing seals; and

(2) At least two individuals present when seals are applied or removed. Both must sign the seal log.

Closing of unstaffed ballot boxes must follow WAC 434-250-100. Voted ballots and voted ballot images may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-261-050 Unsigned ballot declaration or mismatched signatures. (1) If a voter neglects to sign a ballot declaration, signs with a mark and fails to have two witnesses attest to the signature, or signs but the signature on the ballot declaration does not match the signature on the voter

registration record, the county auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign, or signs with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the declaration no later than the day before certification of the primary or election; or

(b) Sign a copy of the declaration, or mark the declaration in front of two witnesses, and return it to the county auditor no later than the day before certification of the primary or election.

(3) If the signature on the declaration does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the registration form becomes the signature in the voter registration record for the current election and future elections; or

(b) Sign a signature update form that includes both the ballot declaration required by WAC 434-230-015 and the voter registration oath required by RCW 29A.08.230, and return it to the county auditor no later than the day before certification of the primary or election. The signature on the signature update form must match the signature on the returned ballot declaration. The signature provided on the signature update form becomes the signature in the voter registration record for the current election and future elections.

(4)(a) If the signature on the declaration does not match the signature on the registration record because the last name is different, the ballot may be counted as long as the first name and handwriting are clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the county auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(b) If the signature on the ballot declaration does not match the signature on the registration record because the voter signed with a middle name, nickname, or initials, the ballot may be counted as long as the last name and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name, and the signature on the ballot declaration does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the ballot declaration if:

(a) The voter who signed the declaration can be identified;

(b) The signature on the declaration matches the signature on the voter registration record; and

(c) The voter who signed the declaration has not returned another ballot.

The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote.

(6) Disposition of other ballot signature circumstances:

(a) Ballot signed using a power of attorney. The county auditor shall process the ballot in the same manner as an unsigned ballot and send an affidavit that explains:

(i) A power of attorney cannot be used for voting purposes;

(ii) The penalty for voting another's ballot;

(iii) The voter must personally sign or make a mark witnessed by two people;

(iv) How to contact the county auditor immediately if the voter did not vote the ballot submitted.

The affidavit shall provide the following declaration for the voter's signature:

"I do solemnly swear or affirm under penalty of perjury that I:

Am a citizen of the United States;

Am a legal resident of the state of Washington;

Am at least 18 years old on election day;

Am voting only once in this election;

Am not under the authority of the department of corrections for a Washington felony conviction;

Am not disqualified from voting due to a court order;

Am not voting in any other jurisdiction in the United States in this election;

Voted the ballot submitted and am authorizing the ballot to be counted on my behalf; and

Understand it is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The county auditor shall forward the ballot to the prosecuting attorney for further investigation if the voter indicates they did not vote the ballot submitted.

(b) Ballot signed by a voter's signature stamp. The county auditor shall accept the signature stamp if it is accompanied by the signatures of two witnesses. Without the witness signatures, the county auditor shall process the ballot in the same manner as an unsigned ballot.

(c) Ballot signed by a different voter and that voter has already submitted a ballot. The county auditor shall process the ballot in the same manner as an unsigned ballot and send an affidavit that explains:

(i) The penalty for voting another's ballot;

(ii) The voter must personally sign or make a mark witnessed by two people;

(iii) How to contact the county auditor immediately if the voter did not vote the ballot submitted.

The affidavit shall provide the declaration for ballots signed by a power of attorney in subsection (6) of this section.

The county auditor shall forward the ballot to the prosecuting attorney for further investigation if the voter indicates they did not vote the ballot submitted.

(7) If it is determined that the signature on a ballot declaration does not match the signature on the registration record and, prior to 8:00 p.m. on election day, the registered voter asserts that the signature on the ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

~~((7))~~ (8) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

~~((8))~~ (9) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481 (a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area shall be valid only if they form a pattern of similar marks as outlined in (b) of this subsection, or qualify as written instructions in (e) of this subsection. Marks that trace or outline the target area are not valid votes unless they form a pattern of similar marks as outlined in (b) of this subsection. The following marks in the target area are exceptions that are not valid votes:

- (i) Obvious stray marks;
- (ii) Hesitation marks;
- (iii) Parts of written notes; and
- (iv) Corrected votes, as described in (c) and (e) of this subsection.

(b) Pattern of similar marks. Marks made outside of the target area shall be counted as valid votes as long as those marks form a pattern of similar marks. All races and issues for which the voter has indicated a choice outside the target area must have a similar mark.

(i) Marks made outside of the target area may be counted as valid votes even if one pattern of similar marks is used on one page of the ballot and another pattern of similar marks is used on another page of the ballot.

(ii) Marks made outside of the target area shall be counted as valid votes if one pattern of similar marks is used for measures and another pattern of similar marks is used for candidate races.

(iii) If some marks are in the target area and some are not, but the same *type* of mark is used, all such marks shall be counted as valid votes.

(iv) If the marks strike through candidate names or ballot measure responses in a pattern of similar marks throughout the ballot, all such marks shall be counted as valid votes.

(v) A mark outside the target area on a ballot that contains only one race or measure is not required to form a pattern.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote. If a second choice is not marked, the race shall be considered undervoted.

(iii) If the voter has marked two target areas and placed an 'X' or slash over one of the marked areas, the choice without the 'X' or slash shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and placed an 'X' in the same target area, but has not marked a second target, it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to vote or correct a vote by providing written instruction regarding his or her intent, it shall be counted as the voter instructed. Written instructions can include words, circles, lines, or arrows.

(f) Identifying marks. Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Write-in: Blank line and candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: ~~((Overvotes))~~ Candidate and write-in response area. If a candidate's target area is marked, the write-in target area is also marked, and something other than that candidate's name is written in the write-in response area,

it shall be counted as an overvote and not a valid vote for any candidate. ~~((This applies whether or not the target area for the write-in is marked.))~~ If a candidate's target area is marked and the write-in target area is not marked, it shall be counted as a valid vote for the marked candidate. If the voter's intent cannot be ascertained, the ballot shall be referred to the canvassing board.

(o) Write-in: Not eligible. A write-in vote for a race not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked in a target area partially extend into the response area, it shall be counted as a vote if most of the mark is in the target area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

Exception: On a federal write-in absentee ballot (FWAB) in which the voter has not written in a candidate's name but has written in the name of a political party, the written instructions may be counted as a vote if the canvassing board can discern that a candidate's party preference is consistent with the voter's instructions. The canvassing board shall not count the instructions as a vote if no candidate's party preference is consistent with the voter's instructions, or if multiple candidates' party preferences are consistent with the voters' instructions.

(s) Anything else. Voter intent on questionable marks not covered by the rules in this manual must be determined by county canvassing boards according to all applicable laws of the state of Washington and the canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-261-102 Resolving ballots on digital scan vote tallying systems. In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve each ballot(s) identified as

requiring resolution. Staff resolving ballots must have completed training on voter intent rules as outlined in WAC 434-261-086. A log of the resolutions must be printed linking staff conducting the resolutions to the ballots resolved. The log must be signed by the two staff.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-013 Crediting voters. (1) A voter may not be credited for voting if the ballot was voted after election day, was received later than the day before certification of the election, or will otherwise not be counted.

(2) The crediting of voters in the county election management system must be completed prior to certification of the election.

(3) The reconciliation of voters credited with ballots counted shall be completed prior to certification of the election. The certification must include, but is not limited to, information indicating that the number of ballots counted equals the number of voters credited. If these numbers do not match, the county auditor must take steps to reconcile the numbers and any discrepancies. If the county auditor cannot reconcile the numbers, documentation of steps taken to reconcile and any other applicable information must be included with the official reconciliation.

(4) Changes to the list of registered voters, such as new registrations, transfers, or cancellations, may not be made following a general election until the crediting reconciliation is complete. Correction of errors is allowed.

(5) The county auditor shall make an electronic or paper copy of the list of registered voters immediately following this reconciliation. ~~((Using this data))~~ Following each general election, the county auditor shall (also) use this data to produce (validation statistics) the number of voters participating in the election for each (minor) taxing district in the county as required by WAC 434-262-017. Once the list is copied and the ~~((validation statistics are))~~ taxing district voter turnout report is complete, changes to the database may be made.

(6) Following certification of the election, each credited voter's history of voting must be updated in the statewide voter registration database.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-262-017 ~~((Calculating validation figures and results for))~~ General election turnout for validation of bonds and levies. ~~((1) For bonds and levies other than school district levies, before determining a jurisdiction's validation figures,))~~ Following each general election, the county auditor must determine the number of (votes cast in the jurisdiction) voters participating in the (last) general election ((must be determined. For levies, the state Constitution states, "... the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election ..." For example:

10,000 votes cast in the jurisdiction in the last general election $\times 40\% = 4,000$ votes $\times 3/5 = 2,400$ votes

These numbers should be calculated based on the number of voters credited for voting in each jurisdiction, before adding, deleting, or transferring voters following the general election.

~~(2) When determining the results of a specific bond or levy, county auditors must not include overvotes or undervotes in the calculation. Rounding must not be used to reach the percentage of "yes" votes required for a bond or levy to pass~~) for each taxing district in the county and provide this number to each district. Districts may use that number to determine the number of votes required for bond and levy passage in the next year.

The county auditor is not responsible for determining minimum turnout or yes votes required for ballot measures and shall not determine if ballot measures meet requirements for passage.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

WAC 434-264-110 Manual recount—Process. The counting board may only count the responses for one race or measure at a time. The following process to count the ballots shall be used during a recount.

(1) Each counting board shall be given the ballots one precinct or batch at a time. The results from the original count shall not be given to the counting board with the ballots. The precinct or batch number must be made available to any observers.

(2) ~~The ((ballots)) counting board shall ((be sorted)) sort~~ the ballots into separate stacks for each of the candidates or side of a ballot measure. Additional stacks may be created for overvotes, undervotes, and write-ins.

(3) ~~((Each stack of ballots must be))~~ Members of the counting board must manually ((counted)) count each sorted stack at least twice to confirm the number of votes ~~((in each stack))~~. The results of the manual count shall not be shared until ~~((both persons have counted the ballots))~~ each stack's count has been confirmed.

(4) ~~((Individual tallies for each stack shall be compared.))~~ If the manual stack counts match, the counting board shall report the results ~~((shall be reported))~~ to the designated staff person and the results shall be compared to the precinct or batch results previously certified.

(5) If the ~~((two))~~ manual counts do not match the precinct or batch results previously certified, the ballots shall be counted by the same counting board one more time. If the manual counts still do not match the precinct or batch results previously certified, the discrepancy must be reported to the designated staff person and the ballots referred to another counting board to be confirmed.

(6) Once the results are confirmed, the canvassing board shall amend both the cumulative and precinct abstracts to reflect the results of the recount as required by RCW 29A.64.061.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-324-115 Challenge of voter's registration.

(1) All county auditors and the secretary of state shall furnish to the public on request forms that allow a registered voter to challenge the registration of another voter pursuant to RCW 29A.08.810 through 29A.08.850. The secretary of state must make the form available on its web site.

(2) Voter registration challenges filed with the county auditor shall be published on the county auditor's web site as required by RCW 29A.08.835. The final decision of the county auditor or canvassing board shall also be posted on the county auditor's web site. The challenge and final decision must remain on the county auditor's web site for one month after the final decision was made.

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-335-330 Logic and accuracy test certification.

(1) The official logic and accuracy test shall be certified by the county auditor or deputy, the secretary of state representative, and any political party observers for a state primary or general election in accordance with RCW 29A.12.130. Additionally, the county auditor must verify in writing that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions.

(2) The county auditor shall provide the secretary of state representative copies of the following documents:

- (a) Test results;
- (b) A zero report;
- (c) Signed verification of the version numbers;
- (d) Signed certification of the official logic and accuracy test;
- (e) A test log of:

(i) The number of accessible voting units to be used in the primary or election; and

(ii) The electronic duplication system, if electronic duplication will be used in the primary or election; and

(f) Any other documentation requested by the secretary of state representative in advance of the official test.

(3) Copies of the certification documents must be retained by the secretary of state and the county auditor. All test results, test ballots, the signed certification, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage ~~((until the equipment is used for a primary or election. The secure storage must use numbered seals and logs that will detect any inappropriate access))~~ as defined in WAC 434-261-045 until ballots are to be tabulated.

(4) If, for any reason, changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-335-550 Direct recording electronic target area tests. Each county employing a direct recording electronic voting device must conduct a test to confirm that the target area indicated on each ballot face is programmed correctly. If the direct recording electronic device is going to be employed as an electronic ballot marker, the county must follow the requirements of WAC 434-335-560. Otherwise, the county must test ~~((all ballot styles on at least one))~~ each device to ensure that the programming is correctly counting and accumulating every office, measure, and selection by the voter.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-560 Electronic ballot marker test. Each county employing an electronic ballot marker must conduct a test to confirm the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles ~~((on at least one device to ensure the programming is correctly marking the target area for every office, measure, and selection by the voter))~~ using the ballot marker programming and test all devices to ensure each device is marking ballots correctly.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-379-012 Acceptance of signatures. (1) The secretary of state must determine if the person who signed a petition is registered to vote. The information may be researched in voter registration records using first name, last name, address, or any combination thereof. A signature may not be rejected merely because:

(a) The person signed with a middle name, nickname, or initials instead of the first name in the voter registration records, as long as the handwriting is clearly the same;

(b) The last name on the petition differs from the last name in the voter registration records, as long as the addresses and the handwriting on the first name are clearly the same;

(c) The last name on the petition or in the voter registration records is hyphenated while the last name in the other source is not;

(d) The first name and last name on the petition are reversed in the voter registration records;

(e) The address on the petition does not match the address in the voter registration records;

(f) The handwriting on the printed name or address does not match the handwriting on the signature; or

(g) The voter is on inactive status.

(2) If the secretary of state is unable to locate the person in the voter registration records, the signature shall be rejected as not registered to vote.

(3) If the person is registered to vote, the signature on the petition sheet must be matched to the signature in the person's voter registration record using the standards in WAC 434-379-020. If the signature on the petition:

(a) Is handwritten and matches the signature in the voter registration record according to the standards in WAC 434-379-020, the signature must be accepted.

(b) Does not match the signature in the voter registration record, the signature must be rejected.

(c) Matches the signature in the voter registration record but another signature on the petition has already been accepted for that voter, the subsequent signature must be rejected as a duplicate.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-379-020 Signature verification standard.

A signature on a petition sheet must be matched to the signature on file in the voter registration records. The following characteristics must be utilized to evaluate signatures to determine whether they are by the same writer:

~~((1))~~ (1) The signature is handwritten.

~~((2))~~ (2) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

~~((2))~~ (3) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;

~~((3))~~ (4) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

~~((4))~~ (5) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

A single distinctive trait is insufficient to conclude that the signatures are by the same writer. There must be a combination or cluster of shared characteristics. Likewise, there must be a cluster of differences to conclude that the signatures are by different writers.

WSR 18-06-088

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed March 6, 2018, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-122 on May 21, 2013.

Title of Rule and Other Identifying Information: Amendments, new sections and repeals of existing regulations in chapters 220-352 and 220-354 WAC: Amending WAC 220-352-010 Fish receiving ticket definitions, 220-352-020 When state of Washington fish receiving tickets are required, 220-352-040 Description of Washington state nontreaty fish receiving tickets, 220-352-060 Distribution of copies of nontreaty fish receiving tickets, 220-352-130 Distribution of copies of shellfish receiving ticket, 220-352-140 Signatures—Fish receiving tickets, 220-352-150 Imprinters—Fish receiving tickets, 220-352-160 Fish receiving ticket accountability, 220-352-230 Commercial food fish and shellfish transportation ticket, 220-352-250 Sale under a limited fish seller endorsement, 220-354-090 Puget Sound salmon—Quick reporting, 220-354-250 Willapa Bay salmon fall fish-

ery and 220-354-290 Grays Harbor salmon fall fishery; new WAC 220-200-035 [220-352-035] Requirement to prepare fish receiving ticket forms completely and accurately—Determining the appropriate form, 220-352-290 Unlawful acts, 220-352-300 Coastal groundfish and halibut—Additional reporting requirements, 220-352-305 Coastal Dungeness crab—Additional reporting requirements, 220-352-310 Forage fish and mackerel—Additional reporting requirements, 220-352-315 Columbia River salmon, sturgeon and smelt—Additional reporting requirements, 220-352-320 Willapa Bay and Grays Harbor salmon and sturgeon—Additional reporting requirements, 220-352-325 Puget Sound salmon and sturgeon—Additional reporting requirements, 220-352-330 Coastal salmon troll—Additional reporting requirements, 220-352-335 Puget Sound shrimp—Additional reporting requirements, 220-352-340 Puget Sound crab—Additional reporting requirements, 220-352-345 Sea urchin and sea cucumber—Additional reporting requirements and 220-352-350 Geoduck—Additional reporting requirements; and repealing WAC 220-352-030 State of Washington fish receiving tickets—When not required—Unlawful acts, 220-352-050 Required information on nontreaty fish receiving tickets, 220-352-110 Description of Washington state electronic fish receiving ticket, 220-352-120 Required information on electronic fish receiving tickets, 220-352-180 Duties of commercial purchasers and receivers, and 220-352-190 Duties of commercial fishers.

Hearing Location(s): On or after April 13, 2018, at 8:00 a.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504 [98501].

Date of Intended Adoption: May 4, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2403, by April 12, 2018.

Assistance for Persons with Disabilities: Contact Tami Lininger, phone 360-902-2267, TTY 360-902-2207, email Tami.Lininger@dfw.wa.gov, by April 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to establish a voluntary program for expanding the use of electronic fish receiving tickets within the state. Electronic fish tickets are currently required by WDFW for all directed commercial groundfish deliveries caught off the west coast. The proposed rule would also expand mandatory electronic fish tickets to directed Pacific halibut fisheries, groundfish deliveries from Alaska and Canada, and research landings. In addition, staff are proposing to restructure chapter 220-352 WAC on fish tickets.

Reasons Supporting Proposal: Electronic fish receiving tickets data will improve the speed with which WDFW receives landings data and reduces data entry costs. Some buyers are already required to submit electronic tickets, and therefore this will reduce the burden of having to submit paper tickets for only select fisheries. Additionally, minor changes to the organization and language of the chapter will improve clarity on fish ticket rules for stakeholders and allow managers more flexibility in amending sections in the future.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.04.090.

Statute Being Implemented: None.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Corey Niles, 1111 Washington Street S.E., Olympia, WA, 360-902-2733; Implementation: Deputy Chief Mike Cenci, 1111 Washington Street S.E., Olympia, WA 360-902-2938; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2938.

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 does not affect hydraulics.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Introduction

Fish receiving tickets ("fish tickets") are mandatory for all commercial deliveries of unprocessed fish and shellfish in the state with few exceptions. This rule making would:

1. Create a voluntary program to expand the use of electronic fish tickets.
2. Expand mandatory electronic reporting of fish tickets to cover more deliveries of Pacific halibut and groundfish.
3. Reorganize and streamline existing fish ticket regulations.

The expansion of mandatory reporting is the one area that might impose additional costs on businesses. The reorganization and streamlining of the regulations are not expected to create new costs as the changes involved would only clarify existing rules and add minor substantive requirements (e.g., requiring buyers to report the place or port of delivery). Core requirements for fish tickets would remain unchanged.

The voluntary expansion of [the] electronic reporting program would likewise not be expected to adversely affect small businesses. Businesses would only be expected to participate if the costs of the program were less than minor or if there were other advantages of reporting electronically over using paper fish tickets.

Number and Type of Business[es] Affected

Mandatory electronic reporting began in 2011 and included just deliveries from the Pacific Fishery Management Council's groundfish individual fishing quota (IFQ) program. In 2017, mandatory electronic reporting expanded to include all directed groundfish. There are exceptions for incidentally caught groundfish and halibut in the salmon troll and pink shrimp fisheries. This rule making would leave those exceptions in place.

The proposed expansion of mandatory electronic reporting would cover deliveries of groundfish and halibut that were not covered by the 2017 expansion. Businesses not currently subject to mandatory electronic reporting that purchase Pacific halibut from the directed commercial fishery, groundfish or halibut caught on research trips, or groundfish or halibut caught off Alaska or British Columbia would be affected

by the expansion. Fish ticket records from 2013-2017 show five to nine businesses with this type of fish buying activity. Some may have ceased doing business in the state and have only been active earlier in the time period used for analysis.

Potential New Costs

Access to a computer, the internet, and a printer are the major potential costs involved with using electronic fish receiving ticket forms. The electronic reporting portal itself is provided free of charge and compatible with all modern web browsers. The current system will work with smartphones and tablets, although it was not designed specifically for mobile use and could be more difficult to use compared to a desktop or laptop. Mobile apps for electronic reporting are expected to become available sometime in the next few years.

The department assumes that many businesses already use computers, printers, and the internet for other aspects of their operations. At the same time, the department recognizes that fish buying businesses are diverse and is aware of smaller operations that operate with little equipment other than a vehicle and telephone. If subject to the mandatory electronic fish ticket requirement, businesses could experience more-than-minor costs from needing to purchase the equipment and pay for internet service.

Computers with internet access and printers are available freely through public libraries around the state. However, they could be inconvenient for businesses to use. There is range of costs for computers and printers. A basic setup could be purchased for under \$500 with more advanced configurations costing two or more than four times as much. The department estimates that internet service would cost on the order of \$300 to \$500 per year.

Businesses would also need to spend staff time toward setup and training in the use of [an] electronic reporting system. The system is as easy to use as the paper-based system. At the same time, it may take time for users to become familiar with its features. The department estimates that businesses would need to spend ten to twenty hours to set up and train for electronic reporting.

Potential New Costs Relative to Business Revenues

A more-than-minor-cost "means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater." (RCW 19.85.020(2)). Under this definition, the \$100 minimum threshold applies to annual revenues under \$33,333.34. For a business earning \$100,000 per year, the more-than-minor-cost threshold would be \$300.

The department does not have direct information on revenues earned by fish and shellfish buying and processing companies. Fish tickets do record ex-vessel revenues, which are the amounts fish buyers pay to fishers for their catch. This information can be used to gauge the amount of overall revenues earned using data collected by NOAA Fisheries Northwest Fisheries Science Center's Economic Data Collection (EDC) program.

The EDC program reports a number of performance statistics, including annual fish purchase costs as a ratio of annual revenues. For small processors, the median ratio averaged 0.801 over 2009-2015. The data suggests that the ratio of fish purchase costs to revenues earned is highly variable

between processors. Over 2009-2015, the minimum lower 25th percentile was 0.469 and the maximum upper 25th percentile was 0.986.

Of note, the EDC program only collects information from buyers participating in the groundfish IFQ fishery. Buyers who do not buy any IFQ groundfish, which would include the business[es] affected here, are not covered. Processors that are covered by the program do report economic information for all species they buy, however. Buyers who receive but do not process fish are also not covered. These businesses may receive less of a markup when selling. The department recognizes the uncertainty in the data but believes it provides a helpful means of gauging the potential size of new costs relative to revenues.

Over 2013-2017, the average annual ex-vessel revenues reported by the companies potentially affected by the new mandatory reporting requirement ranged from just under \$840,000 to \$1.1 million. Based on 0.801 ratio of fish purchase costs to overall revenues earned, this equates to overall annual revenues of just over \$1 million to \$1.4 million. The corresponding more-than-minor-cost thresholds would be between \$3,000 and \$4,200. The data does show a few larger businesses influencing these average statistics. In contrast to the average, the median ex-vessel revenues paid per business ranged from around \$150,000 to over \$330,000.

The statistics reported so far are based on the full suite of fish buying activity from these businesses. Groundfish and halibut deliveries appear to provide only a small proportion of the overall total. On average, these businesses have submitted between three and five Pacific halibut or groundfish fish tickets per year compared to an average of roughly four hundred fifty fish tickets overall. The average ex-vessel revenues paid for groundfish and halibut ranged from roughly \$14,000 to \$64,000 with the equivalent median values being \$3,000 and \$13,000.

Considering these numbers, some businesses may choose to stop purchasing groundfish and Pacific halibut deliveries altogether if electronic reporting is a minor part of their business and an unattractive option. On the other hand, electronic reporting may be attractive and businesses may seek to participate in the voluntary program and report more types of deliveries using electronic fish tickets. Businesses receiving fish from Alaskan waters may already report electronically using a separate Alaska-based system.

A copy of the statement may be obtained by contacting Corey Niles, 1111 Washington Street S.E., Olympia, WA, phone 360-902-2733, fax 360-902-2943, email corey.niles@dfw.wa.gov.

March 6, 2018

Scott Bird

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-352-010 Fish receiving ticket definitions.

The following definitions apply to this chapter:

(1) "Department" means the Washington Department of Fish and Wildlife, Fish Program - Commercial Harvest Data

Team, 600 Capitol Way North, Olympia, Washington 98501-1091.

~~(2) ("Delivery" means arrival at a place or port and includes arrivals from offshore waters to waters within the state, arrivals ashore from state or offshore waters, and arrivals within the state from interstate or foreign commerce.~~

~~(3) "Electronic fish receiving ticket" means the groundfish catch reporting system described in 50 C.F.R., Part 660 that is used to submit harvest and fishing information to the department and the National Marine Fisheries Service.~~

~~(4)) "Fish" means food fish classified under WAC ((220-12-010 and)) 220-300-370, game fish classified under WAC 220-300-380, and any other fish species subject to catch or harvest reporting requirements under state or federal law.~~

~~((5)) (3) "Fish broker" means a person who facilitates the sale or purchase of raw or frozen fish or shellfish on a fee or commission basis, without assuming title to the fish or shellfish and is required to have a fish dealer license.~~

~~((a)) A broker is not required to have a fish dealer license if the fish or shellfish only transit the state of Washington, and no storage, handling, processing, or repackaging occurs within the state.~~

~~((b) A broker who takes physical possession of fish or shellfish is an original receiver and must complete a fish receiving ticket. A broker acting strictly as an intermediary is not required to complete a fish receiving ticket for fish or shellfish that are delivered to an original receiver in the state of Washington.~~

~~(c) A broker must complete a fish receiving ticket for brokering an interstate or foreign sale from a Washington commercial fisherman when:~~

~~(i) The fisherman is not a holder of a limited fish seller endorsement; or~~

~~(ii) The sale involves fish or shellfish that have entered the state from another state, territory, or country, and the fish or shellfish are placed into interstate or foreign commerce without first having been delivered to an original receiver in the state of Washington.~~

~~((6)) (4) "Fish buyer," "buyer," or "wholesale fish buyer" means a person who:~~

~~(a) Takes first possession or ownership of fish or shellfish directly from a commercial fisher that is landed into the state of Washington; or~~

~~(b) Takes first possession or ownership of raw or frozen fish or shellfish in the state of Washington from interstate or foreign commerce; or~~

~~(c) Engages in the wholesale buying or selling of fish or shellfish harvested by fishers exercising treaty rights; or~~

~~(d) Acts as an agent for a wholesale fish buyer, to include purchasing or receiving fish or shellfish on a contractual basis.~~

~~((7)) (5) "Fish receiving ticket" ((means a document produced by the department for commercial catch accounting purposes and includes electronic fish tickets, nontreaty fish receiving tickets, such as Puget Sound salmon, troll, marine, utility, and shellfish receiving tickets; treaty Indian fish receiving tickets; and treaty Indian shellfish receiving tickets)) is an official department document, available in paper or electronic form, for recording the delivery of commercial fish~~

and shellfish and related transactions identified in WAC 220-352-020.

~~((8)) (6) "Fisher" means a person engaged in commercial fishing activities.~~

~~((9)) (7) "Fresh" or "raw" means unprocessed and unfrozen, regardless of whether the fish or shellfish are in the round, cleaned, or packaged for retail sale.~~

~~((10)) (8) "Frozen" means completely frozen throughout. Flash frozen and surface glaze frozen fish and shellfish are unfrozen fish and shellfish.~~

(9) "Groundfish" refers to the flatfish, rockfish, and roundfish species managed under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan and equivalent management plans in British Columbia and Alaska. The term is largely synonymous with the definition of "bottomfish" at WAC 220-300-040 but identifies a more limited subset of species.

(10) For deliveries made from the groundfish fisheries operating under 50 C.F.R., Part 660, the terms "to land", "landing", and "landed" are equivalent to the term "to deliver" as defined under RCW 77.15.630 (4)(b).

(11) "Nontreaty" means all entities not qualified by definition as "treaty."

(12) Except as provided, "original receiver" or "receiver" means a person who holds a wholesale fish buyer endorsement or a limited fish seller endorsement. Except as provided, an original receiver means the first person in possession of fish or shellfish in the state of Washington who is acting in the capacity of a buyer:

(a) A fisher who is not the holder of a limited fish seller endorsement and who sells fish or shellfish to anyone other than a wholesale fish buyer, or a fisher who delivers fish or shellfish and places the fish or shellfish into interstate or foreign commerce, is the original receiver of the fish or shellfish;

(b) A cold storage facility that holds fish or shellfish for a fisher is not an original receiver, provided that the facility does not process, package, or otherwise handle the fish or shellfish;

(c) A person transporting fish or shellfish on behalf of a fisher, and who is in possession of an accurately completed commercial food fish and shellfish transportation ticket, is not an original receiver, provided that the fish or shellfish are transported only to a cold storage facility or to a wholesale fish buyer.

(13) "Processed" means preparing and preserving and requires a fish buyer's license. Preserving includes treating with heat, including smoking and kippering. Cooked crab is processed. Preserving also includes freezing fish and shellfish.

(14) "Shellfish" means shellfish classified under WAC ((220-12-020)) 220-320-010 and any other marine invertebrate species subject to catch or harvest reporting requirements under state or federal law.

(15) "Treaty" and "treaty Indian," for purposes of fish receiving tickets only, means persons who are members of federally recognized Indian tribes who harvest fish or shellfish in Washington pursuant to an Indian treaty, whether such harvest is on or off reservation.

(16) "Working day" means Monday through Friday, exclusive of a Washington state or federal holiday.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-352-020 When state of Washington fish receiving tickets are required. (1) Wholesale fish buyers must complete a state of Washington fish receiving ticket((s are required)) for:

(a) ~~((Fresh)) All fish and shellfish delivered in the state of Washington((, including deliveries not purchased by a dealer, which shall be recorded as weigh-back or take-home fish or shellfish.~~

~~(b) Fresh fish and shellfish previously delivered in another state, territory or country, and transported into the state of Washington to an original receiver.~~

~~(c) Frozen fish or shellfish not previously delivered in another state, territory, or country, and transported into the state of Washington to an original receiver. Food fish and shellfish in this category are typically an at-sea processed product)). This includes fish or shellfish transported into Washington from another state, territory, or country as well as fish or shellfish landed or harvested in Washington and delivered into interstate or foreign commerce. Additionally, any other fish or shellfish landed by the fisher and not delivered to the buyer, such as weigh-back, zero-value product, or take-home, must also be recorded on a fish receiving ticket.~~

~~((d)) (b) Raw fish and shellfish that are transported into the state of Washington after being previously delivered in another state, territory, or country must be recorded using an import ticket.~~

~~(c) Purchase of fish or shellfish from a fisher who is also a dealer, if the fisher/dealer has not previously completed a fish receiving ticket(-~~

~~(e) Forage fish)) or has not provided a copy of the fish receiving ticket or ticket number as proof.~~

(2) State of Washington fish receiving tickets are required for retail sales offered under a limited fish seller endorsement (WAC 220-352-250).

(3) A fish broker must comply with subsection (1) of this section unless receiving raw or frozen fish or shellfish that:

(a) Never enter into the state;

(b) Are in transit through the state of Washington and no storage, handling, processing, or repackaging occurs within the state; or

(c) Have been previously documented on a state of Washington fish receiving ticket.

(4) If a fisher wishes to donate fish or shellfish to a non-profit or other organization but does not possess a valid wholesale fish buyer or a limited fish seller endorsement, they must deliver to an original receiver who must report the fish or shellfish on a fish receiving ticket.

(5) Fishers must ensure that a fish receiving ticket is completed for any forage fish that are:

(a) Transferred at sea to another vessel.

~~((f) Forage fish)) (b) Caught for use as bait by the catching vessel and not transferred to another vessel or an original receiver.~~

~~((2) It is unlawful to fail to complete a fish receiving ticket when one is required.~~

~~Violation of this section is punishable under RCW 77.15.630.) (6) Fish receiving tickets are not required for the following transactions:~~

~~(a) Fish or shellfish purchased from holders of a wholesale fish buyer or limited fish seller endorsement provided that the receiver or buyer complies with the recordkeeping requirements under RCW 77.15.568 and retains this information with the fish or shellfish.~~

~~(b) Fish or shellfish purchased at retail.~~

~~(c) Fresh or frozen fish or shellfish that are in transit through the state of Washington, if no storage, handling, processing, or repackaging occurs within the state.~~

~~(d) Private sector cultured aquatic products.~~

~~(e) Processed fish or shellfish except frozen fish or shellfish not previously delivered in another state, territory or country.~~

~~(f) Any importation of fish that are not classified food fish under WAC 220-300-370 or importation of shellfish that are not classified shellfish under WAC 220-370-010.~~

NEW SECTION

WAC 220-352-035 Requirement to prepare fish receiving ticket forms completely and accurately—Determining the appropriate form. (1) Receivers must completely, accurately, and legibly prepare fish receiving tickets using a department-approved electronic or department-supplied paper form, as further specified in this section.

(2) Receivers must use an electronic fish receiving ticket form for the following:

(a) Deliveries from vessels fishing under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan and related regulations under 50 C.F.R., Part 660. This requirement includes deliveries from research vessels but excludes deliveries of groundfish made under the trip limits for salmon troll and pink shrimp trawl vessels.

(b) Deliveries from directed commercial halibut vessels fishing under 50 C.F.R., Part 300 or vessels conducting research surveys for the International Pacific Halibut Commission.

(c) Deliveries of groundfish harvested from the offshore waters off Alaska or British Columbia.

(3) Receivers not required to report under subsection (2) of this section may report using electronic fish receiving ticket forms if they enter into an electronic fish receiving ticket reporting agreement with the department.

(a) The department reserves the discretion to limit the use of electronic fish receiving ticket reporting agreements based on species, gears, areas, times, or other factors.

(b) Electronic fish receiving ticket reporting agreements will identify how to access the appropriate electronic forms and may include terms and conditions related to the timing and manner of completion and submittal.

(c) Receivers may not submit paper fish receiving tickets for deliveries covered by an electronic fish receiving ticket reporting agreement.

(d) The department or receiver may terminate an electronic fish receiving ticket reporting agreement with thirty days notice to the other party.

(e) A receiver who fails to comply with the terms of the electronic fish receiving ticket agreement commits a violation of this chapter.

(4) A receiver that is not required or authorized by agreement to use electronic fish receiving ticket forms must report using the appropriate paper form. There are separate forms for nontreaty troll fish, marine fish, shellfish, and Puget Sound salmon; and separate forms for treaty fish and treaty shellfish.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-352-040 ((Description of)) Required information for Washington state nontreaty fish receiving tickets. (1) The ~~((department creates, prepares, prints, and distributes upon request the following nontreaty fish receiving ticket forms:~~

- (a) ~~Puget Sound salmon;~~
- (b) ~~Troll;~~
- (c) ~~Marine;~~
- (d) ~~Utility; and~~
- (e) ~~Shellfish.~~

(2) ~~Fish receiving ticket forms must contain space for the~~) following information is required to be reported on all nontreaty fish receiving ticket forms for all deliveries except imports (WAC 220-352-020 (1)(b)):

(a) ~~((Fisherman's))~~ Fisher identification: The name and license number of the licensed deliverer.

(b) Address: The address of the licensed deliverer.

(c) Boat name: The name or Coast Guard number of the landing vessel, unless the fishery does not require a vessel.

(d) WDFW boat registration: The Washington department of fish and wildlife boat registration number, unless the fishery does not require a vessel.

(e) Gear: The code number or name of the specific type of gear used.

(f) ~~((Fisherman's))~~ Fisher's signature: The signature of the licensed deliverer as required in WAC 220-352-140.

(g) Date: Date of landing.

(h) Original receiver: Name of original receiver and the department number assigned to original receiver.

(i) Buyer identification: The name of buyer and the department number assigned to buyer.

(j) Receiver's signature: The signature of the original receiver as required in WAC 220-352-140.

(k) Number of days fished: Days spent catching fish.

(l) Fish or shellfish caught inside or outside 3-mile limit: Check one box.

(m) Catch area:

(i) The salmon catch area code if salmon are caught.

(ii) The marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.

(n) ~~((Tally space for wholesale fish buyer's use: Used at the wholesale fish buyer's discretion.))~~ Port: Port or landing location of delivery using the relevant location code in use by the department.

(o) Species ~~((code: The department assigned species code:~~

(p) ~~Individual number of salmon and sturgeon.~~

(q) ~~Individual numbers of other fish species if fish other than salmon or sturgeon are landed as part of an incidental catch allowance or catch ratio restriction.~~

(r) ~~The number of ghost shrimp in dozens, the number of oysters in dozens or gallons, and the species description for all fish and shellfish.~~

(s)) description: Species must be reported using the relevant species or species category code in use by the department.

(p) Delivery amounts:

(i) Number of individuals caught: Deliveries of salmon and sturgeon and all species landed as part of an incidental catch allowance or catch ratio restriction that is expressed in numbers of fish must be reported as counts of individuals.

(ii) The number of ghost shrimp in dozens, the number of oysters in dozens or gallons.

(iii) The original total weight in round pounds of all shellfish or fish, except that pounds of legally dressed fish and shellfish may be recorded in original dressed weight so long as dressed fish and shellfish are designated as dressed on the fish receiving ticket.

((t)) (q) Value of fish and shellfish sold or purchased ((: Summary information for species, or species groups landed.

(u) All species or categories of bottomfish having a vessel-trip limit must be listed separately (see WAC 220-355-100).

(v) Work area for wholesale fish buyer's use: Used at wholesale fish buyer's discretion, except:

(i) Federal sablefish endorsed limited entry permit numbers for each delivery of sablefish landed under the authority of the permit must be recorded on the fish receiving ticket in the space reserved for wholesale fish buyer's use. Separate fish tickets are required for each permit number used.

(ii) At the time of landing of coastal bottomfish into a Washington port, the wholesale fish buyer receiving the fish must clearly record all legally defined trawl gear aboard the vessel at the time of delivery of the bottomfish on the fish receiving ticket in the space reserved for wholesale fish buyer's use. The 3 trawl gear types are: Midwater trawl, roller trawl, and small foot rope trawl (foot rope less than 8 inches in diameter). The gear type(s) aboard the vessel must be recorded on the fish receiving ticket before the vessel representative signs the fish receiving ticket.

(w) Total amount: Total value of landing.

(x)):

(i) Summary information for species or species groups landed.

(ii) Total amount: Total value of landing.

(r) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.

((y)) (s) Crew: The name and signature of crew members who take home fish for personal use.

((z) A Puget Sound salmon fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty salmon caught in inland waters; and

~~(b) Any imports of fresh salmon into the state of Washington:~~

~~(4) A troll fish receiving ticket must be completely, accurately, and legibly prepared for:~~

~~(a) Deliveries of nontreaty coastal salmon and incidental catch;~~

~~(b) Any imports of fresh salmon into the state of Washington; and~~

~~(c) Any bottomfish or halibut subject to a catch allowance or ratio restriction, when those species are taken incidental to salmon fishing.~~

~~(5) A marine fish receiving ticket must be completely, accurately, and legibly prepared for:~~

~~(a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon; and~~

~~(b) Any imports of fresh marine fish or bottomfish.~~

~~(6) A marine or utility fish receiving ticket must be completely, accurately, and legibly prepared for:~~

~~(a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate; and~~

~~(b) Any imports of fresh fish or shellfish that do not include salmon.~~

~~(7) A shellfish receiving ticket must be completely, accurately, and legibly prepared for:~~

~~(a) Any nontreaty deliveries of shellfish;~~

~~(b) Any imports of fresh shellfish; and~~

~~(c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.) (t) Any other fishery specific requirements under this chapter.~~

(3) For deliveries reported using paper fish receiving ticket forms:

(a) A valid license card or duplicate license card issued by the department used with an approved mechanical imprinter satisfies the requirements in subsection (1)(a) through (e) of this section except as provided in WAC 220-352-150.

(b) A valid dealer or buyer card issued by the department used with an approved mechanical imprinter satisfies the requirements in subsection (1)(h) and (i) of this section.

(4) For import deliveries under WAC 220-352-020 (1)(b), the receiver must:

(a) Report the following information on the fish receiving ticket form:

(i) Place of origin: Area of harvest using the department provided area code.

(ii) Date of harvest: Date the fish or shellfish were delivered in the place of origin.

(iii) Date of import: Date the fish or shellfish entered Washington state.

(iv) Buyer or broker name.

(v) Fisher or harvester name.

(vi) Deliverer name.

(vii) Delivery amount: Species description and weights.

(b) Attach any previously completed fish receiving ticket, or equivalent document, or the bill of lading to the fish receiving ticket form.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-352-060 ((Distribution)) Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets. (1) Original receivers must complete state of Washington nontreaty fish receiving tickets by recording scale weights for all delivered fish at the conclusion of the offload and prior to the fish being processed or transported away from the delivery site.

(2) Fish receiving tickets paper forms must be made out in quadruplicate (four copies) at the time of delivery of fish ((or shellfish. It is unlawful for the)). Original receivers must use fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued. Original receivers ((who completes a fish receiving ticket to fail to distribute the copies as follows)) reporting using paper forms must:

(a) ((Except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-352-180 (14)(e), the original receiver must)) Mail the state copy (green) of the fish receiving ticket to the department of fish and wildlife (department), except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-352-315, 220-352-320, 220-352-325 and 220-352-330. The department must receive the state copy no later than the sixth working day after the day the original receiver completes the fish ticket.

(b) ((The original receiver must)) Retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) for his or her records.

(2) ((It is unlawful for an original receiver who submits an electronic fish receiving ticket to fail to retain a signed copy of the electronic fish receiving ticket for three years.

(3) A violation of this section is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.)) Original receivers who submit fish receiving tickets using an electronic form must:

(a) Submit the ticket within twenty-four hours of completion of the delivery if required by WAC 220-352-035(2).

(b) Submit the ticket in compliance with the timely reporting conditions set forth in an electronic fish receiving ticket reporting agreement under WAC 220-352-035(3).

(c) Print and retain a copy of the completed electronic fish receiving ticket for three years unless an alternative fish ticket retention requirement is specified in an electronic fish receiving ticket agreement.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-352-130 Completion, submission, distribution, and retention of copies of shellfish receiving ticket. (1) State of Washington shellfish receiving tickets paper forms must be made out in quintuplicate (five copies) at the time of delivery of shellfish. ~~((It is unlawful for))~~ Original receivers must use fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued to the original receiver. The original receiver ~~((to fail to distribute the fish receiving ticket copies as follows))~~ must:

(a)(i) ~~((For shellfish other than geoduck clams from department of natural resources (DNR) geoduck tracts, the original receiver must))~~ Mail the state copies (green and pink) to the department of fish and wildlife (department) for any shellfish, other than geoduck clams from department of natural resources (DNR) geoduck tracts. The department must receive the state copies no later than the sixth working day after the day the original receiver completes the ticket.

(ii) ~~((For geoduck clams from DNR tracts, the original receiver must))~~ Mail one state copy (green) to the department for any geoduck clams from DNR tracts. The department must receive its copy no later than the sixth working day after the day the original receiver completes the ticket. The original receiver must give the other state copy (pink) to DNR at the time of weigh-out, unless otherwise directed by DNR.

(b) ~~((The original receiver must))~~ Retain the dealer copies (white and yellow) for his or her records for three years.

(c) ~~((The deliverer must retain the fisher's))~~ Provide the fisher his or her copy (gold) for his or her records.

(2) ~~((A violation of this section is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.))~~ Original receivers who submit fish receiving tickets using an electronic form must:

(a) Submit and retain the fish ticket in compliance with the terms and conditions set forth in the electronic fish receiving ticket reporting agreement under WAC 220-352-035(3).

(b) Print and retain a copy of the completed electronic fish receiving ticket for three years unless an alternative fish ticket retention requirement is specified in an electronic fish receiving ticket agreement.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-352-140 Signatures—Fish receiving tickets. (1) ~~((It is unlawful for the deliverer or))~~ The fisher and original receiver of both treaty and nontreaty fish or shellfish ~~((to fail to))~~ must sign the ~~((complete nontreaty))~~ appropriate completed fish receiving ticket paper form to certify that all entries on the ticket are accurate and correct.

(2) ~~((It is unlawful for the deliverer of treaty fish or shellfish to fail to sign the tribal copy of the treaty Indian fish receiving ticket to certify that all entries on the ticket are accurate and correct. It is unlawful for the original receiver of treaty fish or shellfish to fail to sign the completed treaty Indian fish receiving ticket.~~

~~((3) It is unlawful for the deliverer or original receiver of fish from the directed commercial fisheries for Pacific Coast Groundfish authorized under 50 C.F.R., Part 660 to fail to~~

~~print and sign a copy of the completed electronic fish receiving ticket to certify that all entries on the ticket are accurate and correct.~~

~~(a) A fisher who fails to sign a fish receiving ticket is in violation of RCW 77.15.630.~~

~~(b) An original receiver who fails to sign a fish receiving ticket is in violation of RCW 77.15.630.~~

~~(4) Where the fisherman is unable to deliver the catch, an agent of the fisherman is authorized to sign the fish receiving ticket if the agent has first obtained an alternate operator's license for the fishing vessel operated by the fisherman.~~

~~((5)) If an agent of the fisher delivers fish or shellfish to the original receiver~~ ~~((receives the fish or shellfish by any method other than direct delivery)), the receiver~~ ~~((shall affix his or her signature to))~~ and the agent must complete and sign the fish receiving ticket ~~((, and the fish receiving ticket shall be completed and submitted without the deliverer's signature and))~~ together with the transportation ticket. The receiver and fisher shall assume complete responsibility for the correctness of all entries on the fish receiving ticket.

~~(3) Any employee of a licensed wholesale fish buyer who is authorized to receive or purchase fish or shellfish for that buyer on the premises of the primary business address or any of its plant locations as declared on the license application or agreement described under WAC 220-352-035(3), is authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, or licensed wholesale fish buyer that the receivers are operating under is responsible for the accuracy and legibility of all documents initiated in their name by any employee or agent.~~

~~(4) If an original receiver submits an electronic fish receiving ticket form, the fisher and original receiver must sign the printed completed fish receiving ticket form to certify that all entries on the ticket are accurate and correct, unless otherwise specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)).~~

~~(5) If the receiver must complete an electronic fish receiving ticket form away from the place of delivery and it is impractical for the fisher to comply with subsection (4) of this section, the deliverer and receiver must sign the completed transportation ticket required by WAC 220-352-230 and attach it to the printed and signed copy of the completed electronic fish receiving ticket form, unless otherwise specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)).~~

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-352-150 Imprinters—Fish receiving tickets. ~~((Use of a mechanical imprinter approved by the department, in conjunction with a license card or treaty Indian identification card to identify the deliverer, and a dealer plate or buyer plate to identify the receiver on all state of Washington fish receiving tickets is hereby made mandatory.~~

~~Provided, That))~~ (1) Fishers and original receivers must mechanically imprint the fish receiving ticket paper forms with their department issued license cards.

(2) License card information may be recorded manually on the ((state of Washington)) fish receiving tickets in the following exceptions:

((+)) (a) Oregon licensed fishers delivering fish caught in the Columbia River(-

(2));

(b) Purchases made from out-of-state firms((-

(3)); and

(c) Fishers selling on a delivery license who have not received a delivery license card from the department at the time of their first sale. All subsequent sales require use of a license card.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-352-160 Fish receiving ticket accountability—Paper forms. (1) ((Only current state of Washington fish receiving tickets may be used.

(2) Official state of Washington fish receiving tickets may be ordered free of charge from the department.

(3) It is unlawful:

(a) To fail to use fish receiving ticket books and fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued to the original receiver;

(b) For a wholesale fish buyer)) When reporting using fish receiving ticket paper forms under WAC 220-352-035, receivers must:

(a) Use only current state of Washington fish receiving tickets;

(b) Get written permission from the department to transfer fish receiving tickets, except if the receiver is a wholesale fish buyer transferring to another licensed wholesale fish buyer or limited fish seller ((with written permission from the department));

(c) ((For any purchaser or receiver terminating business to fail to)) Notify the department in writing if terminating their business and to fail to return all unused fish receiving tickets and ticket books to the department within thirty days after termination of business;

(d) ((To fail to)) Return the state copy of all fish receiving tickets to the state. All fish receiving tickets that are incorrectly made out, voided, or otherwise unused, must be submitted to the department accompanying, and in sequence with, other fish receiving tickets; and

(e) ((To fail to)) Account for all lost, destroyed, or otherwise missing fish receiving tickets in writing to the department(;

(f) For any person who is not a licensed wholesale fish buyer, or holder of a limited fish seller endorsement to have fish receiving tickets in his or her possession; and

(g) For a wholesale fish buyer or holder of a limited fish seller endorsement to fail to maintain the buyer copy or copies of a completed fish receiving ticket at the buyer's or holder's regular place of business for three years after the date of use of the fish ticket.

(4) A violation of this section is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty).

(2) Any person who is not a licensed wholesale fish buyer or holder of a limited fish seller endorsement shall not have blank fish receiving ticket paper forms in his or her possession.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-352-230 Commercial ((food)) fish and shellfish transportation ticket. (1) ((Except as provided in subsection (6) of this section, it is unlawful for commercial fishers or their designees, who are neither wholesale fish buyers nor holders of a limited fish seller endorsement, to fail to)) If fish or shellfish are transported from a vessel or catch site (if the fishery does not require a vessel) prior to completing a fish receiving ticket, the fisher must complete a commercial ((food)) fish and shellfish transportation ticket as required by this section. ((These tickets must be completed prior to transporting fish or shellfish harvested for commercial purposes or in commercial quantities. For a fishery that does not require a vessel, a transportation ticket must be completed prior to leaving the catch site.)) The transportation ticket must accompany the fish or shellfish until the fish receiving ticket is completed. The purpose of this rule is to ensure catch accountability when fish or shellfish are transported by the ((fisherman)) fisher or his or her designee ((from the catching vessel to an original receiver)) before a fish receiving ticket is required to be completed. Fish receiving ticket requirements under this chapter are still in effect. ((A violation of this subsection or subsection (2) of this section is punishable as a gross misdemeanor under RCW 77.15.290.))

(2) ((A)) The fisher must complete the department provided transportation ticket ((must contain all of)) with the following information ((and space for that information)):

(a) The name of the ((fisherman)) fisher who caught the fish(;

(b) The ((fisherman's)) fisher's vessel registration number(;

(c) The signature of the ((fisherman)) fisher or additional operator(;

(d) The name of the transporter(;

(e) ((The signature of the transporter;

(f)) The catch area where the ((food)) fish or shellfish were caught(;

(g));

(f) The species of ((food)) fish or shellfish being transported(; and

(h));

(g) The individual number or approximate pounds of ((food)) fish or shellfish being transported, as required under WAC 220-352-040.

(3) ((It is unlawful for an)) In cases where the fisher does not deliver the fish or shellfish to an original receiver within twenty-four hours after offloading, the fisher must send a copy of the completed transportation ticket to the department. The completed ticket must arrive within the sixth working day. Once the fisher delivers the fish or shellfish to the original receiver, a copy of the transportation ticket must be attached or the ticket number must be written on the fish receiving ticket.

~~(4) In cases where an agent of the fisher delivers fish or shellfish with a transportation ticket to the original receiver, the original receiver ((or someone acting in the capacity of an original receiver to fail to)) must mail the transportation ticket, together with the state copy of the fish receiving ticket as required in WAC 220-352-060, 220-352-090, and 220-352-130((, when the person delivering the fish or shellfish does not sign the fish receiving ticket as required in WAC 220-352-140)). If the commercial fisher delivers and signs the fish receiving ticket, only the fish receiving ticket must be mailed in, and the transportation ticket is not required to be submitted with it. ((Violation of this section is a gross misdemeanor, punishable under RCW 77.15.640.~~

~~(4) It is unlawful to fail to keep the transportation ticket with the fish or shellfish until a fish receiving ticket is completed. Violation of this subsection is a gross misdemeanor under RCW 77.15.290.~~

~~(5) It is unlawful for)) Transportation tickets completed for deliveries reported using electronic fish receiving ticket forms should be attached to the printed and signed copy of the form, as required by WAC 220-352-140(5).~~

~~(5) Any person transporting commercially taken fish or shellfish or commercial quantities of fish or shellfish ((to fail to)) must provide a transportation ticket for inspection upon demand by a fish and wildlife officer((-Violation of this subsection is a gross misdemeanor under RCW 77.15.290)).~~

(6) The provisions of this section do not apply to:

(a) ~~((Food))~~ Fish and shellfish purchased at retail, provided the purchaser has, in his or her possession, a sales receipt documenting the purchase;

(b) ~~((Food))~~ Fish or shellfish for which a fish receiving ticket has been completed and a copy of the fish receiving ticket is in the possession of the person transporting;

(c) ~~((Food))~~ Fish or shellfish being transported by the department;

(d) Hatchery carcass sales;

(e) Private sector cultured aquatic products in transport;

(f) ~~((Food))~~ Fish or shellfish being transported on a completed Oregon transportation ticket, provided that the fish were caught in the concurrent waters of the Columbia River and were landed on Washington's shore; and

(g) Fish or shellfish being transported in the catching vessel, provided that the vessel is not being transported or towed over land.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-352-250 Sale under a limited fish seller endorsement. ~~((It is unlawful for any fisher selling salmon, sturgeon or Dungeness crab))~~ Any holder of a limited fish seller endorsement selling fish or shellfish taken by that fisher under ((a limited fish seller)) the endorsement, ((or for a wholesale fish buyer accepting salmon, sturgeon or crab from such a fisher, to fail to)) must comply with the requirements of this section.

~~(1) ((A limited fish seller endorsement will not be issued to a licensee who is other than a natural person. Applicants for the endorsement must present a letter from the county health department of the fisher's county of residence certifi-~~

~~ing that the methods used by the fisher for transport, storage and display of product meet the county and statewide standards for food service operations. If the fisher is landing product from a documented vessel, the letter may be from the county health department of the hailing port of the vessel. Additionally, applicants must present a valid food and beverage service worker's permit at the time of application, and pay the direct retail administrative cost of fifty dollars. The health department letter, permit, and administrative cost are required for each application or renewal for a limited fish seller endorsement.~~

~~(2) Any fisher who offers salmon, sturgeon or crab)) (a) Before offering any fish or shellfish for retail sale under a limited fish seller endorsement, the fisher must complete a fish receiving ticket for all ((salmon, sturgeon or crab)) fish or shellfish aboard the harvesting vessel ((before the product is offered for retail sale, except if the salmon, sturgeon or crab are being offered)) upon landing, unless meeting the exception under (b) of this subsection.~~

~~(b) If the fisher offers fish or shellfish for sale directly off the catcher vessel, the fisher may complete the ticket with an estimated number or weight. At the completion of the retail activity, the fisher ((who has completed a ticket with an estimated number or weight is required to)) must enter the actual number ((and)), weight, and sale price of ((salmon, sturgeon or crab)) the fish or shellfish that were sold at retail((-The price shown on the fish receiving ticket must be the actual sale price of the salmon, sturgeon or crab.~~

~~(3) Any fisher selling salmon, sturgeon or crab at retail if the product is taken from an area under the quick reporting requirements of WAC 220-352-180, is required to comply with the quick reporting requirement.~~

~~(4) Sturgeon and crab offered for retail sale must be landed in the round. Salmon may be cleaned or headed but not steaked or filleted prior to landing).~~

~~((5)) (2) In order to allow inspection and sampling, each fisher offering ((salmon, sturgeon or crab)) fish or shellfish for retail sale at any location other than the harvesting vessel or, if from the harvesting vessel, in an amount having a retail value greater than one hundred fifty dollars must notify the department eighteen hours prior to sale and identify the location of the fisher's vessel, temporary food service establishment or restaurant or other business which prepares and sells food at retail to which the fisher is selling the ((salmon, sturgeon or crab)) fish or shellfish. The only acceptable notification is by telephone to 360-902-2936, fax to ((902-2155)) 360-902-2155, or email to enforcement-web@dfw.wa.gov.~~

~~((6)) (3) Each fisher offering ((salmon, sturgeon or crab)) fish or shellfish for retail sale must maintain a sequentially numbered receipt book, which receipt book contains a receipt duplicate copy, and must give each purchaser of ((salmon, sturgeon or crab)) fish or shellfish a receipt showing the number, weight and ((value)) purchase price of ((salmon, sturgeon or crab)) the fish or shellfish sold to that purchaser. The seller must retain the duplicate receipts ~~((must be retained by the seller))~~ for one year.~~

~~((7) If salmon, sturgeon or crab)) (4) If fish or shellfish offered for retail sale and documented on a fish receiving ticket are subsequently sold to a licensed wholesale fish~~

buyer, the sale must be documented by a sale receipt, not a fish receiving ticket ~~(and it is the responsibility of the wholesale fish buyer to maintain the product separately, until the product is resold or processed.~~

~~(8) Violations of this section are punishable under RCW 77.15.640, Wholesale fish buying—Rules violations).~~

NEW SECTION

WAC 220-352-290 Unlawful acts. Violation of rules contained in this chapter are punishable as crimes under one or more statutes in chapter 77.15 RCW, including, but not limited to, RCW 77.15.280, 77.15.290, 77.15.620, and 77.15.630; and such rule violations may separately incur financial liability under RCW 77.65.330 and 77.15.565.

NEW SECTION

WAC 220-352-300 Coastal groundfish and halibut—Additional reporting requirements. For deliveries from groundfish fisheries (as defined in 50 C.F.R., Part 660 and WAC 220-355-070), the original receiver must record:

(1) The legal gear code used to harvest each species on the fish receiving ticket line level if multiple gears were used.

(2)(a) The federal limited entry permit authorizing participation in the limited entry portions of the groundfish fishery (50 C.F.R., Part 660) from which the delivery was made.

(b) For deliveries from the sablefish primary fishery (50 C.F.R., Part 660.231) involving cumulative limits from more than one permit, the pounds of sablefish must be enumerated by permit number using multiple lines on the fish receiving ticket form.

NEW SECTION

WAC 220-352-305 Coastal Dungeness crab—Additional reporting requirements. Original receivers of Dungeness crab from the Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters must enter the crab vessel inspection certificate number on all shellfish receiving tickets during the period specified in emergency regulations. The crab inspection certificate number must be entered legibly in the space indicated for dealer's use or where specified by the terms of an electronic fish ticket reporting agreement (WAC 220-352-035(3)).

NEW SECTION

WAC 220-352-310 Forage fish and mackerel—Additional reporting requirements. (1) Fishers and receivers must ensure that forage fish harvests required to be reported as bait under WAC 220-352-020 (5)(b) are accurately reported on the same fish ticket as, and at the time of delivery of, the fish or shellfish harvested with the bait. For forage fish transferred from one vessel to another without monetary consideration, the harvest should be reported on the fish ticket of the fisher who received the bait.

(2) Operators of commercial fishing vessels distributing or transferring forage fish for monetary consideration from the nets or other holding devices under his or her control must either:

(a) Transfer the fish to a licensed wholesale fish buyer; or

(b) Possess a wholesale fish buyer endorsement and complete a fish receiving ticket to record the transaction.

(3) Receivers of forage fish or mackerel must initiate and complete fish receiving tickets on the day the forage fish or mackerel are delivered.

(a) Herring must also be reported on herring harvest logs.

(b) The harvested amount of forage fish or mackerel must be entered upon the fish ticket when the forage fish are off-loaded from the catcher vessel.

(c) Fishers and receivers must ensure that any catches of herring, candlefish, anchovy, sardine, or mackerel that are unmarketable due to mortality are recorded on a fish receiving ticket as a "loss estimate" by weight.

(4) In the coastal sardine fishery or coastal mackerel fishery, receivers may not purchase, per sardine or mackerel fishery vessel, more than fifteen percent cumulative weight of sardine or mackerel for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait during the sardine or mackerel fishery season. Sardine and mackerel purchased for these purposes must be included, by weight, on the fish ticket as "reduction."

(5) In any forage fish fishery or in the mackerel purse seine fishery, receivers must not purchase anchovy in excess of fifteen percent, by weight, of the total landing weight per vessel, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products. Anchovy purchased for these purposes must be included, by weight, on the fish ticket as "reduction."

(6) Electronic fish receiving ticket reporting agreements (WAC 220-352-035(3)) may specify alternative procedures for satisfying the catch report requirements under WAC 220-356-050 and 220-356-160.

NEW SECTION

WAC 220-352-315 Columbia River salmon, sturgeon, and smelt—Additional reporting requirements. During any Columbia River fishery opening that is designated by rule as "quick reporting required":

(1) An original receiver must report all purchases of salmon, sturgeon, or smelt made (wholesale buyer) or offered for retail sale (limited fish seller) on the previous calendar day.

(2) The report must include the following:

(a) The wholesale fish buyer or limited fish seller name and purchasing location;

(b) Date of purchase;

(c) Each fish receiving ticket number, including the first alphanumeric letter, used on the purchasing date; and

(d) The following catch data for each fish ticket used: The total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale fish buyer) or sold (limited fish seller).

(3) When quick reporting is required, the original receiver must submit the report within 5, 8, 12, or 24 hours of

closure of the designated fishery unless otherwise specified in a voluntary electronic fish receiving ticket agreement (WAC 220-352-035(3)).

(a) The department establishes the time frame for submitting reports at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery occurs in conjunction with the adoption of the fishery through the Columbia River Compact.

(b) Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777; via email at crfishtickets@dfw.wa.gov; or via phone at 1-866-791-1281.

(4) Faxing or reporting electronically in portable document format (PDF) a copy of each fish receiving ticket used, within the previously indicated time frames specified per area, satisfies the quick reporting requirement.

NEW SECTION

WAC 220-352-320 Grays Harbor and Willapa Bay salmon and sturgeon—Additional reporting requirements. During any Grays Harbor or Willapa Bay fishery opening that is designated by rule as "quick reporting required":

(1) An original receiver must report all purchases of salmon and sturgeon made (wholesale buyer) or offered for retail sale (limited fish seller) on the previous calendar day.

(2) The report must include the following:

(a) The wholesale fish buyer or limited fish seller name and purchasing location;

(b) The date of purchase;

(c) Each fish receiving ticket number, including the first alphanumeric letter, used on the purchasing date; and

(d) The following catch data for each fish ticket used: The total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale fish buyer) or sold (limited fish seller).

(3) When quick reporting is required, the original receiver must submit the report by 10:00 a.m. on the day after the purchase date unless otherwise specified in a voluntary electronic fish receiving ticket agreement (WAC 220-352-035(3)). Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-249-1229; via email at harborfish tickets@dfw.wa.gov; or via phone at 1-866-791-1280.

NEW SECTION

WAC 220-352-325 Puget Sound salmon and sturgeon—Additional reporting requirements. During any Puget Sound fishery opening that is designated as "quick reporting required," per WAC 220-354-090:

(1) An original receiver must report all purchases of salmon and sturgeon made (wholesale buyer) or offered for retail sale (limited fish seller) on the previous calendar day.

(2) The report must include:

(a) The wholesale fish buyer or limited fish seller name and purchasing location;

(b) The date of purchase;

(c) Each fish receiving ticket number, including the first alphanumeric letter, used on the purchasing date; and

(d) The following catch data for each fish ticket used: The total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale fish buyer) or sold (limited fish seller).

(3) When quick reporting is required, the original receiver must submit the report by 10:00 a.m. on the day after the purchase date unless otherwise specified in a voluntary electronic fish receiving ticket agreement (WAC 220-352-035(3)). Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via email at psfishtickets@dfw.wa.gov; or via phone at 1-866-791-1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 C.F.R. Chapter III Sec. 300.93.

NEW SECTION

WAC 220-352-330 Coastal salmon troll—Additional reporting requirements. During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(1) An original receiver must report all purchases of salmon made (wholesale buyer) or offered for retail sale (limited fish seller) on the previous calendar day.

(2) The report must include:

(a) The wholesale fish buyer or limited fish seller name and purchasing location;

(b) The date of purchase;

(c) Each fish receiving ticket number, including the first alphanumeric letter, used on the purchasing date; and

(d) The following catch data for each fish ticket used: The total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale fish buyer) or sold (limited fish seller).

(3) When quick reporting is required, the original receiver must submit the report by 10:00 a.m. on the day after the purchase date unless otherwise specified in a voluntary electronic fish receiving ticket agreement (WAC 220-352-035(3)). Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-902-2949; via email at trollfish tickets@dfw.wa.gov; or via phone at 1-866-791-1279.

NEW SECTION

WAC 220-352-335 Puget Sound shrimp—Additional reporting requirements. (1) Any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested with pot or trawl gear must record on the shellfish receiving ticket the appropriate catch area based on the location of harvest and the boundary definitions specified in WAC 220-340-520.

(2) Any person originally receiving or purchasing shrimp, other than ghost shrimp, taken from Puget Sound by trawl gear must report to the department the previous day's purchases by 10:00 a.m. the following morning.

(a) Reports must be sent by fax to 360-302-3031 or by text message or email to shrimpreport@dfw.wa.gov.

(b) Reports must include, for each fish receiving ticket prepared:

(i) The wholesale fish buyer name, fisher name, and date of sale;

(ii) The fish receiving ticket number, including the first alphanumeric letter; and

(iii) The total number of pounds delivered per shrimp species.

(3) Alternative reporting requirements may be specified in an electronic fish receiving ticket agreement (WAC 220-352-035(3)).

NEW SECTION

WAC 220-352-340 Puget Sound crab—Additional reporting requirements. (1) Any person originally receiving or purchasing Dungeness crab taken from Puget Sound by nontreaty fishers must report to the department the previous day's purchases by 10:00 a.m. the following day.

(a) Reports must be sent to the Mill Creek Regional Office by fax to 425-338-1066, or by email to crabreport@dfw.wa.gov.

(b) Reports must include, for each fish receiving ticket submitted:

(i) The name of the wholesale fish buyer or limited fish seller;

(ii) The phone number of the wholesale fish buyer or limited fish seller;

(iii) The date of delivery of crab to the original receiver; and

(iv) The total number of pounds of crab delivered, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

(2) Alternative reporting requirements may be specified in an electronic fish receiving ticket agreement (WAC 220-352-035(3)).

NEW SECTION

WAC 220-352-345 Sea urchin and sea cucumber—Additional reporting requirements. (1) Any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers must report to the department each day's purchases by 10:00 a.m. the following day.

(a) Reports must be made by phone to 866-207-8223 or by text message or email to seaurchinreport@dfw.wa.gov for sea urchins or seacucumberreport@dfw.wa.gov for sea cucumbers.

(b) Reports must include, for each fish receiving ticket prepared:

(i) The wholesale fish buyer name, fisher name, date of sale, and the name of the port of landings; and

(ii) The fish receiving ticket number, including the first alphanumeric letter.

(c) For red sea urchins and green sea urchins, the report must specify the number of pounds received from each sea urchin district.

(d) For red sea urchins, green sea urchins, and sea cucumbers, the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area.

(e) For sea cucumbers, the report must specify whether the landings were delivered "whole-live" or "split-drained."

(2) Alternate reporting requirements may be specified in an electronic fish receiving ticket agreement (WAC 220-352-035(3)).

NEW SECTION

WAC 220-352-350 Geoduck—Additional reporting requirements. (1) A commercial geoduck license holder operating under a valid department of natural resources harvest agreement must be present at all times on each vessel commercially harvesting geoducks or if the vessel has harvested geoducks aboard.

(2) For each day's harvest of geoducks from each tract, the commercial geoduck license holder must completely, legibly and accurately enter the following information on a fish receiving ticket before leaving the department of natural resources geoduck harvest tract. This fish receiving ticket must accompany the harvested geoduck from the department of natural resources harvest tract to the point of delivery.

(a) In the "dealer's use" column, enter the number of cages of geoducks harvested.

(b) Enter the harvest vessel name, its Washington department of fish and wildlife identification number, and the date across the top of the fish receiving ticket directly below the tear strip.

(c) Enter the number of days fished, the appropriate option in the distance from shore column, and the Marine Fish-Shellfish Catch and Management Reporting Area and tract number.

(d) Species code, species description, and physical gear actually used.

(e) Sign the fish receiving ticket as the fisher.

(3) Any person receiving or purchasing geoduck must accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoduck from the harvesting vessel onto the shore. The original receiver must:

(a) Enter the total quantity of geoduck in pounds received from the fisher, the price per pound paid to the fisher, and the total amount paid to the fisher.

(b) Enter the dealer or buyer name and its Washington department of fish and wildlife identification number below the tear strip.

(c) Sign the fish receiving ticket as the dealer.

(4) Licensed fishers whom are also the licensed dealer for a fish receiving ticket transaction must complete the fisher portion of the fish receiving ticket as required in subsection (2) of this section and the dealer portion of the fish receiving ticket as required in subsection (3) of this section.

(5) Alternate reporting requirements may be specified in a voluntary electronic fish receiving ticket agreement (WAC 220-352-035(3)).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-352-030 State of Washington fish receiving tickets—When not required—Unlawful acts.
- WAC 220-352-050 Required information on nontreaty fish receiving tickets.
- WAC 220-352-110 Description of Washington state electronic fish receiving ticket.

WAC 220-352-120 Required information on electronic fish receiving tickets.

WAC 220-352-180 Duties of commercial purchasers and receivers.

WAC 220-352-190 Duties of commercial fishers.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-354-090 Puget Sound salmon—Quick reporting. All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial purchasers and receivers must comply with the provisions of WAC ((~~220-352-180(14)~~)) 220-352-325.

AMENDATORY SECTION (Amending WSR 17-17-012, filed 8/4/17, effective 9/4/17)

WAC 220-354-250 Willapa Bay salmon fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

- (1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:

Area	Time	Date(s)	Maximum Mesh Size
2M, 2R	7:00 a.m. through 7:00 p.m.	9/5	4.25"
2M, 2N, 2R	7:00 a.m. through 7:00 p.m.	9/11, 9/12	4.25"
2T	6:00 a.m. through 6:00 p.m.	9/18	4.25"
2N	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20, 9/21, 9/22	4.25"
2M	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20	4.25"
2R	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20, 9/21	4.25"
2U	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20, 9/21	4.25"
2N, 2R	7:00 a.m. through 7:00 p.m.	9/25, 9/26, 9/27, 9/28, 9/29	6.5"
2M	7:00 a.m. through 7:00 p.m.	9/25, 9/26, 9/27, 9/28	6.5"
2T	7:00 a.m. through 7:00 p.m.	9/25, 9/26	4.25"
2U	7:00 a.m. through 7:00 p.m.	9/25, 9/26, 9/27, 9/28, 9/29	4.25"
2R	6:00 a.m. through 6:00 p.m.	10/2, 10/3, 10/4, 10/5, 10/6	6.5"
2M, 2N	6:00 a.m. through 6:00 p.m.	10/3, 10/4, 10/5, 10/6	6.5"
2T	6:00 a.m. through 6:00 p.m.	10/2, 10/3, 10/4, 10/5, 10/6	6.5"
2U	6:00 a.m. through 6:00 p.m.	10/2, 10/3, 10/4, 10/5, 10/6	4.25"
2N, 2R	7:00 a.m. through 7:00 p.m.	10/9, 10/10, 10/11, 10/12, 10/13	6.5"
2M	7:00 a.m. through 7:00 p.m.	10/9, 10/10, 10/11, 10/12	6.5"
2T	7:00 a.m. through 7:00 p.m.	10/9, 10/10	6.5"
2U	7:00 a.m. through 7:00 p.m.	10/9, 10/10, 10/11, 10/12, 10/13	4.25"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	10/31 through 11/2	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/6 through 11/10	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/13 through 11/17	6.5"

Area	Time	Date(s)	Maximum Mesh Size
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/20 through 11/24	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/27 through 12/1	6.5"

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear.

(b) It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(c) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line.

(d) It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(e) From 12:01 a.m. September 5 through 11:59 p.m. December 1: Mesh size must not exceed six and one-half inches stretched, except mesh size must not exceed four and one-quarter inches stretched in Areas 2M and 2R on September 5, in Areas 2M on September 11, 12, 18, 19, and 20, 2N on September 11, 12, 18, 19, 20, 21, and 22, and 2R on September 11, 12, 18, 19, 20, and 21, in Area 2T on September 18, 25, and 26, and in Area 2U on September 18, 19, 20, 21, 25, 26, 27, 28, 29, October 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13.

Other:

(3) Recovery boxes and soak time limits described in this section are required from 12:01 a.m. September 5 through 11:59 p.m. October 13:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches

above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box, which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection. From September 5 through December 1, 2017, all chum must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection.

(c) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river/bay prior to landing or docking.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "~~direct retail endorsement~~) limited fish seller endorsement." According to WAC ((220-352-180(14))) 220-352-320, reports must be made by 10:00 a.m. the day following landing, unless otherwise specified in an electronic fish receiving ticket reporting agreement (see WAC 220-352-035(3)).

(5) Retention prohibitions:

(a) All green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) Retention of any species other than coho salmon or Chinook is prohibited.

(c) From 12:01 a.m. September 5 through 11:59 p.m. October 13, retention of any species other than coho salmon or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(d) From 12:01 a.m. October 31 through 11:59 p.m. December 1, retention of any species other than coho salmon, hatchery Chinook marked by a healed scar at the site of the adipose fin, or wild (unmarked) Chinook is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(8) Those waters of Area 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N, 123°50.83134'W are CLOSED from 6:00 a.m. September 18, 2017 through 11:59 p.m., September 30, 2017.

(9) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or email. Notice of intent must be given prior to 5:00 p.m. on August 28, 2017.

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-354-290 Grays Harbor salmon fall fishery.

From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
12:01 p.m. through 7:00 p.m. October 24;	Area 2A and Area 2D
7:00 a.m. through 7:00 p.m. October 25;	
6:00 a.m. through 6:00 p.m. October 30;	
6:00 a.m. through 6:00 p.m. October 31;	
7:00 a.m. through 7:00 p.m. November 6;	
7:00 a.m. through 7:00 p.m. November 7;	
7:00 a.m. through 7:00 p.m. November 8;	
AND	
7:00 a.m. through 7:00 p.m. November 9;	
6:00 a.m. through 6:00 p.m. October 23;	Area 2C
6:00 a.m. through 6:00 p.m. November 2;	
7:00 a.m. through 7:00 p.m. November 6;	
AND	

Time: Areas:
7:00 a.m. through 7:00 p.m.
November 7.

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be aboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, coho or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for original receivers. According to WAC (~~(220-352-180)~~) 220-352-320, reports must be made by 10:00 a.m. the day following landing, unless otherwise specified in an electronic fish receiving ticket reporting agreement (see WAC 220-352-035(3)).

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale fish buyers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or email. Notice of intent must be given prior to 12:00 p.m. on October 1, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 18-06-089

PROPOSED RULES

OLYMPIC COLLEGE

[Filed March 6, 2018, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-071.

Title of Rule and Other Identifying Information: Olympic College Public Records Policy #700-03 repeal and replacement.

Hearing Location(s): April 10, 2018, at 4 - 6 p.m., at Olympic College, Humanities and Student Services Building, Room 119, 1600 Chester Avenue, Bremerton, WA 98337.

Date of Intended Adoption: May 15, 2018.

Submit Written Comments to: Kim Abel, 1600 Chester Avenue, CSC 300, Bremerton, WA 98337, email lharmon@olympic.edu, by April 5, 2018.

Assistance for Persons with Disabilities: Contact Karen Fusco, phone 360-475-7540, email accessservices@olympic.edu, by March 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to repeal and replace chapter 132C-276 WAC to better conform such chapter to: (1) Recent changes in the law concerning public records; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC); (3) current practices; and (4) adopt a permanent rule that implements the state legislature's new Public Records Act requirements and provide the necessary findings so that Olympic College may use the amended statutory default fee schedule that became effective July 23, 2017, and waive copy fees under limited circumstances.

Reasons Supporting Proposal: The college is updating procedures regarding requests for public records in order to comply with legislative changes to the Public Records Act (chapter 42.56 RCW) pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, which are effective July 23, 2017. RCW 42.56.120 as amended requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. The college is also making general housekeeping changes.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Olympic College, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kim Abel, 1600 Chester Avenue, CSC 300, Bremerton, WA 98337, 360-473-2848.

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. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative [rules] review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 42.56.070, 42.56.120. Explanation of exemptions, if necessary: 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. RCW 42.56.070, 42.56.120.

March 6, 2018

Kim E. Abel

Public Records Manager and
Policy Development Coordinator

NEW SECTION

WAC 132C-276-200 Purpose. The purpose of this chapter is to provide for public access to existing, identifiable, nonexempt public records of Olympic College in accordance with the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 132C-276-210 Definitions. (1) **Public record.** The term "public record" and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.

(2) **Public Records Act.** References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.

(3) **Requestor.** A "requestor" is any person or entity requesting public records of the college pursuant to the Public Records Act.

(4) **College.** The term "college" means Olympic College.

NEW SECTION

WAC 132C-276-220 Description of the college. (1) **Mission - Governance.** Olympic College is a public institution of higher education established under chapter 28B.50 RCW as a community college, which offers associate and applied baccalaureate degrees. The college is governed by a board of trustees appointed by the governor. The board

appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **Olympic College campuses.** The main campus of the college is located at 1600 Chester Avenue, Bremerton, Washington 98337. The college also offers educational programs online and at other campuses located at 937 West Alpine Way, Shelton, Washington 98584, and 1000 Olympic College Way Northwest, Poulsbo, Washington 98370.

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW, are adopted by the board of trustees and published in Title 132C of the Washington Administrative Code. Other college policies approved by the administration are published in policies and procedures available on the college web site.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. The secretary of the college's board of trustees does maintain and publish on the college web site a documents index of the board's approved meeting minutes which includes motions and resolutions. Inquiries may be directed to the secretary of the board in the office of the president.

(5) **College web site.** The college's official web site, available at www.olympic.edu, provides general information about the college and its board of trustees, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the web site prior to submitting a records request.

NEW SECTION

WAC 132C-276-230 Processing of records requests.

(1) **Applicable law.** Requests for public records will be processed in accordance with these rules and applicable provisions of the Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.

(2) **Prioritizing of requests.** Public records requests generally will be processed in the order in which they are received by the records office and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records, if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.

(3) **Clarification of requests.** The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within fifteen business days of the request for clarification.

(4) **Providing records by installment.** If a requestor submits multiple records requests, or if a request seeks a large number of records or many different types of records, the public records officer may provide access to the records in

installments in accordance with applicable provisions of the Public Records Act.

(5) **Denial of bot requests.** The public records officer may deny a bot request as defined by, and under the circumstances set forth in, RCW 42.56.080(3) if the records officer reasonably believes the request was automatically generated by a computer program or script.

NEW SECTION

WAC 132C-276-240 Public records available for inspection. (1) **Scheduling of appointments.** Public records identified as responsive to a public records request may be made available for inspection and copying during customary office hours by scheduling an appointment with the public records officer. The requestor must review the assembled records, or installment of records, within fifteen business days of being notified that the records are available for review.

(2) **Protection of records.** The public records officer will be responsible for providing full access to public records made available for inspection, for protecting the records from damage or disorganization, and for preventing excessive interference with essential college functions. Public records made available for inspection may not be removed from the office without the permission of the records officer.

(3) **Copying of records.** The public records officer will arrange for copying of any records designated by the requestor and will charge such copying fees as may apply under WAC 132C-276-270.

NEW SECTION

WAC 132C-276-250 Public records officer. (1) **Designation.** A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) **Duties.** The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) **Records office.** Inquiries regarding public records of the college may be addressed to the public records officer at the following office address:

Public Records Officer
Olympic College
1600 Chester Avenue
Bremerton, WA 98337
publicrecords@olympic.edu

(4) **Office hours.** The customary office hours of the public records office are from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

NEW SECTION

WAC 132C-276-260 Requests for public records. (1) **Online requests preferred.** Requests for public records of the college may be addressed to the public records officer at the email address given in WAC 132C-276-250. The college encourages, but does not require, requestors to use the public records request form made available online at <https://www.olympic.edu> on the public records web page. Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer.

(2) **Contents of records requests.** A request for public records must include the following information:

(a) The name and contact information of the person requesting the records;

(b) The requestor's mailing address, which may be an electronic mail address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer to identify and locate the records.

(3) **Lists of individuals for commercial purposes.** State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request if it is evident from the request and/or the requestor's response to an inquiry that the list will be used for a commercial purpose.

(4) **Assistance in identifying records.** The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records requested.

NEW SECTION

WAC 132C-276-270 Copying—Payments. (1) **Fees and payment procedures.** The following copying fees and payment procedures apply to requests to the college under chapter 42.56 RCW and received on or after the effective date of this section.

(2) **Inspection of records.** There is no fee for inspecting public records made available for inspection by the public records officer under WAC 132C-276-240.

(3) **Actual costs not calculated.** Pursuant to RCW 42.56.120 (2)(b), the college is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The institution does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential college functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120.

(4) **Default fees adopted.** The college will charge for copies of records pursuant to the default fees in RCW 42.56.-120 (2)(b), (c), and (d). The college will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's web site.

(5) **Advanced payment required - Fee waivers.** Requestors are required to pay for copies in advance of receiving records or an installment of records. The records officer will notify the requestor when payment is due. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and consist of fifteen or fewer pages;

(ii) All of the records responsive to an entire request are electronic with attachments of a size totaling no more than the equivalent of one hundred printed pages and can be provided through an online secure web portal or in a single email with attachments; or

(iii) Would be contrary to the agency's mission or would not be in the public interest.

(b) Fee waivers are not applicable to records provided in installments.

(6) **Copying fee deposits.** The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceed twenty-five dollars.

(7) **Payment method.** Payment should be made by check or money order payable to Olympic College. The college prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) **Closure of request for nonpayment.** The college will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

NEW SECTION

WAC 132C-276-280 Closing public records requests.

(1) **Generally.** Once the requestor has inspected or been provided with copies of the records made available in response to their request, that request is closed. However, with respect to any installment of records other than the final installment, the foregoing applies only to that installment and not the entire request, unless otherwise provided in this chapter.

(2) **Other closing events.** A request may also be closed:

(a) If a requestor does not respond to a request for clarification or otherwise fails to clarify within fifteen business days;

(b) If the requestor fails to make a required deposit or payment for requested copies as provided under WAC 132C-276-270;

(c) If all records identified in any notice of availability, including a notice with respect to an installment of records, have not been inspected, paid for, or picked up within fifteen business days of issuance of such notice of availability; or

(d) As otherwise provided by this chapter or by law.

(3) **Disposition of records upon closing.** Upon the closing of a request, originals of any records assembled in response to the request will be refiled.

NEW SECTION

WAC 132C-276-290 Records exempt from inspection and copying.

(1) **Public Records Act exemptions.** The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but may deny the inspection or copying of such records to the extent that the records are exempt from inspection or copying under the Public Records Act or other applicable law.

(2) **Commonly applied exemptions.** The public records office maintains an exemption key explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the exemption key can be requested from the public records officer and will typically be provided by the records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

(3) **Determining applicable exemptions.** The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

NEW SECTION

WAC 132C-276-300 Review of denials of public records requests.

(1) **Petition for internal administrative review.** A requestor who objects to the denial, or partial denial, of a records request may petition in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and render a decision within two business days following the initial receipt of the petition by the public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.

(2) **Review by attorney general's office.** A requestor who objects to the denial, or partial denial, of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC

44-06-160. Requests for attorney general review must be directed to Public Records Review, Office of the Attorney General, Post Office Box 40100, Olympia, Washington 98504-0100.

(3) **Judicial review.** A requestor may petition the superior court for judicial review of the college's decision denying a public records request, whether in whole or in part, by following the procedures in RCW 42.56.550. The denial of a petition for internal administrative review under subsection (1) of this section shall constitute the final agency action subject to judicial review.

NEW SECTION

WAC 132C-276-310 Court protection of public records. (1) **Notifying interested persons.** The college, as required or permitted by law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested, and that such persons may apply to the superior court for a protective order under RCW 42.56.540.

(2) **Applying for court protection.** The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW 42.56.540. Nothing in this chapter shall be construed as either requiring or prohibiting the college's application to the court for such an order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132C-276-010 Purpose.
- WAC 132C-276-020 Definitions.
- WAC 132C-276-030 Description of central and field organization of Community College District No. 3.
- WAC 132C-276-040 Operations and procedures.
- WAC 132C-276-050 Public records available.
- WAC 132C-276-060 Public records officer.
- WAC 132C-276-070 Office hours.
- WAC 132C-276-080 Requests for public records.
- WAC 132C-276-090 Copying.
- WAC 132C-276-100 Exemptions.
- WAC 132C-276-110 Review of denials of public records requests.
- WAC 132C-276-120 Protection of public records.
- WAC 132C-276-130 Adoption of form.
- WAC 132C-276-990 Appendix A—Request for public record to Community College District No. 3.

WSR 18-06-091
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed March 6, 2018, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-004 on December 6, 2017.

Title of Rule and Other Identifying Information: The department is amending several regulations in chapter 220-354 WAC that affect commercial salmon fishing in the Puget Sound and include WAC 220-354-080 Puget Sound salmon—Closed areas, 220-354-120 Puget Sound salmon—Purse seine—Open periods, 220-354-160 Puget Sound salmon—Gillnet—Open periods, 220-354-180 Puget Sound salmon—Reef net—Open periods, and 220-354-210 Puget Sound salmon—Beach seine—Open periods.

Hearing Location(s): On Tuesday, April 10, 2018, at 1 p.m. to 2 p.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: On or after May 1, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by April 8, 2018.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by April 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon sub group of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: The reason is to protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.12.045, 77.12.047, and 77.04.020.

Statute Being Implemented: RCW 77.12.045, 77.12.047, and 77.04.020.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504 [98501], 360-902-2717; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-2799; and Enforcement: Chief Steve Bear, 1111 Washington Street, Olympia, WA 98501, 360-902-2373.

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 proposed rule changes do not affect hydraulics.

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. These rule changes clarify dates for anticipated open periods and areas

for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply. Based on the department's analysis, the proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

March 6, 2018
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-080 Puget Sound salmon—Closed areas. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-354-330.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 -

(1) The San Juan Island Preserve as defined in WAC 220-354-320.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly

to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-354-310.

Area 7B -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to ((a)) the fishing boundary marker on Samish Island.

Area 8 -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'50"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

~~((5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.))~~

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Areas 12, 12B, and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

~~((Area 12—Additional purse seine chum seasonal closures:~~

~~(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 24 and October 30.~~

~~(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 24 and October 30.))~~

Area 12A -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

Area 12B -

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Area 12C -

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-120 Puget Sound salmon—Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3(- H4)
	7AM - 5PM	- 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10(- H4)
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).		
7B, 7C:	6AM - 8PM	- ((8/16, 8/23, 8/30, 9/6) 8/15, 8/22, 8/29, 9/5)
	7AM - 7PM	- ((9/11, 9/13, 9/15) 9/10, 9/12, 9/14)
7B:	7AM - 7PM	- ((9/18, 9/20, 9/22) 9/17, 9/19, 9/21)
	7AM (9/24) 9/23	- 6PM (H4) 11/3
	7AM (H6) 11/5	- 4PM (H10) 11/9
	7AM (H13) 11/12	- 4PM (H17) 11/16
	7AM (H20) 11/19	- 4PM (H24) 11/23
	7AM (H27) 11/26	- 4PM 11/30
	7AM (H24) 12/3	- 4PM (H28) 12/7

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8: Closed

AREA	TIME	DATE	AREA	TIME	DATE
8A:	((Closed)) 7AM - 7PM	-	Limited participation - Two boats 9/17, 9/24	12C:	7AM - 5PM - ((11/7, 11/9)) 11/5, 11/7, 11/13, ((11/21, 11/27)) 11/19
8D:	7AM - 7PM	-	((9/19, 9/26, 10/3, 10/10)) 9/17, 9/24, 10/1, 10/8	Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).	
	7AM - 6PM	-	((10/18)) 10/16, 10/22, 10/24, 10/30	(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:	
	7AM - 5PM	-	((11/7, 11/9)) 11/5, 11/7, 11/13, ((11/21, 11/29)) 11/19, 11/26	(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.	
((10:	7AM - 7PM	-	Limited participation - 5 boats 8/23, 8/29, 8/31, 9/5, 9/7)	(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.	
10, 11:	7AM - 6PM	-	((10/18, 10/24, 10/30)) 10/16, 10/22, 10/24, 10/30	(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.	
	7AM - 5PM	-	((11/7, 11/9)) 11/5, 11/7, 11/13, ((11/21)) 11/19	(d) All other saltwater and freshwater areas - Closed ((for all species at all times)) .	
12, 12B:	7AM - 6PM	-	((10/18, 10/24, 10/30)) 10/16, 10/22, 10/24, 10/30		
	7AM - 5PM	-	((11/7, 11/9)) 11/5, 11/7, 11/13, ((11/21)) 11/19		

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-160 Puget Sound salmon—Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-350-170 and lawful gear description WAC 220-354-140.	7AM - 7PM	9/21, ((9/22)) 9/24, 9/25, 9/26, 9/27, 9/28, ((9/29)) 10/1, 10/2, 10/3, 10/4, 10/5, ((10/6)) 10/8, 10/9, 10/10, 10/11, 10/12, ((10/13)) 10/15, 10/16, 10/17, 10/18, 10/19, ((10/20)) 10/22, 10/23, 10/24, 10/25, 10/26, ((10/27))	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	-	Midnight; use of recovery box required	10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21	6 1/4"
	7AM	-	Midnight	10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, ((11/11))	6 1/4"

Note: In Areas 7 and 7A after October 9 and prior to October ~~((23))~~ 22, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-354-140 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM	-	8AM	NIGHTLY 8/12, 8/13, 8/14, ((8/15)) 8/19, 8/20, 8/21, 8/22, ((8/23)) 8/26, 8/27, 8/28, 8/29, ((8/30))	7"
	7AM ((9/3)) 9/2	-	7AM ((9/8)) 9/7		5"
	7AM ((9/10)) 9/9	-	7AM ((9/15)) 9/14		5"
7B:	7AM ((9/17)) 9/16	-	7AM ((9/22)) 9/21		5"

AREA	TIME		DATE(S)	MINIMUM MESH
	7AM ((9/24)) <u>9/23</u>	-	Midnight 11/4	5"
	7AM ((11/6)) <u>11/5</u>	-	4PM ((11/10)) <u>11/9</u>	6 1/4"
	6AM ((11/13)) <u>11/12</u>	-	4PM ((11/17)) <u>11/16</u>	6 1/4"
	6AM ((11/20)) <u>11/14</u>	-	4PM ((11/24)) <u>11/23</u>	6 1/4"
	7AM ((11/27)) <u>11/26</u>	-	4PM 11/30	6 1/4"
	7AM ((12/4)) <u>12/3</u>	-	4PM ((12/8)) <u>12/7</u>	

Note: In Area 7C the minimum mesh size is 7" through ((9/15)) 9/14.

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	5AM	-	11PM	Closed	5"
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	6PM	-	8AM	((Closed)) <u>Limited participation; 2 boats only 9/19</u>	<u>5"</u>
	<u>6PM</u>	-	<u>8AM</u>	<u>9/25, 9/27</u>	<u>5"</u>

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	((6AM	-	10PM	9/19	5"
	6AM 9/21	-	10PM 9/22		5"
	7AM	-	9PM	9/26, 10/3, 10/10	5"
	7AM 9/28	-	9PM 9/29		5"
	7AM 10/5	-	9PM 10/6		5"
	7AM 10/12	-	9PM 10/13		5"
	7AM	-	8PM	10/17, 10/24	5"
	7AM 10/19	-	8PM 10/20		5"
	7AM 10/26	-	8PM 10/27		5"
	7AM	-	7PM	10/31	5"
	7AM 11/2	-	7PM 11/3		5"
	6AM	-	6PM	11/7	5"
	6AM 11/9	-	6PM 11/10		5"))
	<u>6PM</u>	-	<u>8AM</u>	<u>Nightly 9/23, 9/27, 9/30, 10/7, 10/11</u>	<u>5"</u>
	<u>6PM 9/24</u>	-	<u>8AM 9/27</u>		<u>5"</u>
	<u>6PM 10/1</u>	-	<u>8AM 10/4</u>		<u>5"</u>
	<u>6PM 10/8</u>	-	<u>8AM 10/11</u>		<u>5"</u>
	<u>5PM</u>	-	<u>9AM</u>	<u>10/14, 10/18, 10/21, 10/25, 10/28, 11/1</u>	<u>5"</u>
	<u>5PM 10/15</u>	-	<u>9AM 10/18</u>		<u>5"</u>
	<u>5PM 10/22</u>	-	<u>9AM 10/25</u>		<u>5"</u>
	<u>5PM 10/29</u>	-	<u>9AM 11/1</u>		<u>5"</u>
	<u>4PM</u>	-	<u>9AM</u>	<u>11/4, 11/8</u>	<u>5"</u>
	<u>4PM 11/5</u>	-	<u>9AM 11/8</u>	<u>10/31</u>	<u>5"</u>
	6AM	-	6PM	<u>11/14, 11/15, 11/16, ((11/17)) 11/21,</u> <u>11/22, 11/23((11/24))</u>	6 1/4"
	7AM	-	6PM	<u>11/28, 11/29, 11/30((12/4))</u>	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH
9A: Skiff gillnet only, definition WAC 220-350-170 and lawful gear description WAC 220-354-140.	7AM ((8/21)) <u>8/19</u> - 7PM ((11/4)) <u>11/3</u>		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	((7PM - 7AM	Limited participation—5 boats 8/22, 8/28, 8/30, 9/5, 9/7	4 1/2" minimum and 5 1/2" maximum))
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Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-354-140 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM - 9AM	NIGHTLY ((10/19, 10/22)) <u>10/14, 10/17, 10/25, 10/28, 10/31</u> ((11/2))	6 1/4"
	<u>5PM</u> - <u>7AM</u>	<u>10/23</u>	
	4PM - 8AM	((11/5)) <u>11/8, 11/11, 11/14, ((11/16, 11/19, 11/22))</u> <u>11/20, 11/21</u>	6 1/4"
	4PM - 7AM	NIGHTLY ((11/8)) <u>11/6</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-350-170 and lawful gear description WAC 220-354-140.	7AM - 7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM - 8PM	((10/19, 10/23,)) <u>10/15, 10/17, 10/23, 10/25</u>	6 1/4"
	7AM - 7PM	<u>10/29, 10/31</u> ((11/2))	6 1/4"
	6AM - 6PM	<u>11/6, 11/8, 11/12, 11/14, ((11/16,)) 11/20</u> ((11/22))	6 1/4"
12C:	6AM - 6PM	<u>11/6, 11/8, 11/12, 11/14, ((11/16,)) 11/20, ((11/22))</u> <u>11/21</u>	6 1/4"
	((7AM - 6PM	11/28, 11/30	6 1/4"))

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-180 Puget Sound salmon—Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7	5AM - 9PM Daily	((9/17-11/17)) <u>9/23 - 11/10</u>

(2) It is unlawful at all times to retain unmarked Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or unmarked coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-210 Puget Sound salmon—Beach seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/21, 8/22, 8/23, 8/24, ((8/25)) <u>8/27</u> , 8/28, 8/29, 8/30, 8/31, ((9/1, 9/2)) <u>9/3</u> , <u>9/4</u> , 9/5, 9/6, 9/7, ((9/8)) <u>9/10</u> , 9/11, 9/12, 9/13, 9/14, ((9/15)) <u>9/17</u> , 9/18, 9/19, 9/20, 9/21, ((9/22)) <u>9/24</u> , 9/25, 9/26, 9/27, 9/28, ((9/29)) <u>10/1</u> , <u>10/2</u> , <u>10/3</u> , <u>10/4</u> , <u>10/5</u>
12C, Hoodspout Hatchery Zone:	7AM - 7PM	((7/31, 8/2, 8/7, 8/9, 8/14, 8/16, 8/21, 8/23, 8/28, 8/30, 9/4, 9/6)) <u>7/30</u> , <u>8/1</u> , <u>8/6</u> , <u>8/8</u> , <u>8/13</u> , <u>8/15</u> , <u>8/20</u> , <u>8/22</u> , <u>8/27</u> , <u>8/29</u> , <u>9/3</u> , <u>9/5</u>
		November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

(2) It is unlawful to retain the following salmon species taken with beach seine gear within the following areas during the following periods:

- (a) Chinook salmon - At all times in Area 12A.
- (b) Chum salmon - In all areas prior to October 10.

**WSR 18-06-094
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY**

[Filed March 6, 2018, 5:15 p.m.]

Original Notice.

Title of Rule and Other Identifying Information: SWCAA 476-030 Definitions. This is an existing section containing definitions for terms and words directly relevant to the regulation.

SWCAA 476-040 Asbestos Survey Requirements. This is an existing section describing the requirements for asbestos surveys.

SWCAA 476-050 Notification Requirements and Fees. This is an existing section containing notification requirements for asbestos projects.

SWCAA 476-060 Procedures for Asbestos Emission Control. This is an existing section describing required measures to control emissions from asbestos projects.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material. This is an existing section containing requirements for disposal and storage of asbestos containing waste material.

SWCAA 476-080 Demolition By Intentional Burning. This is an existing section containing requirements for fire training exercises that intentionally demolish a structure by burning.

Hearing Location(s): On May 3, 2018, at 3:00 p.m., at the Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682.

Date of Intended Adoption: June 7, 2018.

Submit Written Comments to: Gerald Strawn, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email gerry@swcleanair.org, fax 360-576-0925, by May 4, 2018.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058, email tina@swcleanair.org, by May 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 476-030 Definitions. The proposed rule change adds additional definitions necessary for implementation and updates existing definitions.

SWCAA 476-040 Asbestos Survey Requirements. The proposed rule change clarifies and updates existing asbestos inspection and sampling procedures, adds alternate inspection and sampling procedures, and adds asbestos inspection reporting requirements to require detailed inspection information, as well as details of identified asbestos-containing materials.

SWCAA 476-050 Notification Requirements and Fees. The proposed rule change reduces the required notification period from ten business days to ten calendar days for both the Notice of Intent to Remove Asbestos and Notification of Demolition, adds abandoned asbestos-containing materials procedures, and adds State of Emergency procedures for storms, floods, or other disasters. Minor clarifications and updates will be made to existing language.

SWCAA 476-060 Procedures for Asbestos Emission Control. The proposed rule change adds a provision for storage of asbestos-containing materials in a leak tight container. Minor clarifications and updates will be made to existing language.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material. The proposed rule change adds waste tracking requirements for the disposal of any asbestos-containing waste materials. Minor clarifications and updates will be made to existing language.

SWCAA 476-080 Demolition By Intentional Burning. The proposed rule change increases the notification period for fire training burns from five calendar days to ten calendar days. Minor clarifications and updates will be made to existing language.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Gerald Strawn, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058; Implementation and Enforcement: Uri Papish, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058.

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. SWCAA is an air pollution control authority and is not included in the list of affected agencies provided in RCW 34.05.328 (5)(a). SWCAA is not voluntarily making the rule applicable.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: Pursuant to RCW 70.94.141 (1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

March 6, 2018
Uri Papish
Executive Director

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 18-06-099
PROPOSED RULES
WASHINGTON STATE UNIVERSITY

[Filed March 7, 2018, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-092.

Title of Rule and Other Identifying Information: Chapter 504-49 WAC, Renewable energy system incentive program.

Hearing Location(s): On April 12, 2018, at 4:00 p.m., at Lighty 401, Washington State University (WSU) Pullman, Pullman, Washington; SAC 503A, WSU Spokane, Spokane, Washington; Floyd 209, WSU Tri-Cities, Richland, Washington; VCL 219, WSU Vancouver, Vancouver, Washington; Everett Seminar Room 261, WSU Everett, Everett, Washington; and Crimson Conference Room 300, WSU Energy Program, Olympia, Washington.

Date of Intended Adoption: May 4, 2018.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by April 12, 2018.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is adding new rules regarding the administration of the state renewable energy system incentive program for citizens, businesses, and utilities.

Reasons Supporting Proposal: In accordance with the renewable energy system incentive program law, ESSB 5939, signed into law on July 7, 2017, the state renewable

energy system incentive program is to be administered by WSU energy program. The new rules are needed to provide procedures and requirements for the administration of this program.

Statutory Authority for Adoption: RCW 28B.30.150.

Statute Being Implemented: ESSB 5939.

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

Name of Proponent: [WSU], governmental.

Name of Agency Personnel Responsible for Drafting: Seth Kolodziejcki, Energy Program Coordinator, WSU Energy Program, 905 Plum Street S.E., Olympia, WA 98504-3165, 509-956-2000; Implementation: Jacob Fey, Director, WSU Energy Program, 905 Plum Street S.E., Olympia, WA 98504-3165, 509-956-2000; and Enforcement: Dan Bernardo, Provost, WSU, French Administration 436, Pullman, WA 99164-1046, 509-335-5581.

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 rule has no impact on small business.

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; 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.

March 7, 2018
Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

Chapter 504-49 WAC
RENEWABLE ENERGY SYSTEM
INCENTIVE PROGRAM

NEW SECTION

WAC 504-49-010 Introduction. (1) The rules in this chapter explain the renewable energy system incentive program, which is administered by the Washington State University energy program (hereinafter referred to as "energy program"). It is the legislature's intent to provide the incentives as described in RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating renewable energy systems by persons or entities receiving the incentive. This incentive program authorizes an incentive payment based on electricity generated by renewable energy systems located in Washington state. Qualified renewable energy systems include:

- (a) Solar energy systems;
- (b) Wind generators; and

(c) Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that generates electricity.

(2) The rules in this chapter are divided into seven parts based on subject matter, as follows:

- (a) Part I: Definitions;
- (b) Part II: Participation and application requirements, and incentive levels by project type;
- (c) Part III: Calculation of incentives;
- (d) Part IV: General topics;
- (e) Part V: Manufactured in Washington state;
- (f) Part VI: Application process for currently certified renewable energy systems in the cost recovery incentive program; and
- (g) Part VII: Appeals rights.

PART I

DEFINITIONS

NEW SECTION

WAC 504-49-100 Overview. The definitions in Part I of this chapter (this section and WAC 504-49-103 through 504-49-195) apply throughout this chapter unless the context clearly requires otherwise.

NEW SECTION

WAC 504-49-103 Administrator. The term "administrator" has the following two meanings in this chapter:

(1) For purposes of a shared commercial solar project, the administrator is a utility or a business under contract with a utility which administers a shared commercial solar project that meets the eligibility requirements specified in this chapter. The administrator applies for certification on behalf of each of the project participants. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

- (a) Receiving the renewable energy incentive payments;
- (b) Allocating and paying appropriate amounts of such payments to owners; and
- (c) Communicating with the energy program about any changes in participants.

(2) For purposes of a community solar project as defined in WAC 504-49-120, the administrator is the utility, non-profit, or local housing authority (as defined in RCW 35.82-020) that organizes and administers the community solar project. The administrator is responsible for applying for the renewable energy system incentive on behalf of the system's owners. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

- (a) Receiving the renewable energy incentive payments;
- (b) Allocating and paying appropriate amounts of such payments to owners; and
- (c) Communicating with the energy program about any changes in participants.

NEW SECTION

WAC 504-49-105 Caps and limits. "Caps and limits" are defined as follows:

(1) "Annual incentive limits" means the annual limits on total incentives paid per person, business, or household for a given fiscal year of electricity generation from the four project types described in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939). Each incentive recipient may qualify for payments up to the incentive cap within each project type. However, incentive recipients who have multiple projects within one project type are subject to the cap for the applicable project type. These caps are as follows:

- (a) Residential-scale systems: Five thousand dollars;
- (b) Commercial-scale systems: Twenty-five thousand dollars;
- (c) Shared commercial solar projects: Up to thirty-five thousand dollars per year per project participant, as determined by the terms specified in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939); and
- (d) Community solar projects: Five thousand dollars per project participant.

(2) "Utility credit cap" means that the maximum annual incentives paid by an electrical utility may not exceed one and one-half percent of the businesses' taxable power sales generated in calendar year 2014 and due under RCW 82.16-020 (1)(b) or two hundred fifty thousand dollars, whichever is greater, up to the utility's public utility tax liability.

(3) "Project type cap" has the following two meanings in this chapter:

(a) For commercial-scale systems, the project type cap is twenty-five percent of the remaining funds for credit available to a utility as of July 1, 2017; and

(b) For community solar and shared commercial solar projects combined, the project type cap is fifty percent of the remaining funds for credit available to a utility as of July 1, 2017.

(4) "Incentive rate limit" for shared commercial solar project participants means that the incentive rate must not exceed the difference between the levelized cost of energy output and the participant's retail rate.

(5) "Total program limit" means that the total incentive payments made under this program (in this chapter) may not exceed one hundred ten million dollars.

NEW SECTION

WAC 504-49-108 Certification. "Certification" means the authorization issued by the energy program establishing a system's eligibility and the eligibility of a person, business, or household to receive annual incentive payments from the serving utility for the incentive program term.

NEW SECTION

WAC 504-49-110 Commercial-scale system. "Commercial-scale system" means a renewable energy system or system other than a community solar project or a shared commercial solar project with a direct current combined nameplate capacity greater than twelve kilowatts that meets the

applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-115 Community solar project. "Community solar project" means a solar energy system that:

- (1) Has a nameplate generating capacity that is no larger than one thousand kilowatts direct current;
- (2) Must have at least ten participants or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and
- (3) Meets the applicable eligibility requirements established in sections 6 and 7, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-120 Consumer-owned utility. "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

NEW SECTION

WAC 504-49-125 Customer-owner. "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner:

- (1) Is not a utility;
- (2) Is the primary account holder of the utility account; and
- (3) Either owns or occupies the premises where the renewable energy system is installed.

NEW SECTION

WAC 504-49-130 Direct current. "Direct current" means the unidirectional flow of electric charge.

NEW SECTION

WAC 504-49-135 Electric utility or utility. "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

NEW SECTION

WAC 504-49-140 Fiscal year. "Fiscal year" means July 1st through June 30th of the following year for the purposes of this rule. For example, fiscal year 2018 goes from July 1, 2017, through June 30, 2018.

NEW SECTION

WAC 504-49-145 Nonprofit organization. "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

NEW SECTION

WAC 504-49-150 Person, business, and household. "Person, business, and household" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity that resides on a property or has a business located on a property within the service area of the utility where the renewable energy system is located.

(1) No person, business, or household is eligible to receive incentive payments provided under section 1, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939) of more than:

- (a) Five thousand dollars per year for residential-scale systems or community solar projects;
- (b) Twenty-five thousand dollars per year for commercial-scale systems; or
- (c) Thirty-five thousand dollars per year for shared commercial solar projects.

(2) Example: Two or more individuals living together in one household, with one customer account with the participating utility, constitutes a household. Although they may each individually participate in this incentive program, these same individuals living together in one household receive incentives in accordance with this chapter.

NEW SECTION

WAC 504-49-155 Program term. "Program term" means eight years, or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first. Eight years is equivalent to ninety-six months of electricity generation from the time of certification.

NEW SECTION

WAC 504-49-160 Project participant. "Project participant" has the two following meanings:

(1) For purposes of community solar projects, a utility customer who participates in a community solar project in order to obtain a beneficial interest. Eligible participants of a community solar project that are business entities, such as a limited liability company or a corporation, are analyzed for participant eligibility and applicable incentive caps and limits by looking through the business entity to the members or stockholders that own the business entity.

(2) For purposes of shared commercial solar projects, a customer of a utility and located in the state of Washington.

NEW SECTION

WAC 504-49-165 Renewable energy system. "Renewable energy system" means:

- (1) A solar energy system;
- (2) An anaerobic digester as defined in RCW 82.08.900; or
- (3) A wind generator.

All systems must be grid-connected and used for the generation of electricity.

NEW SECTION

WAC 504-49-170 Residential-scale system. "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts direct current or less that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-175 Shared commercial solar project. "Shared commercial solar project" means a solar energy system, owned or administered by an electric utility, which:

- (1) Has a combined nameplate capacity of greater than one megawatt direct current and not more than five megawatts direct current;
- (2) Has at least five participants; and
- (3) Meets the applicable eligibility requirements established in sections 6 and 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-180 Solar energy system. "Solar energy system" means any device or combination of devices or elements that rely on direct sunlight as an energy source for use in the generation of electricity.

NEW SECTION

WAC 504-49-185 Solar inverter. "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

NEW SECTION

WAC 504-49-190 Solar module. "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

NEW SECTION

WAC 504-49-195 Total system price. (1) "Total system price" includes only the renewable energy system components and fees that are integral and necessary for the generation of electricity. Components and fees include:

- (a) Renewable energy system equipment (depends on system type):
 - (i) Solar energy system: Solar modules, inverter(s);
 - (ii) Wind generator: Turbine(s), tower(s), inverter(s);
 - (iii) Anaerobic digester: Digester/reactor, electrical generator.
- (b) Balance of system (such as racking, wiring, switch gear, meter base);
- (c) Nonhardware costs incurred up to the date of the final electrical inspection (such as fees associated with engineering, permitting, interconnection, application);
- (d) Labor;
- (e) Sales tax (as applicable).

- (2) Total system price does not include structures and fixtures that are not integral and necessary to the generation of electricity, such as carports, roofing, and battery storage.

PART II**PARTICIPATION AND APPLICATION REQUIREMENTS, AND INCENTIVE LEVELS BY PROJECT TYPE**NEW SECTION

WAC 504-49-200 Participation by a utility in the renewable energy system incentive program is voluntary.

(1) A utility electing to participate in the incentive program must notify the energy program of such election in writing.

(2) The utility may terminate its voluntary participation in the incentive program by providing notice in writing to the energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(3) Such notice of termination of participation is effective after fifteen days, at which point the energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(4) Upon receiving a utility's notice of termination of participation in the incentive program, the energy program must report on its web site that customers of that utility are no longer eligible to receive new certifications under the incentive program.

(5) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The energy program must continue to process and issue certifications for renewable energy systems that were received by the energy program before the effective date of the notice of termination.

(6) A utility that has terminated participation in the program may resume participation upon filing notice with the energy program.

NEW SECTION

WAC 504-49-205 Certification restrictions. No new certification may be issued under this chapter for a system which an applicant received notice of eligibility from the department of revenue under the cost recovery program (RCW 82.16.120), or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in WAC 504-49-200.

NEW SECTION

WAC 504-49-210 Renewable energy project requirements. Any person, business, or household, as defined in WAC 504-49-150, that participates in any of the four types of renewable energy projects defined in sections 5 through 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), must meet the specified participation requirements and is subject to the system capacity limits, application requirements, and incentive limits, as follows:

(1) Residential-scale:

(a) Participation: The participant must be an owner of a residential-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system;

(ii) Is located on contiguous property; and

(iii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Twelve kilowatts direct current or less, combined:

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure does not qualify for the residential-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined. This combined system instead qualifies for the commercial-scale incentive rate.

(iii) In the case of multiple renewable energy systems on a structure such as a condominium or commercial building, each having a separate customer-owner and separate utility and production meters, each system, if under twelve kilowatts direct current, would qualify for the residential-scale rate.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Five thousand dollars per person, business, or household.

(2) Commercial-scale:

(a) Participation: The participant must be an owner of a commercial-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system;

(ii) Is located on contiguous property; and

(iii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Greater than twelve kilowatts direct current, combined.

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure qualifies for the commercial-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Twenty-five thousand dollars per person, business, or household.

(3) Shared commercial solar:

(a) Administration: Administrators of this project type must be a utility or a business under contract with a utility;

(b) Participation: Projects must have at least five project participants, each of which is a customer of the utility and located in the state of Washington;

(c) Capacity: Combined nameplate capacity greater than one megawatt direct current and not more than five megawatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a shared commercial solar administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;

(D) Additional information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the shared commercial solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Thirty-five thousand dollars per participant (person, business, household), consistent with their share of participation.

(4) Community solar project:

(a) Administration: A utility, nonprofit, or local housing authority that organizes or administers a solar project;

(b) Participation: The project must have at least ten participants, or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and all participants must be customers of the participating utility;

(c) Capacity: Nameplate capacity that is no more than one thousand kilowatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a community solar project administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the community solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Five thousand dollars per participant (person, business, household), consistent with their share of participation.

NEW SECTION

WAC 504-49-215 Department of revenue-certified renewable energy systems. To continue to be eligible to receive incentive payments under the renewable energy system cost recovery program (as described in WAC 458-20-273), the applicants (as defined in WAC 458-20-273) with the department of revenue certification must reapply with the energy program. This reapplication process is described in Part VI of this chapter and must be completed by April 30, 2018.

(1) Participation: Only applicants with renewable energy systems previously certified by the department of revenue may reapply for continued incentives.

(2) Application: Submit a completed reapplication to the energy program for certification in accordance with the requirements specified in Part VI of this chapter. For community solar projects, also submit a list of participants in the project.

(3) Annual incentive limit: Five thousand dollars per individual, household, business, or local governmental entity.

(4) Deadline: Reapplications must be submitted by April 30, 2018.

NEW SECTION

WAC 504-49-220 Requirements to apply for certification—Residential-scale and commercial-scale projects. The application must contain, but is not limited to, the following information; additional requirements are specified in WAC 504-49-210.

(1) The name and address of the customer-owner and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of the total system price as defined in WAC 504-49-195.

(6) A signed statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(7) A signed statement that the applicant has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Provisional certification. The energy program may grant provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction, or the energy program extends the certification for a term or terms of thirty days due to extenuating circumstances.

NEW SECTION

WAC 504-49-225 Requirements to apply for certification—Shared commercial and community solar projects. The application must contain, but is not limited to, the information detailed below. Additional requirements are specified in WAC 504-49-210.

(1) The name and address of the project administrator and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of total system price as defined in WAC 504-49-195.

(6) A signed statement that the administrator understands that this information is true, complete, and correct to the best of administrator's knowledge and belief under penalty of perjury.

(7) A signed statement that the administrator has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the community solar project participants to receive annual incentive payments for electricity generated by the solar energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Additional information required for certification of shared commercial solar and community solar projects may include, but is not limited to:

(a) Shared commercial solar projects:

(i) Project design details;

(ii) Levelized cost of energy output of the system over its production life, and the calculations used to determine such cost;

(iii) A list of participants, including:

(A) Name;

(B) Address;

(C) Retail rate; and

(D) Utility account number;

(iv) Interconnection information; and

(v) Details regarding the majority of the installation work. If the majority of the installation of a shared commercial solar project is awarded to out-of-state contractors, the administrator must submit to the energy program:

(A) The reasons for using out-of-state contractors;

(B) The percentage of installation work performed by out-of-state contractors; and

(C) A cost comparison of the installation services performed by out-of-state contractors compared to the same services performed by Washington-based contractors.

(b) Community solar projects:

(i) System ownership information and business address;

(ii) Project design details;

(iii) Proof of administrator registration with the utilities and transportation commission, as applicable;

(iv) A list of participants, including:

(A) Name;

(B) Address; and

(C) Utility account number.

(v) Subscription information, including:

(A) Rates;

(B) Fees;

(C) Terms and conditions.

(vi) Executed interconnection agreement if the project size is greater than five hundred kilowatts direct current; and

(vii) Updated information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

NEW SECTION

WAC 504-49-230 Response from the energy program. Within thirty days of receipt of the application for pre-certification or certification, the energy program must notify the customer-owner or administrator, electronically or by mail, whether the renewable energy system qualifies for incentive payments. This notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in section 6(12), chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), subject to any applicable caps and limits on total annual payment as defined in this chapter.

NEW SECTION

WAC 504-49-235 Public disclosure. System certifications and the information contained therein are subject to public disclosure. In addition, all energy generation and incentive payment information associated with the certified system (as collected by the energy program) is subject to public disclosure.

NEW SECTION

WAC 504-49-240 Denial or revocation of system certification. The energy program may deny or revoke the approval of a system's certification and an appeal of this final determination may be initiated. The appeal provisions under Part VII of this chapter apply here.

NEW SECTION

WAC 504-49-245 Utility liability. A utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as nonpayment of the customer's bill or a violation of an interconnection agreement.

NEW SECTION

WAC 504-49-250 Modification to system. Modification details must be provided to the energy program. Examples are provided in WAC 504-49-305.

PART III

CALCULATION OF INCENTIVES

NEW SECTION

WAC 504-49-300 Incentive payment rate. The incentive payment rate is the sum of the base rate and the made-in-Washington bonus, if applicable. To determine the incentive payment, the incentive payment rate is then multiplied by the system's gross kilowatt-hours generated during the fiscal year to determine the incentive payment.

(1) Determining the base rate. The first step in computing the incentive payment is to determine the correct base rate to apply. This rate depends on the fiscal year in which the system was certified and the type of renewable energy project under consideration, as defined in the table in subsection (2) of this section.

(2) Made-in-Washington bonus. The bonus rate is determined by whether all applicable system components (solar modules, wind turbines or towers) are manufactured in Washington state. See additional manufacturing details in Part V of this chapter. Bonus rates vary depending on the fiscal year in which the system is certified, as provided in the table below.

Fiscal year of system certification	Base rate: Residential-scale	Base rate: Commercial-scale	Base rate: Community solar	Base rate: Shared commercial solar	Made-in-Washington bonus
2018	\$0.16	\$0.06	\$0.16	\$0.06	\$0.05
2019	\$0.14	\$0.04	\$0.14	\$0.04	\$0.04
2020	\$0.12	\$0.02	\$0.12	\$0.02	\$0.03
2021	\$0.10	\$0.02	\$0.10	\$0.02	\$0.02

(3) Examples: A renewable energy system certified in fiscal year 2019 and generate:

(a) Residential-scale system: Two thousand five hundred kilowatt-hours; commercial-scale system: Fourteen thousand kilowatt-hours.

(i) If a residential-scale or commercial-scale renewable energy system has only solar modules manufactured out-of-state, the computation is as follows:

- (A) Residential-scale: $0.14 \times 2,500 = \$350.00$;
- (B) Commercial-scale: $0.04 \times 14,000 = \$560.00$.

(ii) If a residential-scale or commercial-scale renewable energy system has all solar modules manufactured in Washington state, the computation is as follows:

- (A) Residential-scale: $(0.14 + 0.04) \times 2,500 = \450.00 ;
- (B) Commercial-scale: $(0.04 + 0.04) \times 14,000 = \$1,120.00$.

(iii) If a residential-scale or commercial-scale renewable energy system has a solar module manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation would be as follows:

- (A) Residential-scale: $0.14 \times 2,500 = \$350.00$;
- (B) Commercial-scale: $0.04 \times 14,000 = \$560.00$.

(iv) If residential-scale or commercial-scale wind generator equipment has an out-of-state turbine combined with a tower manufactured in Washington state, the computation is as follows:

- (A) Residential-scale: $(0.14 + 0.04) \times 2,500 = \450.00 ;
- (B) Commercial-scale: $(0.04 + 0.04) \times 14,000 = \$1,120.00$.

(v) If residential-scale wind generator equipment has both an out-of-state turbine and tower, the computation is as follows:

- (A) Residential-scale: $0.14 \times 2,500 = \$350.00$;
- (B) Commercial-scale: $0.04 \times 14,000 = \$560.00$.

(b) Shared commercial solar project system: Four million kilowatt-hours.

(i) If a shared commercial system has out-of-state solar modules, the computation is as follows: $0.04 \times 4,000,000 = \$160,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$160,000.00 \times 0.05 = \$8,000.00$ (contingent on the rates, fees, terms or conditions of the project).

(ii) If a shared commercial system has all solar modules manufactured in Washington state, the computation is as follows: $(0.04 + 0.04) \times 4,000,000 = \$320,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$320,000.00 \times 0.05 = \$16,000.00$ (contingent on the rates, fees, terms or conditions of the project).

(c) Community solar project system: Fifty thousand kilowatt-hours.

(i) If a community solar energy system has all solar modules manufactured in Washington state combined with an out-of-state inverter, the computation is as follows: $(0.14 + 0.04) \times 50,000 = \$9,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$9,000.00 \times 0.05 = \450.00 (contingent on the rates, fees, terms or conditions of the project).

(ii) If a community solar energy system has some solar modules manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation is as follows: $0.14 \times 50,000 = \$7,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$7,000.00 \times 0.05 = \350.00 (contingent on the rates, fees, terms or conditions of the project).

NEW SECTION

WAC 504-49-305 Additions or changes to existing certified systems. (1) All additions or changes to existing certified systems are subject to existing utility standards and policies.

(2) If a residential-scale or commercial-scale customer-owner makes investments that result in an expansion of capacity, the applicant must provide this information to the energy program. The energy program may:

(a) Issue a new certification for an additional system installed with a previously certified system, as long as the new system meets the program requirements and its production can be measured separately from the previously certified system; or

(b) Issue a recertification if the additional capacity is not measured separately. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system, and applies the incentive rates and program rules that are in effect as of the date of the recertification.

(3) The following examples illustrate how increases in system capacity may affect incentive payments:

(a) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. Two kilowatts direct current of capacity is added in February 2021 without a separate production meter and the system is recertified in the same fiscal year. The incentive rate of ten cents per kilowatt-hour applies to all future incentive payments of the entire seven kilowatts

direct current system. Incentive payments end in 2027 or when cumulative incentive payments reach fifty percent of the total system price plus the expansion price, including applicable sales tax, whichever comes first;

(b) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. If two kilowatts direct current of capacity is added in February 2021 with its own production meter, the addition may be certified separately and the ten cent rate applies only to the production from this separate system and ends in 2029. The originally certified five kilowatts direct current system continues to be certified at the fourteen cents rate, with those payments ending in 2027. Cumulative incentive payments of fifty percent of the total system price, including applicable sales tax, apply separately to the five kilowatts direct current and two kilowatts direct current installations;

(c) An increase in nameplate capacity results in the total system size being greater than twelve kilowatts direct current. The system requires recertification and the applicable commercial-scale incentive rate applies.

NEW SECTION

WAC 504-49-310 Cumulative limit on incentive payments. Incentive payments continue for eight years or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

PART IV

MANUFACTURED IN WASHINGTON STATE

NEW SECTION

WAC 504-49-400 What constitutes manufactured in Washington? The energy program must, in consultation with the department of commerce, establish a list of equipment that is eligible for the bonus rates described in this chapter.

(1) In order for a solar module, or a wind turbine or tower, to qualify as manufactured in Washington state, the manufactured component must meet the following definitions:

(a) "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. The lamination of the modules must occur in Washington state;

(b) "Wind turbine" refers to a device that converts the wind's kinetic energy into electrical energy and "tower" refers to the supporting structure.

(2) Is combining products considered to be manufacturing? When determining whether a solar module, or a wind turbine or tower, are manufactured in Washington, the energy program considers various factors to determine if a manufacturer combining various items into a single package is engaged in a manufacturing activity. Any one of the following factors is not considered conclusive evidence of a manufacturing activity:

(a) The ingredients are purchased from various suppliers;

(b) The manufacturer combining the ingredients attaches his or her own label to the resulting product;

(c) The ingredients are purchased in bulk and broken down to smaller sizes;

(d) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(e) The manufacturer combining the items does not sell the individual items except within the package.

NEW SECTION

WAC 504-49-405 What is the process for a manufacturer to get its product qualified as made in Washington? The manufacturer must request certification from the energy program that its product, such as a module, or wind turbine or tower, qualifies as made in Washington.

(1) Manufacturer's statement. The manufacturer must supply the energy program with a statement specifying what processes were carried out in Washington state to qualify the product.

(2) Penalty of perjury. The manufacturer's statement must be made under penalty of perjury.

(3) Field visit to view manufacturing process. The energy program performs a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

(a) An inspection of the process by an engineer or other technical expert;

(b) Testing and evaluation of a product pulled off the production line;

(c) Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

(d) Inspection of the production line; and

(e) Requests for clarification concerning questions, if any, discovered during the inspection.

(4) Approval or disapproval of manufacturer's certification. Within thirty days of the field visit, the energy program issues a written decision to the manufacturer on its product's qualification as made in Washington state. The energy program makes the decision available to the public.

(5) Change in manufacturing process. The manufacturer must notify the energy program of any change in the manufacturing process for previously certified products within ten days of such a change.

(6) Inspection of previously certified product's manufacturing process. The energy program reserves the right to perform an inspection of the manufacturing processes for each product, such as a solar module, or a wind tower or turbine, that has been previously certified as manufactured in Washington state. The inspection is conducted to verify that the product continues to qualify as manufactured in Washington state.

(7) Denial or revocation of approval of certification. The energy program may revoke the approval of certification that a product, such as a module, or a wind turbine or tower, is made in Washington state when it finds that the product does

not qualify for certification as manufactured in Washington state.

(8) The appeal provisions under Part VII of this chapter apply here.

(9) Document retention. The manufacturer must retain the documentation of the made in Washington certification process for five years after the application period for the related incentive program closes.

PART V

GENERAL TOPICS

NEW SECTION

WAC 504-49-500 Is there a time limit on when incentive payment may be made for a system's generated electricity? Yes. Incentive payments may only be made for kilowatt-hours generated on or after July 1, 2017, and for the following eight years, or until cumulative incentive payments for electricity generated by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

(1) Authorization of incentive payments. No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the energy program.

(2) Certification is valid for the incentive program term. This certification entitles the person, business, or household to receive incentive payments for electricity generated from the date the renewable energy system commences operation, or the date the system is certified, whichever date is later.

(3) Changes to incentive rates. Incentive rates determined by certification date may not be retroactively changed except to correct errors that were made during the original application or certification process and that are discovered later.

(4) Incentive schedule. Incentives are issued based on the gross kilowatt-hours generated during the fiscal year beginning on July 1st and ending on June 30th. For the last year of incentive payments, the payment is the balance of the last year of generation less the first year of generation. A negative balance for the last year results in nonpayment.

(5) Certification date. Certification date is determined by the date when the energy program completes its review of a submitted application. However, due to the timing of this program, the following administrative processes apply:

(a) For applications submitted from July 1, 2017, to December 31, 2017:

(i) For purposes of systems that commenced operation on or after July 1, 2017: The certification date is assigned based on the date that the local jurisdiction issued its final approval of the electrical inspection of the renewable energy system.

(ii) For purposes of systems that commenced operation before July 1, 2017: The certification date is assigned as July 1, 2017.

(b) For applications submitted on or after January 1, 2018: The certification date is assigned on the date when the energy program completes its review of a submitted applica-

tion. The energy program encourages customer-owners to submit all applications on the date the local jurisdiction issues its final approval of the electrical inspection of the renewable energy system. In instances where the certification date might follow the final electrical inspection by more than thirty days, the customer-owner or the serving utility must provide additional information to ascertain the correct initial electrical generation amount to use in calculating the first year of incentive payments.

NEW SECTION

WAC 504-49-505 Must the customer-owner or administrator keep records regarding incentive payments? (1) Customer-owners or administrators receiving incentive payments must keep and preserve, for a period of five years after the receipt of the last incentive payment from the utility, suitable records as may be necessary to determine the amount of incentive received.

(2) Examination of records. Such records must be open for examination at any time upon notice by the energy program.

NEW SECTION

WAC 504-49-510 How to determine if community solar or shared commercial solar projects located on the same property are one combined system or separate systems for determining the applicable limit? In determining if a community solar or shared commercial solar project is within the applicable limit when more than one community solar or shared commercial solar project is located on one property, the energy program treats each project's system as separate from the other projects if there are separate production meters and separate certification applications have been submitted to the energy program.

NEW SECTION

WAC 504-49-515 Are the renewable energy system's environmental attributes transferred when ownership of the renewable energy system changes? The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project or a shared commercial solar project, the participant. The attributes may be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned community solar or shared commercial solar project, a contract between the customer and the utility clearly specifies that the utility retains the attributes.

NEW SECTION

WAC 504-49-520 What do I have to do if I purchase property that has an existing renewable energy system? If a person, business, or household purchases a property that has a certified renewable energy system, the new customer-owner must (at a minimum) notify the energy program of the transfer of ownership and provide an executed interconnection agreement with the utility serving the premises.

NEW SECTION

WAC 504-49-525 What if I sell my share in a community solar or shared commercial solar project? The administrator of a community solar project or shared commercial solar project must provide notice to the energy program of any changes or transfers in project participation.

PART VI**APPLICATION PROCESS FOR CURRENTLY CERTIFIED RENEWABLE ENERGY SYSTEMS IN THE COST RECOVERY INCENTIVE PROGRAM**NEW SECTION

WAC 504-49-600 Requirements to reapply for certification. The reapplication for continued incentive payments through June 30, 2020, must be submitted to the energy program by April 30, 2018. This reapplication must contain, but is not limited to, the following information as specified in the applicant and eligibility requirements in WAC 458-20-273:

- (1) The name and address of the applicant and location of the renewable energy system;
- (2) The applicant's tax registration number;
- (3) The utility name and utility account number;
- (4) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;
- (5) A signed statement that the applicant understands that this information is true, complete, and correct to the best of their knowledge and belief under penalty of perjury; and
- (6) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

NEW SECTION

WAC 504-49-605 May a renewable energy system that has already been certified by the department of revenue be certified in the new program for incentive payments beyond June 30, 2020? No. If the applicant's renewable energy system has already been certified by the department of revenue for cost recovery incentives, that system is ineligible for the new incentive program.

NEW SECTION

WAC 504-49-610 May I increase the capacity of a department of revenue-certified system? The person, business, or household may not increase the capacity of a department of revenue-certified system to receive additional cost recovery program incentive payments.

NEW SECTION

WAC 504-49-615 Is there a fee to reapply? No. There is no fee for reapplication for a department of revenue-certified renewable energy system.

PART VII**APPEALS RIGHTS**NEW SECTION

WAC 504-49-700 What are the appeal rights under the renewable energy system incentive payment program? (1) The energy program may take four different types of actions that may result in a right to an appeal:

- (a) Denying a system's precertification or certification;
- (b) Revoking a system's precertification or certification;
- (c) Denying a manufacturer's statement of a product as qualifying as made in Washington state; and
- (d) Revoking a previously approved certification of a product qualifying as made in Washington.

(2) The same appeal procedures apply to all four types of action. All appeals involving the renewable energy system incentive program in this chapter are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(3) The notice issued by the energy program provides an explanation of the reasons for the denial or revocation, and advises the recipient about how to appeal the decision if the recipient disagrees.

(4) The energy program's action is final unless the recipient files an appeal petition with the energy program within thirty days of service (receipt) of the notice of the energy program's action. RCW 34.05.010(19) defines "service" and includes service by postal mail, electronic mail, and personal service.

NEW SECTION

WAC 504-49-705 Presiding officer—Final order—Review. For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding is the Washington state office of administrative hearings. The presiding officer makes the final decision and enters a final order as provided in RCW 34.05.461 (1)(b).

NEW SECTION

WAC 504-49-710 Petitions for reconsideration. RCW 34.05.470 governs petitions for reconsideration. Petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

NEW SECTION

WAC 504-49-715 Judicial review. Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.

WSR 18-06-104
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed March 7, 2018, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-22-071.

Title of Rule and Other Identifying Information: Chapter 392-401 WAC, Statewide definition of absence, excused and unexcused.

Hearing Location(s): On April 11, 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.

Date of Intended Adoption: April 16, 2018.

Submit Written Comments to: Krissy Johnson, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email krissy.johnson@k12.wa.us, fax 360-753-4201, by April 11, 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 April 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to establish a statewide definition of absence for students enrolled in public schools. The proposed rule would change the current rule's definition of what constitutes an excused or unexcused absence.

OSPI initially filed proposed language for chapter 392-401 WAC on August 23, 2017 (WSR 17-17-167). Following the public comment period, OSPI made revisions to the proposed rule language that are substantially different from the rule proposed in WSR 17-17-167. OSPI is therefore reopening the proceedings for public comment on the proposed rule.

Reasons Supporting Proposal: Several recent developments have necessitated a revision of the existing rule: (1) OSPI is publicly displaying chronic absenteeism data through the key performance indicator analytics; (2) United States Department of Education (USDOE) is collecting an annual chronic absenteeism report; (3) USDOE Office of Civil Rights collects chronic absenteeism in its civil rights data collection; and (4) chronic absenteeism is included in Washington state's ESSA accountability framework. The intent of the rule making is to align OSPI's state data collection with federal reporting and create consistent reporting across the state so as to increase data quality and comparability as accountability and visibility of chronic absenteeism increases.

Statutory Authority for Adoption: RCW 28A.300.046.

Statute Being Implemented: RCW 28A.300.046.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Krissy Johnson, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6045; and Enforcement: Dixie Grunfelder, OSPI, 600 South Washington Street, Olympia, WA 360-725-0415.

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).

March 7, 2018

Chris P. S. Reykdal
 State Superintendent
 of Public Instruction

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-400-325 Statewide definition of excused and unexcused daily absences.

Chapter 392-401 WAC

STATEWIDE DEFINITION OF ABSENCE, EXCUSED AND UNEXCUSED

NEW SECTION

WAC 392-401-005 Purpose. The purpose of this chapter is to provide a definition of absence to districts that supports accurate and consistent attendance data collection across the state. This effort will support the state and districts to address the challenge of chronic absenteeism, in an effort to improve learning outcomes and success in school for all students and to support the whole child.

NEW SECTION

WAC 392-401-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school.

NEW SECTION

WAC 392-401-012 Definition of absent or absence for the 2017-18 school year. (1) A student is absent when they are:

(a) Not physically present on school grounds; and
 (b) Not participating in instruction or instruction-related activities at an approved off-grounds location for at least fifty percent of the student's scheduled day.

(2) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC must be reported as excused absences, unless the student is receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC.

(3) A student who is marked tardy to class is not absent unless the student otherwise meets the criteria for absence provided in WAC 392-401-015(1).

(4) This section is effective only for the 2017-18 school year.

NEW SECTION

WAC 392-401-015 Definition of absent or absence.

(1) A student is absent when they are:

(a) Not physically present on school grounds; and

(b) Not participating in the following activities at an approved off-grounds location:

(i) Instruction;

(ii) Any instruction-related activity; or

(iii) Any other district or school approved activity that is regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

(2) Students who have been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC and are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC, shall not be absent.

(3) A full day absence is when a student is absent for fifty percent or more of their scheduled day.

(4) A school or district shall not convert or combine tardies into absences that would result in the filing of a truancy petition.

(5) This section is effective for the 2018-19 school year and thereafter.

NEW SECTION

WAC 392-401-020 Excused absences. Absences due to the following reasons must be excused:

(1) Participation in a district or school approved activity, that meets the criteria of an absence as defined in WAC 392-401-015;

(2) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible;

(3) Family emergency including, but not limited to, a death or illness in the family;

(4) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

(5) Court, judicial proceeding, court-ordered activity, or jury service;

(6) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

(7) State-recognized search and rescue activities consistent with RCW 28A.225.055;

(8) Absence directly related to the student's homeless or foster care/dependency status;

(9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(10) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC

if the student is not receiving educational services as provided under RCW 28A.600.015 and chapter 392-400 WAC;

(11) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;

(12) Absences due to a student's migrant status; and

(13) An approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth.

A school principal or designee has the authority to determine if an absence meets the above criteria for an excused absence. Districts may define additional categories or criteria for excused absences.

NEW SECTION

WAC 392-401-030 Unexcused absences. Any absence from school is unexcused unless it meets one of the criteria provided in WAC 392-401-020.

WSR 18-06-105

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 7, 2018, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-105.

Title of Rule and Other Identifying Information: WAC 392-121-182 Alternative learning experience requirements.

Hearing Location(s): On April 12, 2018, at 10:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Brouillet Conference Room, Olympia, WA 98501.

Date of Intended Adoption: April 17, 2018.

Submit Written Comments to: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email becky.mclean@k12.wa.us, fax 360-664-3683, by April 12, 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 April 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to revise the agency's alternative learning experience (ALE) rules in WAC 392-121-182 for the purpose of ensuring that the statutory requirements governing full-day kindergarten (FDK), RCW 28A.150.315, are implemented in an ALE setting.

Reasons Supporting Proposal: WAC 392-121-182 needs to be clarified to provide the expectations in an ALE setting when FDK student attendance is not reflected in a full-time seat-time classroom.

RCW 28A.150.315 establishes the expectations for all-day kindergarten. To align with enrollment allocation language, the term "full-day kindergarten" or "FDK" will be used for purposes of this rule.

OSPI convened a workgroup to provide recommendations on the final rules for FDK in ALE. This workgroup

included representation from OSPI's alternative learning, early learning, and learning and teaching departments, as well as ALE programs offering FDK, and educational service district WaKIDS coordinators with experience in ALE and traditional kindergarten classrooms. Additionally, OSPI performed several site visits to ALE programs to observe how they were meeting the FDK requirements.

The proposed rules reflect input from the collected survey information, the workgroup recommendations, site visit observations, and the recommendations of the alternative learning and learning and teaching department staff.

Emergency rules for WAC 392-121-182 (WSR 18-03-007) were filed in January 2018, to clarify the statutory expectations for FDK in an ALE setting for the 2017-18 school year and to notify ALE programs offering FDK instruction that OSPI would collect survey information about how they were meeting those expectations. These emergency rules are currently in effect. The rules proposed with this CR-102 have been updated to reflect proposed changes for the next school year (2018-2019).

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

Statute Being Implemented: RCW 28A.232.010, 28A.150.315.

Name of Agency Personnel Responsible for Drafting: Becky McLean, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6306; and Implementation: T. J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301.

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).

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

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public charter school have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work;

(c) "Certificated teacher" means an employee of a school district or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, email,

instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "Full-day kindergarten" means a program that is eligible for state-funded full-day kindergarten, as provided for in RCW 28A.150.315 in which any student's alternative learning experience enrollment is claimed as greater than 0.50 full-time equivalent.

(f) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

~~((f))~~ (g) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

~~((g))~~ (h) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

~~((h))~~ (i) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

~~((i))~~ (j) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday

that includes at least three days when a district's schools are in session or when a charter school is in session;

~~((j))~~ (k) "School-based support staff" means an employee of a school district or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

~~((k))~~ (l) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

~~((l))~~ (m) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

~~((m))~~ (n) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

~~((n))~~ (o) "WaKIDS" means the Washington kindergarten inventory of developing skills assessment provided under RCW 28A.655.080.

(p) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school; and

(ix) For students enrolled in full-day kindergarten:

(A) A description of curriculum activities that assist students in:

(I) Developing initial skills in the academic areas of reading, mathematics, and writing;

(II) Developing a variety of communication skills;

(III) Providing experiences in science, social studies, arts, health, physical education, and a world language other than English;

(IV) Acquiring large and small motor skills;

(V) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(VI) Learning through hands-on experiences.

(B) A description of learning environments that are developmentally appropriate and promote creativity.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning manage-

ment system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

(d) Alternative learning experience programs providing full-day kindergarten must have:

(i) Multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week WaKIDS assessment window.

(ii) At least a one thousand annual hour instructional program.

(5) Required school district or charter school board policies for alternative learning experiences: The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors or charter school board on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be consistent in quality with those available to the district's or charter school's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of

superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district or charter school that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district or charter school does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district, school district contractor, charter school, or charter school contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district or charter school.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts and charter schools offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's or charter school's alternative learning experience courses by the office of the state auditor.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district or charter school must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district or charter school in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation

in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experience students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Assessment requirements:

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent

in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(d) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten under RCW 28A.150.315 must administer WaKIDS to identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

To maintain fidelity to the state WaKIDS assessment protocol, the WaKIDS assessment requires multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week assessment window.

(9) Reporting requirements:

(a) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available

to students enrolled in the district's or charter school's regular instructional program.

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(iii) The number of students enrolled in full-day kindergarten at any time during the school year.

(iv) The number of students enrolled in full-day kindergarten who participated in the WaKIDS assessment prior to the assessment deadline.

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) Documentation and record retention requirements: School districts and charter schools claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts and charter schools must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors or charter school board as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

WSR 18-06-106

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 7, 2018, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-090.

Title of Rule and Other Identifying Information: WAC 392-121-415(2), Basic education allocation—Deductible revenues.

Hearing Location(s): On April 17, 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.

Date of Intended Adoption: April 20, 2018.

Submit Written Comments to: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email thomas.kelly@k12.wa.us, fax 360-664-3683, by April 17, 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 April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under current law, OSPI must deduct proceeds from state forest payments under RCW 79.22.040 and 79.22.050 from school district and charter school basic education apportionment payments. OSPI is proposing to eliminate this requirement in WAC 392-121-415(2), which would allow rural school districts to have access to approximately \$13 million in state forest revenues that are currently deducted from the recipient school district's basic education allocation from the state.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

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

Name of Agency Personnel Responsible for Drafting: T. J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301.

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).

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

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-415 Basic education allocation—Deductible revenues. In addition to those funds appropriated by the legislature for basic education allocation purposes, the following locally available general fund revenues shall be included in the computation of the total annual basic education allocation of each school district or charter school pursuant to RCW 28A.150.250 and 28A.150.260 and shall be deducted from payments made pursuant to WAC 392-121-400:

(1) Proceeds from the sale, rental or lease of stone, minerals, timber, forest products, other crops and matter, and improvements from or on tax title real property managed by a county pursuant to chapter 36.35 RCW;

(2) ~~((Proceeds from state forests pursuant to RCW 79.22.040 and 79.22.050;~~

~~((3)))~~ Federal in lieu of tax payments made pursuant to RCW 84.72.020; and

~~((4)))~~ (3) Proceeds from the sale of lumber, timber, and timber products on military reservations or facilities in accordance with U.S.C. §2665, Title 10, and P.L. 97-99.

~~((5)))~~ (4) Local in lieu of tax payments including but not limited to payments made pursuant to RCW 35.82.210, 35.83.040, and 79.19.110.

Otherwise deductible revenues from any of the foregoing sources received by a school district due solely to the district's levy of a capital projects fund or debt service fund excess tax levy shall constitute nongeneral fund revenues and shall not be deducted in the computation of the district's annual basic education allocation for that school year.

WSR 18-06-107
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed March 7, 2018, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-12-056.

Title of Rule and Other Identifying Information: Chapter 392-143 WAC, Transportation—Specifications for school buses.

Hearing Location(s): On April 12, 2018, at 1:30 p.m., at the Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington, Olympia, WA 98501.

Date of Intended Adoption: April 16, 2018.

Submit Written Comments to: Glenn Gorton, Director, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, email glenn.gorton@k12.wa.us, by April 12, 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 April 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to revise rules in chapter 392-143 WAC regarding nonpresented school buses during WSP inspections. Among other things, the proposed rules would adopt the National Highway Traffic Safety Administration's definition of "multifunction school activity bus" and make additional revisions to ensure all school bus specifications are up-to-date with federal and state regulations.

Statutory Authority for Adoption: RCW 46.61.380.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Glenn Gorton, OSPI, Student Transportation, 360-725-6121; and Enforcement: Lisa Dawn-Fisher, OSPI, Chief Financial Officer, 360-725-6292.

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).

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

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-001 Authority and purpose. The authority for this chapter is RCW 46.61.380 which authorizes the superintendent of public instruction to adopt and enforce regulations to govern the design, marking, and mode of operation of all school buses transporting public school students. The purpose of this chapter is to establish the specifications governing the design and marking of all school buses owned and operated by any school district and all school buses which are privately owned and operated under contract with any school district for the transportation of students. The provisions of this chapter ~~((shall be))~~ are incorporated by express reference into all school district contracts for the transportation of public school students in privately owned and operated school buses.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "School bus" means every vehicle with a seating capacity of more than ten persons including the driver regularly used to transport students to and from school or in connection with school activities.

(2) "School bus specifications manual" means that manual published by the superintendent of public instruction.

(3) "School district" means either a school district or an educational service district.

(4) "School bus operation permit" means that form issued by the superintendent of public instruction to a school district, which is required prior to the use of any school bus for the transportation of students. No school bus operation permit is valid for any school bus which does not meet the Federal Motor Vehicle Safety Standards implemented April 1, 1977.

(5) "Inspection officer" means an employee of the Washington state patrol designated by the chief of the Washington state patrol to inspect school buses.

(6) "SPI Form 1028" means that form distributed by the superintendent of public instruction upon which the inspection officer indicates that the school bus has been inspected and approved, for used buses previously inspected by the Washington state patrol.

(7) "SPI Form 1029" means that form distributed by the superintendent of public instruction upon which the inspection officer indicates that the school bus has been inspected and approved upon initial purchase, used buses not previously inspected by the Washington state patrol, and buses which have undergone rehabilitation or modification.

(8) "Major repairs" means repairs to or rebuilding of the frame, steering, suspension, or braking systems. Major repairs to braking systems does not include routine maintenance such as replacing brake shoes, pads or drums.

(9) "Multifunction school activity bus (MFSAB)" means a vehicle defined by the National Highway Traffic Safety Administration, 49 C.F.R. 571, as a multifunction school activity bus used for purposes consistent with that definition.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-015 School bus specifications manual. The Washington state school bus specifications manual is hereby incorporated into this chapter by reference. Prior to any revision of the school bus specification manual, the superintendent of public instruction ~~((shall))~~ must serve notice to interested parties and shall hold at least one public meeting.

AMENDATORY SECTION (Amending WSR 12-15-079, filed 7/18/12, effective 8/18/12)

WAC 392-143-032 School bus operation permit. The superintendent of public instruction ~~((shall))~~ must issue school bus operation permits as follows:

(1) School buses owned or operated by a school district or owned by a private contractor under contract to a school district ~~((shall))~~ must be issued a school bus operation permit on receipt of the following electronic files or documents for each new school bus or used school bus not previously issued a school bus operation permit in Washington state:

(a) SPI Form 1020A, School Bus Acquisition Report; ~~((and))~~

(b) SPI Form 1029, Initial School Bus Inspection; and

(c) Supporting documentation as required on SPI Form 1020A.

(2) A school bus operation permit ~~((shall))~~ must be reissued on receipt of the following electronic files or documents for school buses previously licensed in Washington state:

(a) SPI Form 1020A, School Bus Acquisition Report, from the school district acquiring the school bus; and

(b) SPI Form 1029, Initial School Bus Inspection, if the most recent school bus inspection was more than twelve months prior to the date of acquisition.

(3) A copy of the operation permit ~~((shall))~~ must be retained by the school district and a copy shall be placed in the permit holder in the school bus.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-035 Routine inspection of school buses. All school buses shall be inspected annually by the Washington state patrol. Inspection dates ~~((shall))~~ must be determined by the chief of the state patrol. School districts ~~((shall))~~ must be notified by the chief of the state patrol prior to each annual inspection of the time and place of inspection. School buses not presented for inspection at the time and place scheduled by the chief of the state patrol ~~((shall))~~ may obtain the appropriate inspection on or before August 31st of the current year. If the vehicle is not inspected on or before August 31st, the bus must not be operated as a school bus unless the requirement is temporarily waived in writing by the chief of the state patrol or until the school bus has passed a required inspection. A second inspection of at least twenty-five percent of each school district's fleet ~~((shall))~~ must be conducted annually by the Washington state patrol. This second inspection shall be unannounced and the inspection team ~~((shall))~~ must select which buses in the fleet it will inspect. These unannounced inspections ~~((shall))~~ must be scheduled so that they do not disrupt the regular transportation program.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-040 Other required inspections of school buses. All school buses which have been rebuilt, have received a major modification, have received a major repair, or have received an interior renovation or refurbishment ~~((shall))~~ must be inspected prior to transporting students in accordance with the following criteria:

(1) A rebuilt school bus: For the purpose of this section, a rebuilt school bus ~~((shall))~~ must fully comply with all current Washington specifications at the time the school bus is rebuilt.

(2) A school bus receiving a major modification (e.g., hydraulic lift and/or ramp for wheelchairs) ~~((shall))~~ must meet all current state of Washington specifications at the time the major modification is made.

(3) A school bus receiving a major repair ~~((shall))~~ must meet or exceed Washington specifications in effect at the time of the original manufacturing date of the bus and shall be inspected in the same manner as a new school bus with emphasis on mechanical safety items.

(4) A school bus receiving an interior renovation or refurbishment ~~((shall))~~ must be inspected in the same manner as a new school bus with respect to Federal Motor Vehicle Safety Standard 222.

AMENDATORY SECTION (Amending WSR 04-08-117, filed 4/6/04, effective 5/7/04)

WAC 392-143-050 Resold school buses. A school district which sells a school bus to anyone other than another school district ~~((shall))~~ must be responsible for removing the school district's name and number and all lettering and markings identifying the vehicle as a school bus prior to its delivery to the purchaser. However, if the district sells the school bus to a private party who certifies in writing that the school bus ~~((shall))~~ will be used as a private carrier bus, the district need not remove the four or eight light warning system and stop signal arm.

AMENDATORY SECTION (Amending Order 7-75, filed 12/22/75)

WAC 392-143-055 Responsibility for compliance with school bus specification rules. The responsibility for compliance with this chapter lies with the board of directors of each school district. Failure to comply with this chapter ~~((shall))~~ constitutes cause for the withholding of state transportation funds for such time and to such extent as is necessary to ensure compliance.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-060 School bus specifications continued compliance. School districts ~~((shall))~~ must maintain all school buses in such condition that they shall continue to meet or exceed Washington state specifications in effect when the bus was manufactured, except as such standards or specifications are subsequently repealed or modified.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-070 Other vehicles used to transport students. All vehicles with a seating capacity including the driver of ten persons or less ~~((shall))~~ are not ((be)) required to meet school bus specifications. Such vehicles regularly used to transport students to and from school or in connection with school activities ~~((shall))~~ must carry the approved school bus first-aid kit, fire extinguisher, and highway warning kit. These vehicles also ~~((shall))~~ must pass a safety inspection

routinely conducted at the intervals outlined in WAC 392-143-035.

School districts may use an MFSAB with a seating capacity of less than sixteen passengers, including the driver. An MFSAB may be used to transport students and is required to have Washington state patrol inspections, initial and annual, for the appropriate class vehicle. An MFSAB must not be used in home-to-school transportation where any stop configuration would require the use of alternately flashing school bus warning lights if the vehicle were a school bus. An MFSAB must be equipped with a lap-shoulder belt or other passenger securement system that meets the requirements set forth in the Washington state school bus specifications manual in all seating positions and must not be painted school bus yellow. An MFSAB must carry the approved school bus first-aid kit, fire extinguisher, and highway warning kit. All drivers of an MFSAB must have a school bus driver's authorization in accordance with chapter 392-144 WAC.

All other vehicles used to transport students with a manufacturer rated seating capacity including the driver greater than ten persons ~~((shall be))~~ are required to meet school bus specifications.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-080 Signs and markings for school buses—Exterior—Interior. Signs and markings on the exterior of any school bus ~~((shall be))~~ are limited to the requirements of the school bus specifications manual.

Signs and markings on the interior of any bus ~~((shall be))~~ are limited to necessary and/or required manufacturers' equipment and/or component identification and instruction, and the requirements of the school bus specifications manual.

WSR 18-06-108

PROPOSED RULES

LIQUOR AND CANNABIS

BOARD

[Filed March 7, 2018, 10:57 a.m.]

Supplemental Notice to WSR 18-03-186.

Preproposal statement of inquiry was filed as WSR 17-21-110.

Title of Rule and Other Identifying Information: WAC 314-12-085 Self-dispensing wine machines and self-service beer taps, the rule clarifies the requirements for on-premises liquor licensees that use self-dispensing wine machines and self-service beer taps.

Hearing Location(s): On April 18, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: May 2, 2018.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by April 18, 2018.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by April 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule provides the requirements for on-premises liquor licensees that use self-dispensing wine machines and self-service beer taps.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

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. There are no costs or reporting requirements for licensees.

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. No costs or reporting requirements are required.

March 7, 2018
Jane Rushford
Chair

NEW SECTION

WAC 314-12-085 Self-dispensing wine machines and self-service beer taps. (1) The requirements for an on-premises liquor licensee to use self-dispensing wine machines are as follows:

(a) The liquor licensee must maintain adequate staff to monitor for potential over service/consumption;

(b) Employees responsible for operating the self-dispensing machines must hold a class 12 or class 13 alcohol server permit;

(c) An employee must first check the customer's ID and check for signs of intoxication; and

(d) A service card to self-dispense must be purchased from an employee. The card may allow no more than a total of ten ounces dispensed in five ounce servings. No more than two cards may be purchased by any one customer at any time.

(2) The requirements for an on-premises liquor licensee to use self-service beer taps are as follows:

(a) The liquor licensee must maintain adequate staff to monitor for potential over service/consumption;

(b) Employees responsible for operating the self-service beer taps must hold a class 12 or class 13 alcohol server permit;

(c) An employee must first check the customer's ID and check for signs of intoxication prior to activating the system;

(d) The system must be programmed to automatically deactivate after the beer has been dispensed;

(e) The amount of beer purchased by any one customer at one time is twenty-four ounces dispensed in twelve ounce servings;

(f) Employees must have the ability to deactivate the system remotely, which allows the employee to control the amount of beer dispensed at all times.

WSR 18-06-110

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 7, 2018, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-143.

Title of Rule and Other Identifying Information: Chapter 16-302 WAC, General rules for seed certification and WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains. As a result of a petition for rulemaking submitted by the Washington State Crop Improvement Association (WSCIA), the department is amending the seed certification rules to better align with current farming practices, and to make house-keeping changes to increase clarity. Affected rule sections include WAC 16-302-050, 16-302-560, 16-302-660, 16-302-665, 16-302-690, and 16-303-340.

Hearing Location(s): On April 16, 2018, at 1:30 p.m., at the Washington State Department of Agriculture (WSDA), Conference Room 238, 21 North 1st Avenue, Yakima, WA 98902.

Date of Intended Adoption: April 27, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by April 16, 2018, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jeff Larsen, phone 360-902-1960, fax 360-902-2085, TTY 800-833-6388, email jlarsen@agr.wa.gov, by April 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under WAC 16-302-010 and its agreement with the department, WSCIA provides certification services for specific crops including: Buckwheat, chickpeas, field peas, lentils, millet, soybeans, sorghum, small grains, and forest trees. The following proposed amendments pertain only to crops inspected by WSCIA:

- Modify the field inspection application deadline for fall planted small grains, peas and lentils from June 1 to April 1;
- Modify the field inspection application deadline for chickpeas from June 1 to within twenty-eight days of planting;
- Modify the field inspection application deadline for hybrid small grains from June 1 to February 1 for fall plantings and to twenty-one days after planting for spring plantings;
- Clarify at what stage of growth chickpeas are to be inspected;
- Reduce land history requirements and isolation standards for field peas, lentils, and chickpeas;

- Update field pea standards to more accurately address winter food grade;
- To allow for organic seed production, change the requirement that all chickpea seed stocks be treated with thiabendazole to treatment with any fungicide registered for control of ascochyta only if ascochyta blight is found in the crop;
- Move chickpea inspection requirements from WAC 16-302-690 to 16-302-560 to prevent confusion with other requirements; and
- Add language to WAC 16-303-340 to explain the WSCIA audit process and to clarify the appropriate application and assessment of final certification and production fees.

Reasons Supporting Proposal: Changing the application deadlines will allow WSCIA to more timely respond to field inspection requirements. Reducing land history requirements and isolation standards will allow growers more flexibility with regard to crop rotations without compromising genetic purity. Clarifying the stage of growth for chickpea inspections will enable WSCIA to make more accurate inspections at the appropriate stage of growth to identify certification factors. Adding language to WAC 16-303-340 to explain the WSCIA audit process will codify a current practice and make it easier to understand.

Statutory Authority for Adoption: RCW 15.49.005, [15.49].021, [15.49].310, and [15.49].370, and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.021, [15.49].-310, and [15.49].370.

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

Name of Proponent: WSCIA, private.

Name of Agency Personnel Responsible for Drafting: Jeff Larsen, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1960; Implementation and Enforcement: Victor Shaul, 21 North 1st Avenue, Suite 203, Yakima, WA 98902, 509-249-6950.

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. WSDA is not a listed agency 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 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.

Is exempt under RCW 34.05.310 (4)(d).

Explanation of exemptions: The provisions of the proposed amendments regarding moving chickpea inspection requirements from one section to another section simply makes it easier to understand the rule and clarifying the WSCIA audit process more clearly addresses the appropriate application and assessment of final certification and production fees to reflect current practices.

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. All components of the proposed rule were analyzed, and none are expected to increase costs to businesses. The department does not anticipate that modifying field inspection application deadlines, clarifying the state of growth for chickpea inspections, or updating field pea standards to address additional winter varieties will increase costs to affected businesses. Reducing land history requirements and isolation standards for field peas, lentils, and chickpeas will positively impact growers by allowing for shorter crop rotations and more options for land availability. Modifying the requirement that all chickpea seed stocks must be treated with the fungicide Thiabendazole, to treatment only if ascochyta blight is detected will positively impact growers by allowing for the production of organic chickpea seed. In addition, a monetary cost savings is inherent in not spraying fungicides on uninfected seed stocks. The proposed rule also allows for the use of other fungicides registered to control ascochyta. Moving chickpea inspection requirements and clarifying the WSCIA audit process fall under exemptions specified in RCW 34.05.310 (4)(d).

A copy of the detailed cost calculations may be obtained by contacting Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsda.rulescomments@agr.wa.gov.

March 7, 2018

Jason Ferrante

Assistant Director

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-050 Submitting an application for seed certification. (1) Seed certification application due dates are:

(a) For seed certified by the department: Alfalfa, clover, grasses and rapeseed (seedling applications) - Within sixty days of planting. Seedling applications will not be accepted if received more than one hundred five days after planting.

(b) Hybrid canola or hybrid rapeseed - Fall plantings February 1st; Spring plantings - Twenty-one days after planting.

(c) Sunflower twenty-one days after planting.

(d) Notification of a seedling field to be harvested for certification the same year of planting is due July 31st with the required fees.

(i) Bean - July 1st.

(ii) Corn - June 1st.

(iii) Industrial hemp - Twenty-one days after planting.

(2) For seed certified by the Washington state crop improvement association (WSCIA) seed certification application due dates are:

(a) ~~((Field pea, chickpea, lentil, millet, and))~~ Fall planted small grains ((both winter and spring varieties) - June), peas and lentils - April 1st.

(b) Spring planted small grains, peas, lentils, and millet - June 1st.

(c) Chickpeas - Within twenty-eight days of planting.

(d) Hybrid small grains - Fall plantings February 1st; spring plantings - Twenty-one days after planting.

(e) Buckwheat and soybean - July 1st.

~~((f))~~ (f) Sorghum - July 15th.

~~((g))~~ (g) Forest tree seed certification - Refer to specific crop requirements in chapter 16-319 WAC.

(3) An application for seed certification must be submitted to the certifying agency each year a grower plans to produce seed for certification of annual crops (beans, peas, grain).

(4) A renewal application for seed certification must be submitted to the certifying agency after a stand is established each year that a grower plans to produce seed for certification of perennial crops (alfalfa, clover, grass). Due dates for renewal applications are as follows:

(a) Alfalfa and clover - June 15th.

(b) Grass - May 1st.

(5) Applications received after the due date are assessed a late application fee.

(6) No renewal application for seed certification may be accepted after the due date if a field inspection cannot be conducted prior to harvest except at the discretion of the certifying agency.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification. (1) Field inspection timing for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

(a) For field pea and lentil - When seed crop is in full bloom;

(b) For chickpea (garbanzo bean) - When seed crop is mature enough to differentiate leaf type (compound or simple leaf type) ~~((and in))~~, with a second inspection occurring between full bloom and late pod stage for registered and foundation class. Certified class requires a second inspection at late pod stage if ascochyta blight is observed during the first inspection;

(c) For soybean - When seed crop is in full bloom ~~((and/or))~~ and of mature color;

(d) For open pollinated sorghum - When seed crop is in full bloom, and optionally again when seed crop begins to show mature color;

(e) For hybrid sorghum - Two inspections during bloom and one inspection after seed begins to show mature color;

(f) For small grains - When seed crop is fully headed and of mature color;

(g) For millet - One inspection during bloom and one inspection after seed begins to show mature color; and

(h) For buckwheat - One inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection. Fields rejected for jointed goatgrass or jointed goatgrass hybrids are not eligible for reinspection and must remain ineligible for any production of certified classes

of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabilitation period at such time that the jointed goatgrass or jointed goatgrass hybrids would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass or jointed goatgrass hybrids are found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. CLEARFIELD is a trait that makes a plant resistant to the Imazamox herbicide.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-660 Field pea standards for seed certification. (1) The land, isolation, and field standards for field pea seed certification are:

Class	Land Minimum Years	Isolation Minimum Feet	Off-type Maximum Plants/acre	Field Other Crop Maximum Plants/acre
Foundation	((5)) 3 (a)	((50)) 25 (b)	None found	None found (c)
Registered	((3)) 2 (a)	((50)) 10 (b)	10	None found (c)
Certified	2 (a)	((25)) 10 (b)	20	None found (c)

- (a) ~~((Spring))~~ Peas also require 10 years land history with no production of Austrian winter pea for all classes.
- (b) Reduce to three feet from fields producing a certified class of the same variety. In addition, each field pea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed field pea seed crop, the planting of small grain between field pea fields, except for the three feet of isolation, is recommended.
- (c) ~~((For spring peas,))~~ No Austrian winter pea or rye is permitted. For Austrian winter peas, no rye is permitted.

(2) Seed certification standards for field pea are:

Class	Off-type Maximum %	Pure Seed Minimum %	Inert Maximum %	Other Crop Maximum %	Weed Maximum %	Germination Minimum %
Foundation	None found	99.00	1.00	None found	None found	85
Registered	None found	99.00	1.00	None found	0.25 (b)	85
Certified	0.03	99.00	1.00	0.10 (a)	0.25 (b)	85

- (a) ~~((For spring peas,))~~ No Austrian winter pea or rye is permitted. For Austrian winter peas, no rye is permitted.
- (b) ~~((Other tolerance for))~~ Objectionable weed seed~~((s))~~ maximum: 1 seed per lb. registered class, 2 seeds per lb. certified class.

	((OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/1b
Certified	2/1b))

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-665 Lentil standards for seed certification. (1) Land, isolation, and field standards for lentil seed certification are:

Class	Land Minimum Years	Isolation Minimum Feet	Off-type Maximum Plants/acre	Field Other Crop Maximum Plants/acre
Foundation	5	((50)) 25 (a)	None found	None found
Registered	4	((50)) 10 (a)	10	10 (b)
Certified	3	((25)) 10 (a)	20	20 (b)

- (a) Reduce to three feet from fields producing a certified class of the same variety. In addition, each lentil field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed lentil seed crop, the planting of small grain between lentil fields, except for three feet of isolation, is recommended.
- (b) Refers to barley and vetch, each.

(2) Seed certification standards for lentil are:

Class	Off Type Maximum Seeds/lb	Pure Seed Minimum %	Inert Maximum %	Other Crop Maximum %	Weed Maximum %	Germination Minimum %
Foundation	None found	99.00 (a)	1.00 (a)	None found	None found	85.00

Class	Off Type Maximum Seeds/lb	Pure Seed Minimum %	Inert Maximum %	Other Crop Maximum %	Weed Maximum %	Germination Minimum %
Registered	1	99.00 (a)	1.00 (a)	0.05 (b)	0.05 (b), (c)	85.00
Certified	4	99.00 (a)	1.00 (a)	0.10 (b)	0.05 (c)	85.00

- (a) A total of three percent inert matter is allowed in samples containing decorticated seed provided total of all other inert matter does not exceed one percent.
- (b) No vetch is permitted.
- (c) ~~((Other tolerance for))~~ Objectionable weed seed((:)) maximum: 1 seed per lb. registered class, 2 seeds per lb. certified class.

	((OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/lb))

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-690 Chickpea standards for seed certification. (1) Land, isolation, and field standards for chickpea seed certification are:

FIELD STANDARDS

Land Requirements (a) (minimum years)	Isolation (minimum feet) (e)	Off-type (plants/acre)	Other Crop (b) (plants/acre)	Noxious (c) Weeds (plants/acre)	Ascochyta Blight (d)
Class					
Foundation	((3)) <u>2</u>	((50)) <u>25</u>	none found	((none found)) <u>(c)</u>	none found
Registered	((2)) <u>1</u>	((50)) <u>10</u>	5	((none found)) <u>(c)</u>	none found
Certified	((2)) <u>1</u>	((25)) <u>10</u>	10	((none found)) <u>(c)</u>	10 plants/acre

- (a) ~~((Shall not have been planted to chickpeas for three years for foundation class, and two years for registered and certified class, unless))~~ Waived if the previous crop is ((of the same variety)) grown and passes certification field standards of ((the same)) equal or higher ((generation)) certified class of seed of the same variety.
- (b) Inseparable other crops.
- (c) Prohibited, restricted, and other weeds difficult to separate must be controlled.
- (d) None found in all classes of ~~((nontolerant))~~ varieties not tolerant to ascochyta. ~~((Planting seedstock must be treated with Thiabendazole (2-(4-thiazolyl)benzimidazole.))~~
- (e) Reduce to three feet from fields producing a certified class of the same variety. In addition, each chickpea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed chickpea seed crop, the planting of small grain between fields, except for three feet of isolation, is recommended.

~~((FIELD INSPECTION~~

~~Foundation and registered class fields must have two field inspections: One at bloom stage and one at late pod stage. Certified class fields must be inspected at bloom stage plus another at pod stage if ascochyta blight is observed during the bloom stage inspection.))~~

(2) Seed standards for chickpea seed certification are:

SEED STANDARDS

	Pure seed %	Inert %	Other crop	Weed seed	Germination %
Class (c)					
Foundation	99	1	none found	none found	85
Registered	99	1	none found	none found	85
Certified <u>(d)</u>	99	1	2 seeds/lb (a)	2 seeds/lb (b)	85

- (a) None found for Austrian pea, rye, or vetch.

- (b) None found for nightshade berries or prohibited noxious weed seeds.
- (c) All classes of varieties not tolerant to ascochyta must be treated with ((Thiabendazole (2-(4-thiazolyl) benzimidazole)) a fungicide registered to control ascochyta at the labeled rate((†)).
- (d) Seed from a field where ascochyta was found at inspection must be treated with a fungicide registered to control ascochyta at the labeled rate.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains. (1) Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains are as follows:

(a)	Application fee per variety per grower	\$25.00
(b)	Field inspection fee per acre except millet and hybrid sorghum	\$3.15
(c)	Millet - First acre	\$32.55
	- Each additional acre	\$6.50
(d)	Hybrid sorghum - First acre	\$32.55
	- Each additional acre	\$13.00
(e)	Special field inspection fee per acre	\$2.60
(f)	Late application fee	\$50.00
(g)	((Reinspection fee)) <u>Minimum reinspection fee for each field which did not pass field inspection plus \$0.46 for each acre over twenty-five . . .</u>	\$45.00
	((minimum for each field which did not pass field inspection plus \$0.46 for each acre over twenty-five.))	
(h)	Final certification fee per cwt. of clean seed sampled	\$0.25
	((per cwt. of clean seed sampled, which is charged to conditioning plant, or production fee	\$0.105))
(i)	<u>Production fee per cwt. of production from fields inspected which is utilized for seed((, which is charged to the grower or the final seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out-of-state.))</u>	\$0.105
((†)) (j)	<u>Sampling fee per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling</u>	\$0.105

	((per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling.))
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(2) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee is refunded upon request until June 30 of the year following harvest.

(3) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

(4) Final certification or production fees shall be determined by the audit process described in subsection (5) of this section.

(5) The WSCIA audit process is as follows:

(a) Audits are conducted semiannually.

(b) Certified seed growers, distributors, and conditioning plants shall report all previously unreported retail and wholesale transactions of certified or certified-eligible seed by completing and returning the WSCIA audit form to WSCIA.

(c) WSCIA invoices each grower, distributor, conditioning plant, or final seller as follows:

(i) For seed certified by WSCIA and utilized as seed, the conditioning plant is charged the final certification fee in subsection (1)(h) of this section;

(ii) For certified-eligible seed not certified by WSCIA but utilized as seed, the grower or final seller is charged the production fee in subsection (1)(i) of this section. "Final seller" means a seller who sells seed prior to brokerage or retail sale, sells seed to a plant not approved for conditioning certified seed, or transships seed out-of-state.