

**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 [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@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](mailto: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 Of the repealed sections, one hundred forty-three are being amended and moved into new sections in the newly created chapter.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](mailto: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

## Chapter 388-891A WAC

VOCATIONAL REHABILITATION SERVICES FOR  
INDIVIDUALS WITH DISABILITIES

## PURPOSE

NEW SECTION

**WAC 388-891A-0005 What is the purpose of this chapter?** This chapter explains the types of vocational rehabilitation (VR) services available to individuals who are eligible through the department of social and health services (DSHS), division of vocational rehabilitation (DVR).

VR services are offered to assist individuals with disabilities to prepare for, secure, maintain, advance in, or regain employment that is consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

This chapter is consistent with the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014 and codified in 34 C.F.R. Sec. 361, 363, and 397, as well as chapter 74.29 RCW, Rehabilitation Services for Individuals with Disabilities, other relevant state laws, and DSHS requirements.

## DEFINITIONS

NEW SECTION

**WAC 388-891A-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:

(1) **"Comparable services and benefits"** means services and benefits, including accommodations and auxiliary aids and services, that are:

(a) Provided for, in whole or in part, by other federal, state, or local public agencies, health insurance, or employee benefits;

(b) Available to you when you need them to ensure your progress toward achieving the desired employment outcome in your individualized plan for employment (IPE); and

(c) Substantially similar to the services that you would otherwise receive from DVR.

(2) **"Competitive integrated employment"** means:

(a) Part-time or full-time work:

(i) that is performed in an integrated setting;

(ii) for which you are paid at or above the highest applicable minimum wage of those specified in 29 U.S.C. Sec. 206 (a)(1), RCW 49.46.020, or local minimum wage laws; and

(iii) Work for which you earn the same wages and benefits as other employees without disabilities in similar occupations or performing similar tasks, who have similar training, experience, and skills; or

(b) Self-employment that yields income comparable to that received by other individuals without disabilities who are self-employed in a similar occupation or performing similar tasks, who have similar training, experience, and skills.

(3) **"Division of vocational rehabilitation (DVR)"** means the division primarily concerned with the vocational rehabilitation of individuals with disabilities and responsible

for the administration of the vocational rehabilitation program of the department of social and health services (DSHS).

(4) **"Employment outcome"** means competitive integrated employment, supported employment, self-employment, telecommuting, business ownership, or any other type of employment compensated at a competitive wage in an integrated setting that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(5) **"Extended employment"** means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with section 14(c) of the Fair Labor Standards Act.

(6) **"Extreme medical risk"** means the probability of substantially increasing your functional impairment or death if medical services, including mental health services, are not provided quickly.

(7) **"Family member"** means a person who:

(a) Is your relative or legal guardian; or

(b) Lives in the same household as you and has a substantial interest in your well-being.

(8) **"Individual with a disability"** means an individual:

(a) Who has a physical or mental impairment;

(b) Whose impairment results in a substantial impediment to employment; and

(c) Who can benefit in terms of an employment outcome as a result of receiving VR services.

(9) **"Individual with a most significant disability"** means an individual with a significant disability who has a severe physical or mental impairment resulting in serious functional limitations in four or more areas (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

(10) **"Individual with a significant disability"** means an individual with a disability:

(a) Who has a severe physical or mental impairment resulting in serious functional limitations in one or more areas (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(11) **"Individualized Plan for Employment (IPE)"** means the written plan, approved by your DVR counselor, described in WAC 388-891A-0915 through 388-891A-0951.

(12) **"Integrated setting"** means one of the following:

(a) The setting in which you receive a VR service is integrated if it is a setting commonly found in the community (such as a store, office, or school) where you come into contact with people without disabilities while you are receiving the service. The people without disabilities who you come into contact with are not the same people providing VR services to you.

(b) The setting in which you work is integrated if it is a setting commonly found in the community where both your immediate co-workers and the public with which you interact include people without disabilities. The amount of contact you have with people without disabilities is the same that a person without disabilities in the same type of job would experience.

(13) **"Most recent tax year"** means the most recent calendar year for which you:

(a) Filed or were required to file an income tax return with the United States Internal Revenue Service (IRS); or

(b) Were claimed as a dependent on an income tax return with the United States IRS.

(14) **"Physical or mental impairment"** means:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(15) **"Representative"** means any person chosen by an applicant or eligible individual, including a parent, family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(16) **"Student with a disability"** means an individual with a disability who is:

(a) Currently enrolled in a secondary, postsecondary, or other recognized educational program;

(b) Not younger than fourteen years of age and not older than the maximum age established for the receipt of services under part B of the Individuals with Disabilities Education Act (IDEA) in the state of Washington, as described in WAC 392-172A-02000; and

(c) Receiving special education or related services under part B of IDEA or is a student with a disability for the purposes of section 504 of the Rehabilitation Act of 1973, as amended.

(17) **"Substantial impediment to employment"** means the limitations or barriers you experience as a result of a physical or mental impairment that hinder your ability to prepare for, secure, maintain, advance in, or regain employment that matches your abilities and capabilities.

(18) **"Vocational rehabilitation (VR) services"** means those services described in WAC 388-891A-0700 through 388-891A-0890.

(19) **"Youth with a disability"** means an individual with a disability who is not younger than fourteen years of age and not older than twenty-four years of age.

## PROTECTION AND USE OF CONFIDENTIAL INFORMATION

### NEW SECTION

**WAC 388-891A-0100 What personal information about me does DVR keep on file?** DVR keeps information regarding your eligibility and the services that you have received as required by federal and state laws and regulations. The kind of information that DVR keeps on file depends on your case status as follows:

(1) For an applicant or individual who has been determined eligible for services, the record of services that you have received from DVR is called the case service record. The case service record includes a narrative as well as information including, but not limited to:

(a) The DVR application form or written request for VR services;

(b) Documentation explaining the need for the trial work experience(s), if conducted, and the written plan for conducting the trial work experience(s), and documentation of progress reviews;

(c) Documentation and records that support the determination of eligibility or ineligibility;

(d) Documentation supporting the severity of disability and priority of service category determination;

(e) Financial statement and supporting documentation as required;

(f) Plan for employment, amendments to the plan, if amended, and information supporting the decisions documented on the plan;

(g) Documentation describing how you used informed choice to make decisions throughout the process, including assessment services, selection of an employment outcome, VR services, service provider, type of setting, and how to get VR services;

(h) If VR services are provided in a setting that is not integrated, documentation of the reason(s) for using a nonintegrated setting;

(i) If you achieve a competitive integrated employment outcome, documentation to show:

(i) Your wages and benefits, including wages and benefits earned up to one year after closure;

(ii) That the job you have is:

(A) Described in your plan for employment;

(B) Consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(C) Paid at a competitive rate in an integrated setting;

(iii) That the services provided to you in your plan for employment helped you achieve the employment outcome identified on your individual plan for employment;

(iv) That you have been employed for at least ninety days and that you no longer need vocational rehabilitation services;

(v) That you and your DVR counselor agree that your employment is satisfactory and that you are performing well; and

(vi) That you have been informed, through appropriate modes of communication about the availability of post-employment services;

(j) If DVR refers you to another state or federal program for services to prepare for, secure, maintain, advance in, or regain employment, documentation of the referral, the reason(s) for the referral, and the name of the program(s) to which you are referred;

(k) Documentation of case closure, including:

(i) Reasons for closing the case service record;

(ii) How you were involved in the decision to close the case; and

(iii) A copy of the closure letter that explains the reason(s) for case closure and your rights if you disagree with the decision;

(l) Documentation of the results of mediation or fair hearings, if held;

(m) Documentation of semi-annual and annual reviews after your case service record is closed as outlined in WAC 388-891A-1330 if:

(i) You choose extended employment in a nonintegrated setting;

(ii) You achieve a supported employment outcome in an integrated setting for which you are paid in accordance with section 14(c) of the Fair Labor Standards Act; or

(iii) DVR determines you are ineligible because you are too severely disabled to benefit from VR services; and

(n) Other documentation that relates to your participation in VR services, including your progress throughout the VR process.

(2) For students with disabilities who are potentially eligible for services, the record:

(a) Includes personal and demographic information about you;

(b) Documents any consent from a parent or guardian required for you to participate in pre-employment transition services;

(c) Documents participation in pre-employment transition services before you apply for VR services; and

(d) May be transferred into your case service record upon application.

(3) For individuals who are either seeking employment in or employed in a job that pays below the federal minimum wage, the record documents the receipt of career counseling and information and referral services.

#### NEW SECTION

**WAC 388-891A-0102 How long will DVR retain my personal information?** DVR keeps a case service record while you are receiving services and for at least six years after closing your case service record. After six years, DVR may destroy the closed case service record.

#### NEW SECTION

**WAC 388-891A-0103 May DVR obtain personal information about me?** (1) DVR may obtain information

about you to help us better understand your disabilities, barriers to employment, abilities, interests, and needs for VR services and to coordinate DVR services with the services you receive from other agencies and programs. With your written consent, DVR may obtain this personal information about you from service providers, cooperating agencies, and others. Examples of information DVR commonly obtains with your written consent include your:

(a) Identity and work status;

(b) Physical and mental health conditions;

(c) Disabilities and functional limitations;

(d) Substance use history and treatment recommendations;

(e) Educational history;

(f) Work history; and

(g) Background check results, including those that are not publicly accessible.

(2) DVR may obtain publicly accessible information about you without your written consent.

(3) DVR may obtain financial and personal information about you from state and federal agencies to verify program participation (including participation in education when appropriate), benefits you receive from other agencies or programs, and earnings and income from employment or self-employment. DVR will only collect such information if the state or federal agencies have legal authority to release it to DVR. This may occur with or without your consent.

(4) If DVR collects information about you from service providers or other agencies, the information will not be released to others without your written consent except under the circumstances identified in WAC 388-891A-0130 (2) and (3).

#### NEW SECTION

**WAC 388-891A-0104 What happens if my personal information is lost, stolen, or released in error?** DVR safeguards the information it collects and stores.

(1) DVR notifies you if it becomes aware that your protected information has been lost, stolen, or released in error.

(2) When your information has been released in error, DVR will make maximum efforts to recover your information.

#### NEW SECTION

**WAC 388-891A-0110 What happens if DVR receives information that indicates I have a history of violent or predatory acts?** If DVR receives information that indicates you have a history of violent or predatory behavior, DVR staff will discuss that history with you. DVR will ask that you consent to release information about this behavioral history to a potential service provider or potential employer prior to referral for services when a risk assessment, as described in WAC 388-891A-0707, indicates a potential risk to individuals you may encounter while receiving services or working.

#### NEW SECTION

**WAC 388-891A-0120 May I ask DVR to change incorrect information in my case service record?** You may

ask DVR to correct information in your case service record that you believe is incorrect.

(1) If DVR agrees with the correction, DVR corrects the information and documents any correction made.

(2) If DVR disagrees that the information is incorrect, DVR will:

(a) Notify you of the decision not to make changes to your case service record, and include instruction with the notice explaining how to provide a written document summarizing the information that you believe is incorrect;

(b) Document the decision not to make changes; and

(c) Place documents you provide to summarize your requested change into your case service record.

#### NEW SECTION

**WAC 388-891A-0130 May DVR share personal information in my case service record with others?** (1) DVR may share personal information with others if you sign a written consent or authorization giving permission to release or exchange the information, and:

(a) Another organization or program involved in your VR services needs specific information to serve you effectively; or

(b) You select an employment outcome in a field that customarily requires a background check as a condition of employment or licensure.

(2) DVR may release information that it obtained from other organizations or programs only when permitted by the rules or laws governing the release of protected information applicable to those organizations or programs.

(3) DVR may release, obtain, or maintain personal information without your written consent when:

(a) Required by federal or state laws or regulations;

(b) Required by chapter 26.44 RCW to report the suspected abuse or neglect of a child to either DSHS or law enforcement;

(c) Required by chapter 74.34 RCW to report the suspected abuse, neglect, abandonment, or financial exploitation of a vulnerable adult to DSHS or law enforcement;

(d) A law enforcement agency or DSHS requests information as part of an investigation into abuse, neglect, abandonment, or exploitation of a child or vulnerable adult;

(e) A law enforcement agency or DSHS requests information as part of an investigation into an alleged criminal act by any recipient of DVR services, unless prohibited by federal or state law;

(f) Required by an order signed by a judge, magistrate, or authorized court official (a subpoena duces tecum or request by an attorney is not an order signed by a judge, magistrate, or authorized court official for purposes of releasing information);

(g) The DSHS division of child support requests contact information;

(h) You have requested a fair hearing regarding DVR services with the Washington state office of administrative hearings (OAH);

(i) An organization, agency, or person(s) has an agreement with DVR for an audit, evaluation for program purposes, fulfilling reporting requirements, or research;

(j) DVR reasonably believes you are a danger to yourself or others; or

(k) Otherwise required.

#### NEW SECTION

**WAC 388-891A-0135 How does DVR protect personal information about substance abuse, HIV/AIDS, and sexually transmitted diseases?** (1) DVR uses special protections when you share personal information about substance abuse, HIV/AIDS, or sexually transmitted diseases.

(2) DVR asks for your specific permission to copy information of this nature before sharing it with a service provider or organization that is helping you reach your desired employment outcome.

(3) Information about substance abuse must be handled in accordance with 42 C.F.R., Part 2 and any other applicable federal and state laws and regulations.

(4) Information about HIV/AIDS or other sexually transmitted diseases must be handled in accordance with RCW 70.02.220 and any other applicable federal and state laws and regulations.

#### NEW SECTION

**WAC 388-891A-0140 May I review or obtain copies of information in my case service record?** (1) You may review or obtain copies of information contained in your case service record by submitting a request to DVR. DVR provides access to or provides copies of records upon request, except in one or more of the following circumstances:

(a) If DVR believes providing the medical, psychological, or other information in your case service record may be harmful to you, DVR only releases the records to a third party that you choose, such as your representative, parent, legal guardian, or a qualified medical professional.

(b) If DVR receives personal information about you from another agency or service provider, DVR may share the records only under the conditions established by the agency or service provider that provided the information.

(c) If a representative has been appointed by a court to represent you, the information must be released to the representative.

(2) DVR provides access or gives you copies of records within five business days of receiving your request. If DVR cannot fulfill your request within five business days, DVR will send you a written notice of the reason(s) the request cannot be met and the date you are granted access or the date the requested information will be provided.

#### NEW SECTION

**WAC 388-891A-0150 How does DVR protect personal information that is released for audit, evaluation, reporting, or research?** DVR may release personal information for audit, evaluation for program purposes, fulfilling reporting requirements, or research if the results would improve the quality of life or VR services for people with disabilities. When DVR has obtained personal information from another organization or program, it will release that information only when permitted by the rules or laws governing the

release of protected information applicable to that organization or program. Before DVR shares any personal information, the organization, agency, or individual must agree to the following conditions:

- (1) The information must only be used by people directly involved in the audit, evaluation, reporting, or research;
- (2) The information must only be used for the reasons approved by DVR in advance;
- (3) The information must be kept secure and confidential;
- (4) The information must not be shared with any other parties, including you or your representative; and
- (5) The final product or report produced by the organization, agency, or individual must not contain any personal information that would identify you without your written consent.

### APPEAL RIGHTS

#### NEW SECTION

**WAC 388-891A-0200 May a guardian or another representative request an exception to a rule, mediation, or fair hearing on my behalf with DVR?** Your chosen representative, legal guardian, or court-appointed representative may act on your behalf when you would like to request an exception to a rule, mediation, or fair hearing.

#### NEW SECTION

**WAC 388-891A-0205 How do I ask for an exception to a rule in this chapter?** (1) You may ask DVR staff to assist you in requesting an exception to a rule. They will help you to write and submit a request.

(2) When you make a request for an exception to a rule in this chapter, you must submit it to the DVR director or designee in writing. The request must include:

- (a) A description of the exception you are requesting;
  - (b) The reason you are asking for the exception; and
  - (c) The duration of the exception, if applicable.
- (3) An exception requesting a medical service that DVR does not otherwise provide may only be made when the service is on a limited basis or for a short duration that you specify in the request.

#### NEW SECTION

**WAC 388-891A-0206 Are there exceptions to rules in this chapter that DVR will not grant?** DVR will not grant an exception to the following rules in this chapter:

- (1) Rules requiring compliance with state or federal laws and regulations that DVR does not have the authority to change;
- (2) Rules describing the services and activities that DVR must not pay for or support, including WAC 388-891A-1101 and 388-891A-1186; and
- (3) Extended services for an individual who does not meet the definition of a youth with a most significant disability in WAC 388-891A-0100(19).

#### NEW SECTION

**WAC 388-891A-0210 What happens after I submit a request for an exception to a rule?** (1) After receiving your request for an exception to a rule, the DVR director or designee decides whether to approve the request based on:

- (a) The impact of the exception on accountability, efficiency, choice, satisfaction, and quality of services;
- (b) The degree to which your request varies from the WAC; and
- (c) Whether the rule or condition is a federal regulation that must not be waived.

(2) The DVR director or designee responds to the request for an exception within ten working days of receiving the request.

(a) If the request is approved, the DVR director or designee provides a written approval that includes:

- (i) The specific WAC for which the exception is approved;
- (ii) Any conditions of approval; and
- (iii) Duration of the exception.

(b) If the request is denied, the DVR director or designee will provide a written explanation of the reasons for the denial.

(3) The DVR director or designee makes the final decision on all requests for exceptions to a rule, as described in WAC 388-440-0001.

#### NEW SECTION

**WAC 388-891A-0211 What does a DVR counselor do when they make a decision to deny my request for VR services, reasonable accommodation, or any other request that affects my participation in VR program services?** (1) If a DVR counselor makes a decision to deny your request for a VR service, reasonable accommodation, or any other request that affects your participation in the VR program, including your participation in pre-employment transition services, the DVR counselor responds to you orally and in writing within ten working days of receiving your request.

(2) The written response you receive will provide:

- (a) The reason or reasons for the denial and your appeal rights if you disagree with the decision; or
- (b) If additional time is needed to gather supplemental information to answer your request, an explanation of the additional time needed and what supplemental information is needed.

#### NEW SECTION

**WAC 388-891A-0215 What may I do if a DVR counselor makes a decision about my VR services that I do not agree with?** (1) If a DVR counselor makes a decision that affects the VR services provided to you as an applicant or recipient of services with which you do not agree, you may try to resolve the disagreement by any one or more of the following:

- (a) Seek assistance from the client assistance program, DVR counselor, VR supervisor, or DVR director or their designee;
- (b) Request mediation;

(c) Request a fair hearing.

(2) You may request a fair hearing or mediation while you continue to work with the DVR counselor, DVR supervisor, or DVR director or designee to resolve the disagreement. If you reach an agreement prior to the date of the scheduled mediation or fair hearing, you may withdraw your request.

#### NEW SECTION

**WAC 388-891A-0220 What is the client assistance program (CAP)?** (1) The client assistance program (CAP) is a program independent of DVR that offers information and advocacy regarding your rights as a DVR customer and offers assistance to help you receive services.

(2) You may ask for help or information from CAP at any time during the rehabilitation process by asking a DVR staff person for information about how to contact CAP or by calling CAP at 206-721-5999 or toll free at 1-800-544-2121 voice/TTY.

(3) A CAP representative may represent you with DVR if a disagreement occurs that you cannot resolve on your own. CAP attempts to resolve disagreements informally through discussions with the DVR employee(s) involved as a first step. If informal efforts are not successful, CAP may represent you in mediation and in a fair hearing.

(4) CAP services are available at no cost to you.

#### NEW SECTION

**WAC 388-891A-0225 What is mediation?** (1) Mediation is a process in which a trained mediator conducts a meeting with you and DVR representative, usually your DVR counselor, to help you settle a disagreement.

(a) The mediator does not work for DVR.

(b) The mediator does not make decisions about your case.

(c) Mediation is voluntary for all parties.

(2) During mediation:

(a) Each party presents information or evidence;

(b) The mediator reviews and explains the laws that apply; and

(c) The mediator helps you and the DVR representative reach an agreement, if possible.

(3) You may ask someone to represent you during the mediation, including a CAP representative, however, you must be present.

(4) Agreements you and DVR reach through mediation are not legally binding.

#### NEW SECTION

**WAC 388-891A-0230 When may I ask for mediation?** (1) You may ask for mediation any time you disagree with a decision DVR makes that affects the VR services that DVR provides to you.

(2) DVR will not use mediation to deny or delay your right to a fair hearing.

(3) You may request both mediation and a fair hearing at the same time.

(4) If an agreement is reached during mediation, the fair hearing is canceled.

#### NEW SECTION

**WAC 388-891A-0235 Who arranges and pays for mediation?** (1) DVR will schedule mediation in a timely manner at a location that is convenient to all parties.

(2) DVR will pay for costs related to mediation, except costs related to a representative or attorney you ask to attend.

(3) DVR may pay for the VR services you require to participate in mediation.

#### NEW SECTION

**WAC 388-891A-0240 Is information discussed during mediation confidential?** (1) Discussions during mediation are confidential and must not be used in a later fair hearing or civil proceeding, if one is held.

(2) Before beginning a mediation session, all parties must sign a statement of confidentiality.

#### NEW SECTION

**WAC 388-891A-0245 If the mediation session results in an agreement, do I receive a written statement of the results?** If you and the DVR representative reach an agreement during mediation:

(1) The agreement is documented in writing;

(2) You and the DVR representative sign the written agreement; and

(3) DVR provides you with a copy of the agreement.

#### NEW SECTION

**WAC 388-891A-0250 What is a fair hearing?** (1) A fair hearing is a review process outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC that is conducted by an administrative law judge who works for the office of administrative hearings.

(2) During a fair hearing, both you and DVR may present information, witnesses, and documents to support your position.

(3) You may ask someone to represent you, such as an attorney, friend, relative, representative from the client assistance program, or someone else you choose.

(4) No DSHS employee may represent you in an administrative hearing challenging a DVR decision.

(5) The administrative law judge makes a decision after they hear all of the information presented and review any documents submitted and relevant laws and regulations.

#### NEW SECTION

**WAC 388-891A-0255 How do I request a fair hearing?** (1) To ask for a fair hearing, send a written request to the office of administrative hearings. You must include the following information in your written request:

(a) Your name, address, and telephone number;

(b) The name of the DSHS program that the fair hearing involves (such as DVR);

(c) A written statement describing the decision and the reasons you disagree; and

(d) Any other information or documents that relate to the matter.

(2) You must submit your request for a fair hearing within forty-five calendar days of the date the DVR counselor issues the decision with which you disagree.

(3) You may ask any DVR employee for instructions or assistance to submit a request for a fair hearing.

#### NEW SECTION

**WAC 388-891A-0260 After I submit a request for a fair hearing, when is it held?** The office of administrative hearings holds a fair hearing within sixty days of receipt of your written request for a hearing, unless you or DVR ask for a later hearing date and the office of administrative hearings determines there is a reasonable cause for the delay.

#### NEW SECTION

**WAC 388-891A-0265 What is a prehearing meeting?** After you submit a request for a fair hearing, DVR offers you a prehearing meeting. The prehearing meeting may be conducted in person, by telephone, or by another method agreeable to all parties. The purpose of the prehearing meeting is to:

- (1) Clarify the decision with which you disagree;
- (2) Exchange copies of laws, rules, or other information to be presented in the fair hearing;
- (3) Explain how the fair hearing is conducted; and
- (4) Settle the disagreement, if possible.

#### NEW SECTION

**WAC 388-891A-0270 Do I receive a written fair hearing decision?** The office of administrative hearings sends you a written report of the findings and decision within thirty days of the fair hearing.

#### NEW SECTION

**WAC 388-891A-0275 Is the fair hearing decision final?** (1) The office of administrative hearings decision is final and DVR must implement the decision.

(2) If you do not agree with the office of administrative hearings decision, you may pursue civil action through superior court to review that decision.

#### NEW SECTION

**WAC 388-891A-0295 May DVR suspend, reduce, or terminate my services if I request a fair hearing?** DVR must not suspend, reduce, or terminate agreed upon services if you have requested a fair hearing, unless DVR provides evidence that you provided false information or committed fraud or other criminal acts related to your receipt of VR services.

## INFORMED CHOICE

#### NEW SECTION

**WAC 388-891A-0300 What is informed choice?** (1) Informed choice is the process by which an individual receiving services from DVR makes decisions about VR goals, VR services, and the service providers necessary to reach those goals. The decision-making process takes into account your culture, values, lifestyle, and characteristics, the availability of resources and alternatives, and general economic conditions. Informed choice involves clear communication to help you understand and use pertinent information in the decision-making process. Informed choice ensures that VR services promote respect for individual dignity, personal responsibility, self-determination, and the pursuit of meaningful careers.

(2) The informed choice decisions that you make are the basis for achieving a successful employment outcome.

#### NEW SECTION

**WAC 388-891A-0310 How does DVR support the informed choice process?** DVR supports the informed choice process by providing counseling and guidance, information, and support to help you make choices that match your unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, including:

- (1) Explaining what choices you can make throughout the rehabilitation process;
- (2) Assisting you to identify and get the information you need to explore the options available; and
- (3) Helping you understand and evaluate the options.

#### NEW SECTION

**WAC 388-891A-0320 What if I do not know how to use the informed choice decision making process?** DVR explains how to use informed choice to make decisions about VR goals and services. If it is difficult for you to make informed choices, DVR can help you understand the options available and choose the one that meets your needs.

#### NEW SECTION

**WAC 388-891A-0330 What decisions may I make using informed choice?** You have the right to make informed choices about VR goals and services, including but not limited to:

- (1) The providers you will work with and activities you will participate in related to pre-employment transition services;
- (2) The assessment services and service provider(s) you will use to get the information necessary for DVR to determine eligibility and identify your VR needs;
- (3) The specific details of your individualized plan for employment (IPE), including:
  - (a) Type of employment outcome and setting;
  - (b) VR services you need to achieve the employment outcome;
  - (c) Service provider(s) that will provide the service and the setting in which you receive the services; and



(d) Method(s) of arranging and paying for services as selected from those available to DVR under state law and agency policy;

(4) Working with DVR staff to request exceptions to rules in this chapter; and

(5) Appealing decisions made by DVR.

#### NEW SECTION

**WAC 388-891A-0340 What information and assistance will DVR provide to help me make informed choices about VR services and service providers?** To support you in making an informed choice about services and providers, DVR will help you get the following information, to the extent the information is both available and appropriate:

- (1) Cost, accessibility, and duration of services;
- (2) Consumer satisfaction with those services;
- (3) Qualifications of potential service providers;
- (4) Type(s) of services offered by each service provider;
- (5) Type of setting in which the services are provided, including whether the setting is integrated or nonintegrated; and
- (6) Outcomes achieved by others served by the service provider.

#### **APPLYING FOR VR SERVICES**

#### NEW SECTION

**WAC 388-891A-0400 Who may apply for vocational rehabilitation services?** Any individual who intends to achieve an employment outcome may apply for VR services.

#### NEW SECTION

**WAC 388-891A-0405 May a guardian or another representative act on my behalf with DVR?** You may select someone to act as your representative, as appropriate, while participating in the VR program.

(1) If your representative is not a legal guardian or a court-appointed representative, you must sign a consent form allowing the representative to communicate with DVR on your behalf.

(2) If you have a legal guardian or a court-appointed representative, they must act as your representative when required by the court.

(a) A legal guardian or court-appointed representative must provide DVR with documentation that describes the nature and scope of legal representation.

(b) When required by guardianship or legal representation documents you have provided to DVR, your legal guardian or court-appointed representative must sign the application and other documents that require your signature.

#### NEW SECTION

**WAC 388-891A-0410 How do I apply for VR services?** You have completed the application requirements for VR services when you:

(1) Have provided information needed to begin an assessment of eligibility and priority for services;

(2) Are available to participate in assessment services necessary to determine if you are eligible for VR services; and

(3) Have signed an application form provided by DVR or otherwise provided a written request that includes the following information:

(a) Your name;

(b) Your contact information, including mailing address and phone or email as appropriate;

(c) Your birth date and gender;

(d) Your Social Security number (optional); and

(e) The date on which you signed the written request.

#### NEW SECTION

**WAC 388-891A-0420 If I do not speak English, how do I communicate with DVR throughout the VR process, beginning at application?** If you do not speak English, or if English is not your primary language, you may request another method of communication to enable you to meet with DVR. DVR arranges and pays for interpreter services as described in WAC 388-891A-0720, translation services as described in WAC 388-891A-0860, or both interpreter and translation services as needed for you to communicate with DVR throughout the VR process.

#### NEW SECTION

**WAC 388-891A-0421 What accommodations are available to help me communicate with DVR throughout the VR process, beginning at application?** DVR uses equipment, devices, or other services you need to understand and respond to information. Methods DVR may use to communicate with you include, but are not limited to:

(1) Interpreters;

(2) Open and closed captioned videos;

(3) Specialized telecommunications services and audio recordings;

(4) Brailled and large print materials;

(5) Materials in electronic formats;

(6) Augmentative communication devices;

(7) Graphic presentations; and

(8) Simple language materials.

#### NEW SECTION

**WAC 388-891A-0425 Does DVR translate written communication for me if I do not speak English?** (1) Upon your request, DVR translates the following written communication into your primary language or the primary language of your representative:

(a) Application for VR services;

(b) Notification of eligibility or ineligibility;

(c) Plan for employment;

(d) Notification of case closure;

(e) Notification of annual review, if appropriate; and

(f) Any notice requiring your response or signature to continue receiving services.

(2) DVR translates the Washington Administrative Code (WAC) regarding VR services or service providers into your primary language or the primary language of your representative upon request.

#### NEW SECTION

**WAC 388-891A-0430 If I do not live in Washington, may I receive VR services?** The state in which you live has the primary responsibility to provide VR services to you. If you do not live in Washington state, you may apply for VR services if you are present in the state and available to participate in required assessment services or VR services.

#### NEW SECTION

**WAC 388-891A-0431 May a case be open at the same time in more than one VR services program?** A case may be open at the same time in more than one VR services program as long as services are coordinated and not duplicated.

#### NEW SECTION

**WAC 388-891A-0440 May I apply for VR services if I am currently receiving or am eligible to receive VR services from the department of services for the blind?** (1) The Washington state department of services for the blind, under an agreement with DVR, is the primary agency responsible for providing vocational rehabilitation services to individuals who are blind or have a visual impairment resulting in an impediment to employment.

(2) You may apply for vocational rehabilitation services from the department of services for the blind, DVR, or both agencies.

(3) The department of services for the blind and DVR may coordinate to provide joint services if you would benefit from such coordination as long as the services are not duplicated.

#### NEW SECTION

**WAC 388-891A-0450 May I apply for VR services if I am currently receiving or am eligible to receive VR services from a tribal VR program?** (1) If you are eligible for vocational rehabilitation services through a tribe that operates a vocational rehabilitation program, you may apply for VR services from DVR.

(2) The tribal vocational rehabilitation program and DVR may coordinate to provide joint services if you would benefit from such coordination as long as the services are not duplicated.

#### NEW SECTION

**WAC 388-891A-0490 Why does DVR offer me the opportunity to register to vote when I apply for services?** The department of social and health services (DSHS) is a voter registration assistance agency. As a division of DSHS, DVR offers you the opportunity to register to vote at application. You do not have to register to vote to receive DVR services.

## ELIGIBILITY

### NEW SECTION

**WAC 388-891A-0500 Who is eligible to receive VR services?** (1) You are eligible for VR services if a DVR counselor determines that you meet all of the following criteria:

(a) You have a physical or mental impairment that results in a substantial impediment to your ability to prepare for, secure, maintain, advance in, or regain employment;

(b) You require VR services to prepare for, secure, maintain, advance in, or regain employment that matches your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) DVR presumes that if you meet the eligibility requirements in subsection (1), you can benefit in terms of an employment outcome.

(3) Before determining that you are unable to benefit from VR services in terms of an employment outcome due to the severity of your disability, DVR must conduct a trial work experience to explore your abilities, capabilities, and capacity to perform in realistic work situations as described in WAC 388-891A-0526 through 388-891A-0535.

### NEW SECTION

**WAC 388-891A-0505 How does DVR determine if I am eligible?** (1) A DVR counselor reviews and assesses information and records about the current status of your disability and determines whether you meet the eligibility requirements outlined in WAC 388-891A-0500.

(a) A DVR counselor bases the determination on observations, education records, medical records, information provided by you or your family, and information provided by other agencies or professionals.

(b) If information or records are not current, available, or sufficient for a DVR counselor to determine if you are eligible, DVR provides the assessment services necessary to get the information needed to make a decision.

(c) VR services used to collect additional information and records to determine eligibility may include medical or psychological evaluations, trial work, assistive technology, personal assistant services, or any other support services necessary to determine if you are eligible.

(d) DVR must not use your participation in pre-employment transition services as an assessment to determine your eligibility for VR services.

(2) When additional assessment services are necessary to get the information needed to make a decision about your eligibility, DVR assists you in making informed choices about the services, providers, and supports you need to participate in those assessment services.

(3) If you decline to provide or consent to the release of records or if you decline to participate in VR services necessary to obtain information required to make an eligibility determination, your VR case service record is closed.

NEW SECTION

**WAC 388-891A-0506 Am I presumed to be eligible for VR services if I receive Social Security disability benefits?** (1) If you receive Social Security disability insurance (SSDI) or supplemental security income (SSI) benefits under Title II or XVI of the Social Security Act and you intend to achieve an employment outcome, DVR presumes that you are an eligible individual upon verification of your Social Security disability benefits.

(2) If you cannot provide appropriate evidence of your Social Security benefits, such as an award letter from the Social Security Administration, or other type of verification, DVR may request the verification for you.

(3) DVR makes maximum efforts to obtain verification of your Social Security benefits in a reasonable period of time.

(4) After verification of your Social Security benefits, the DVR counselor determines whether you are eligible for VR services.

(5) Although DVR presumes that you are eligible for VR services if your DVR counselor has verified that you receive SSDI or SSI, if the DVR counselor has reason to believe you are not capable of benefiting in terms of an employment outcome after receiving VR services due to the severity of your disability, the DVR counselor conducts an exploration of your abilities, capabilities, and capacity to perform in realistic work situations as described in WAC 388-891A-0526 and 388-891A-0530.

NEW SECTION

**WAC 388-891A-0507 Am I required to provide proof of my identity and work status?** (1) DVR must verify your identity and work status before paying for VR services.

(2) DVR verifies your identity and work status when you provide the documentation required by the United States Citizenship and Identification Services (USCIS) for USCIS form I-9, "Employment Eligibility Verification."

(3) If you do not provide documentation of your identity and legal work status, DVR may obtain existing records that contain information for use in determining your eligibility.

(4) DVR must not pay for any services other than those described in subsection (3) of this section until you provide proof of your identity and work status.

NEW SECTION

**WAC 388-891A-0510 After DVR receives my signed application, how long does it take to make an eligibility determination?** (1) DVR will make an eligibility determination as soon as enough information is available, but no longer than sixty days after receiving your completed application materials.

(2) If DVR does not have enough information to determine your eligibility within sixty days, you and a DVR counselor must agree to:

(a) Extend the eligibility period to collect additional information or records because exceptional and unforeseen circumstances prevented the collection of information necessary to make an eligibility determination; or

(b) Conduct a trial work experience, if a DVR counselor is not certain whether VR services will enable you to benefit in terms of an employment outcome because of the severity of your disability.

NEW SECTION

**WAC 388-891A-0515 What if I do not agree to extend the eligibility determination period?** If you do not agree to extend the eligibility determination period, DVR must close your case service record.

NEW SECTION

**WAC 388-891A-0525 What criteria does DVR not consider in its eligibility determination?** In making an eligibility determination, DVR does not consider your:

- (1) Type of disability;
- (2) Age, sex, gender, gender identification, sexual orientation, race, color, creed, religion, national origin, veteran status, military status, or marital status;
- (3) Rehabilitation needs;
- (4) Type of employment outcome you expect to achieve;
- (5) Source of referral;
- (6) Anticipated cost of services; or
- (7) Income.

NEW SECTION

**WAC 388-891A-0526 May DVR determine that I am ineligible for VR services without additional assessment of the severity of my disability?** If a DVR counselor cannot presume that you are eligible for VR services or that VR services will enable you to benefit by achieving an employment outcome because of the severity of your disability, DVR requires a trial work experience to determine eligibility. To develop the trial work experience, DVR will:

(1) Conduct an exploration of your abilities, capabilities, and capacity to perform in realistic work situations. This exploration must include an assessment of existing information to the maximum extent possible;

(2) Develop a trial work plan to assess your abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences; and

(3) Make a determination for eligibility based on the information gathered from trial work experience(s).

NEW SECTION

**WAC 388-891A-0527 What is a trial work experience?** A trial work experience is an assessment DVR requires when a DVR counselor cannot presume that you are eligible for VR services or that VR services will enable you to benefit by achieving an employment outcome because of the severity of your disability. Through that assessment, DVR gathers information to determine that either:

(1) You can benefit from VR services to achieve an employment outcome and are eligible for VR services; or

(2) There is clear and convincing evidence that due to the severity of your disability, you are incapable of benefiting in

terms of an employment outcome after receiving VR services and you are ineligible for VR services.

(a) The clear and convincing standard is the highest standard used in our civil system of law and is applied on a case-by-case basis.

(b) Clear and convincing evidence may include assessments that conclude service providers would be unable to meet the individual's needs due to the severity of the individual's disability.

(c) The demonstration of clear and convincing evidence may include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

#### NEW SECTION

**WAC 388-891A-0530 What is involved in a trial work experience?** (1) You and your DVR counselor develop a trial work plan outlining the specific questions to be answered by the trial work experience.

(2) The plan developed by you and your DVR counselor will identify appropriate VR services and supports to accommodate your rehabilitation needs, such as supported employment, on-the-job training, assistive technology or personal assistant services.

(3) DVR will exhaust all opportunities, consistent with your informed choice and rehabilitation needs, for providing trial work experiences through actual work experiences in integrated community environments.

(4) You will participate in one or more trial work experiences that allow you to try different employment experiences.

(5) Your trial work experience(s) will take place over a period of time that you and your DVR counselor agree to in your trial work plan.

#### NEW SECTION

**WAC 388-891A-0535 What if I cannot participate in or decline to participate in a trial work experience?** If you cannot participate in a trial work experience, DVR has exhausted efforts to arrange a trial work experience, or you decline to participate in a trial work experience, DVR will close your case.

#### NEW SECTION

**WAC 388-891A-0540 When may DVR determine that I am not eligible or no longer eligible for DVR services?** If you do not or you no longer meet the eligibility criteria in WAC 388-891A-0500, a DVR counselor may determine that you are not eligible or no longer eligible for services:

(1) At any time after application; and

(2) After giving you an opportunity to discuss the reasons for the counselor's determination.

#### NEW SECTION

**WAC 388-891A-0545 What happens if DVR determines that I am not eligible or no longer eligible for VR services?** (1) Before determining that you are not eligible for

VR services or that you are no longer eligible for VR services, a DVR counselor consults with you and gives you an opportunity to discuss the decision.

(2) DVR sends you a notice in writing, or using another method of communication, if needed. The notice includes:

(a) An explanation of the reason(s) you are not eligible or no longer eligible;

(b) Your rights to appeal the decision; and

(c) An explanation of the services available from the client assistance program.

(3) If you are ineligible based on a determination that you cannot achieve employment because of the severity of your disability, DVR reviews the decision within twelve months and annually thereafter at your request.

#### NEW SECTION

**WAC 388-891A-0550 If I am not eligible or no longer eligible for VR services, does DVR help me find other programs and service providers to meet my needs?** If DVR determines that you are not eligible or no longer eligible for VR services, DVR provides you with information and refers you to other agencies or organizations that may provide services to meet your employment-related needs.

#### NEW SECTION

**WAC 388-891A-0555 Does a determination that I am eligible for VR services mean that I am entitled to any service?** Eligibility for VR services in general does not mean that you are entitled to receive any specific VR service. The specific VR services that you receive are determined on an individual basis.

### ORDER OF SELECTION

#### NEW SECTION

**WAC 388-891A-0600 What happens if DVR cannot serve every eligible person?** When it is not possible to serve all eligible persons because there are not enough funds or other resources, DVR must:

(1) Continue services without disruption for eligible individuals who have developed and signed an individualized plan for employment;

(2) Establish a statewide waiting list for services;

(3) Implement a process called order of selection that:

(a) Establishes the order in which DVR selects eligible individuals from the waiting list to begin receiving VR services; and

(b) Ensures that individuals with the most significant disabilities are served as a priority over other groups of eligible individuals; and

(4) Provide you with information and guidance (which may include counseling and referral for job placement) about other federal or state programs that offer services to help you meet your employment needs, if available.

NEW SECTION

**WAC 388-891A-0610 How are individuals selected for services when DVR is operating under an order of selection?** When DVR is operating under an order of selection, individuals are selected for services as follows:

(1) At the time you are determined eligible for VR services, a DVR counselor assigns you to a priority category based on the severity of your disability.

(2) The priority categories are defined in WAC 388-891A-0620 through 388-891A-0660.

(3) As resources become available for DVR to serve additional individuals, DVR selects names from the waiting list in the priority category being served at that time.

(4) Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

(5) DVR may provide you specific services or equipment without requiring that you wait for services under an order of selection if:

(a) You are at immediate risk of losing your job in a competitive integrated setting for reasons related to your disability; and

(b) You require specific services or equipment in the very near future that will enable you to keep your job.

(6) If you have successfully achieved an employment outcome as described in WAC 388-891A-1310, are currently employed, and require post-employment services, you are not required to wait for services under an order of selection.

NEW SECTION

**WAC 388-891A-0611 What criteria must DVR not use when assigning you to a priority of service of category?** DVR must not use any of the following criteria when assigning you to a priority of service category:

(1) Any duration of residency requirement, provided the individual is present in the state;

(2) Type of disability;

(3) Age, sex, gender, gender identification, sexual orientation, race, color, creed, religion, national origin, veteran status, military status, or marital status;

(4) Source of referral;

(5) Type of expected employment outcome;

(6) The need for specific vocational rehabilitation services, except those services described in WAC 388-891A-0610 (5) and (6);

(7) The anticipated cost of services required by an individual; or

(8) The income level of an individual or an individual's family.

NEW SECTION

**WAC 388-891A-0615 May I receive pre-employment transition services when DVR has assigned me to a priority of service category with a waiting list for services?** If you are a student with a disability who DVR has assigned to a priority of service category with a waiting list for services, you may continue to receive pre-employment transition services while waiting for services as long as you began to

receive pre-employment transition services prior to DVR determining you eligible for services.

NEW SECTION

**WAC 388-891A-0620 What are the criteria for priority category one?** DVR determines you are in priority category one (an individual with a most significant disability) if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in four or more of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (self-direction);

(e) Interpersonal;

(f) Work tolerance; or

(g) Work skills.

NEW SECTION

**WAC 388-891A-0630 What are the criteria for priority category two?** DVR determines you are in priority category two if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in three of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (self-direction);

(e) Interpersonal;

(f) Work tolerance; or

(g) Work skills.

NEW SECTION

**WAC 388-891A-0640 What are the criteria for priority category three?** DVR determines you are in priority category three if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in two of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (self-direction);

(e) Interpersonal;

(f) Work tolerance; or

(g) Work skills.

NEW SECTION

**WAC 388-891A-0650 What are the criteria for priority category four?** DVR determines you are in priority category four if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

- (1) You require multiple VR services over an extended period of time; and
- (2) You experience serious functional limitations in one of the following areas in terms of an employment outcome:
  - (a) Mobility;
  - (b) Communication;
  - (c) Self-care;
  - (d) Cognition and learning (self-direction);
  - (e) Interpersonal;
  - (f) Work tolerance; or
  - (g) Work skills.

NEW SECTION

**WAC 388-891A-0660 What are the criteria for priority category five?** DVR determines you are in priority category five if you are determined eligible for vocational rehabilitation services, but you do not meet the criteria for priority categories one through four.

**VR SERVICES**NEW SECTION

**WAC 388-891A-0700 What vocational rehabilitation services are available to individuals from DVR?** The following VR services are available to individuals from DVR:

- (1) Assessment services;
- (2) Benefits planning services;
- (3) Independent living evaluation and services;
- (4) Information and referral services;
- (5) Interpreter services;
- (6) Job-related services;
- (7) Maintenance services;
- (8) Occupational licenses;
- (9) Personal assistance services;
- (10) Physical and mental restoration services;
- (11) Pre-employment transition services;
- (12) Rehabilitation technology services;
- (13) Self-employment services;
- (14) Services to family members;
- (15) Substantial vocational rehabilitation counseling and guidance services;
- (16) Tools, equipment, initial stocks, and supplies;
- (17) Training services;
- (18) Transition services;
- (19) Translation services;
- (20) Transportation services;
- (21) Other services; and
- (22) Post-employment services.

NEW SECTION

**WAC 388-891A-0705 What are assessment services?** Assessment services include a review of existing data and the

provision of assessment activities, including a trial work experience, that are necessary to determine:

- (1) Whether you are eligible for VR services;
- (2) Severity of disability and assignment of priority category in the event DVR must utilize an order of selection; and
- (3) The employment outcome, including supported employment, your rehabilitation needs, and the VR services to be included in an individualized plan for employment.

NEW SECTION

**WAC 388-891A-0706 What are examples of assessments that DVR conducts, obtains, or purchases?** (1) Some of the assessments that DVR may use include, but are not limited to:

- (a) Assistive technology evaluation;
- (b) Background checks, including criminal history background checks;
- (c) Community based assessment (CBA);
- (d) Driving evaluation;
- (e) Substance use disorder assessment;
- (f) Educational achievements;
- (g) Environmental factors that affect your employment and rehabilitation needs;
- (h) Independent living evaluation;
- (i) Physical assessment;
- (j) Psychological or neuropsychological evaluation;
- (k) Psychosexual evaluation or a sexual offender behavior assessment;
- (l) Risk or safety assessment to determine whether a risk may exist to you or others;
- (m) Self-employment feasibility assessment;
- (n) Supported employment assessment of ongoing and extended support needs;
- (o) Training as an assessment;
- (p) Trial work experience as outlined in WAC 388-891A-0526 through 388-891A-0530 to determine you are eligible, ineligible, or no longer eligible;
- (q) Vocational, interest, and aptitude assessment;
- (r) Work experience, both paid and unpaid; and
- (s) Other assessments.

(2) DVR conducts assessments using information provided by you and your family to the extent that it is available.

(3) DVR will obtain information or purchase assessment services if needed for making the determinations described in WAC 388-891A-0705. Information may be obtained, as described in WAC 388-891A-0103, from other programs and agencies that serve you.

(4) DVR will not utilize information generated through your participation in pre-employment transition services to determine eligibility for any other vocational rehabilitation services.

NEW SECTION

**WAC 388-891A-0707 When may DVR require that I participate in a risk assessment, and how are the results of a risk assessment used by DVR?** If a DVR counselor receives information or records that reasonably lead the DVR

counselor to believe you have a history of violent or predatory behavior:

(1) A DVR counselor will discuss your history with you to better understand your situation.

(2) You must participate in a risk assessment conducted by a licensed psychiatrist, psychologist, counselor, certified sex offender treatment provider, or other qualified professional prior to developing a plan for employment. The risk assessment is for the purpose of determining the level of risk you present to yourself, members of the community, or others in an employment situation.

(a) DVR must consider the results and recommendations of the risk assessment in developing the plan for employment, including any restrictions relating to employment outcome or employment setting.

(b) If the results of the risk assessment indicate a potential risk to individuals you may encounter while receiving services or working, you must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

(3) If the results and recommendations of a current risk assessment are available, the DVR counselor must consider those results and recommendations when developing the plan for employment, including any restrictions relating to employment outcome or setting.

(a) For the purposes of determining a current risk, the DVR counselor must use assessments conducted within the previous two years.

(b) If any information becomes available that would require a reevaluation of a previous assessment, you must participate in a new risk assessment.

(c) If the results of a current risk assessment indicate a potential risk to individuals you may encounter while receiving services or working, you must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

(4) If you are currently participating in a treatment plan and you and your provider agree to release reports to DVR that demonstrate your current status, the DVR counselor must consider that information when developing the plan for employment, including any restrictions relating to employment outcome or setting. If the information contained in your provider's reports indicates a potential risk to individuals you may encounter while receiving services or working, you must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

#### NEW SECTION

**WAC 388-891A-0708 What happens if I decline to participate in a risk assessment or release reports of my status in a treatment program?** When the conditions described in WAC 388-891A-0707 apply, the DVR counselor closes your case service record if you do not cooperate by declining:

(1) To participate in or consent to providing the results of a risk assessment; or

(2) To report your status in a treatment program.

#### NEW SECTION

**WAC 388-891A-0709 What are benefits planning services?** Benefits planning services are provided to help you understand how earning income through employment will impact your Social Security disability insurance (SSDI), supplemental security income (SSI), or other government benefits. Benefits planning services also help you understand how to use work incentives or other benefit programs that may enable you to achieve an employment outcome.

#### NEW SECTION

**WAC 388-891A-0710 What are independent living services and evaluation?** Independent living services and evaluation includes services provided to:

(1) Identify issues that present problems for you in achieving an employment outcome and services you need to address the issues;

(2) Help you manage the services you need to live independently, get information about benefits available to you, and about your rights and responsibilities;

(3) Help you set personal goals, make decisions about life issues and employment, and help your family with issues related to your disability and independence;

(4) Help you learn to manage areas such as budgeting, meal preparation and nutrition, shopping, hygiene, time management, recreation, community resources, and attendant management; and

(5) Find out about housing resources and make decisions about changing to a more independent living arrangement.

#### NEW SECTION

**WAC 388-891A-0715 What are information and referral services?** Information and referral services include information and assistance to help you explore and gain access to employment services or benefits available to you from other programs, including other programs within the workforce development system.

#### NEW SECTION

**WAC 388-891A-0720 What are interpreter services?** Interpreter services are services that help to ensure you are able to communicate effectively while receiving services from DVR. Interpreter services may include real-time captioning services, sign language or oral interpretation services for individuals who are deaf or hard of hearing, and tactile interpretation services for individuals who are deaf-blind.

#### NEW SECTION

**WAC 388-891A-0725 What is job search assistance?** Job search assistance activities support and assist you in searching for an appropriate job. Job search assistance may include help in resume preparation, identifying appropriate job opportunities, developing interview skills, and making contacts with companies on your behalf.

NEW SECTION

**WAC 388-891A-0730 What is job placement assistance?** Job placement assistance includes a DVR employee or contracted provider working directly with employers to identify and secure competitive integrated employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. You and your DVR counselor (as well as the provider, if appropriate) agree upon the job to be secured. Job placement is accomplished when you have officially completed your first day of work.

NEW SECTION

**WAC 388-891A-0731 What are customized employment services?** (1) Customized employment services are services to facilitate a placement in customized employment.

(2) These services are carried out through flexible strategies, which include job exploration by the individual and working with an employer to facilitate placement, including:

(a) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(b) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(c) Using a professional representative chosen by you, or representing yourself if you choose, to work with an employer to facilitate placement; and

(d) Providing services and supports at the job location.

NEW SECTION

**WAC 388-891A-0732 What are job retention services?** Job retention services are provided after your first day of work and while you remain employed. Job retention services may include any vocational rehabilitation service necessary to help you maintain employment.

NEW SECTION

**WAC 388-891A-0735 What are maintenance services?** (1) Maintenance services include monetary support for expenses such as food, shelter, or clothing that exceed your usual living expenses and are necessary for you to participate in another VR service. The following are examples of maintenance services, but they may not apply to every situation or substitute for the professional judgment of an individual counselor:

(a) A uniform or other suitable clothing required to look for or get a job;

(b) Short-term lodging and meals required to participate in assessment or training services not within commuting distance of your home; and

(c) Initial one-time costs, such as security deposits or charges to begin utility services at a home in which you will live, when you relocate for a job.

(2) As described in WAC 388-891A-0206 and 388-891A-1101, DVR must not grant any exception to provide for your usual living expenses as a maintenance service.

NEW SECTION

**WAC 388-891A-0740 What are occupational licenses?** Occupational licenses are licenses, permits, or certificates showing that you meet certain standards, have accomplished certain achievements, or otherwise qualify to engage in a business, specific occupation or trade, or other work.

NEW SECTION

**WAC 388-891A-0745 What are personal assistance services?** (1) Personal assistance services include a range of services provided by at least one person to help you perform daily living activities on or off the job that you would perform without assistance if you did not have a disability. Examples include, but are not limited to:

(a) Reader services for individuals who cannot read print because of blindness or other disability. Reader services include both reading aloud and the transcription of printed information into Braille or sound recordings. Reader services are for people who are blind and individuals unable to read because of serious neurological disorders, specific learning disabilities, or other physical or mental impairments.

(b) Personal attendant services are personal services that an attendant performs for an individual with a disability, including, but not limited to, bathing, feeding, dressing, and providing mobility and transportation.

(2) DVR only provides personal assistance services in connection with one or more other VR services.

NEW SECTION

**WAC 388-891A-0750 What are physical and mental restoration services?** (1) Physical and mental restoration services are used to diagnose and treat physical and mental impairments when you need those services to prepare for, secure, maintain, advance in, or regain employment.

(2) DVR provides physical and mental restoration services only when financial support is not readily available from another source, such as health insurance.

(3) Physical and mental restoration services include:

(a) Corrective surgery or therapy if your disabling condition is stable or slowly progressive and the service is expected to substantially modify, correct, or improve a physical or mental impairment that is a substantial impediment to employment for you within a reasonable period of time;

(b) Diagnosis and treatment of mental or emotional disorders by qualified personnel who meet state licensing requirements;

(c) Dental treatment;

(d) Nursing services;

(e) Necessary hospitalization (in-patient or outpatient) in connection with surgery or treatment and clinic services;

(f) Prescription drugs and supplies;

(g) Prosthetic and orthotic devices;



(h) Eyeglasses and visual services, including visual training and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who meet state licensing requirements;

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of acute or chronic medical conditions and emergencies that result from providing physical and mental restoration services or are related to the condition being treated;

(o) Special services for the treatment of end-stage renal disease; and

(p) Other medical or medically related rehabilitation services.

#### NEW SECTION

**WAC 388-891A-0755 What are the medical treatments DVR does not pay for?** DVR does not pay for any of the following medical treatments other than as an exception to policy, as described in WAC 388-891A-0205:

(1) Maintenance of your general health or fitness;

(2) Cosmetic procedures, such as facelifts, liposuction, and cellulite removal;

(3) Maternity care;

(4) Hysterectomies, elective abortions, sterilization, and contraceptive services as independent procedures;

(5) Drugs not approved by the U.S. Food and Drug Administration for general use or by state law;

(6) Life support systems, services, and hospice care;

(7) Transgender services including surgery and medication management;

(8) Homeopathic and herbalist services, Christian Science practitioners, or theological healers;

(9) Treatment that is experimental, obsolete, investigational, or otherwise not established as effective medical treatment.

#### NEW SECTION

**WAC 388-891A-0760 What are pre-employment transition services?** (1) Pre-employment transition services are activities that offer an early start at career exploration.

(2) Pre-employment transition services are provided to you while you are in school and eligible for an individualized educational program (IEP) or otherwise are regarded as an individual with a disability under section 504 of the Rehabilitation Act of 1973, as amended.

(3) Pre-employment transition services are coordinated between schools and DVR to help you prepare for and go to work in the community.

(4) Pre-employment transition services are available to any eligible or potentially eligible student with a disability as defined in WAC 388-891A-0010(16).

(5) Pre-employment transition services are not available if you have been determined ineligible for services.

(6) Pre-employment transition services include:

(a) Job exploration counseling;

(b) Work-based learning experiences provided in an integrated setting and paid at a competitive rate to the maximum extent possible;

(c) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(d) Workplace readiness training to develop social skills and independent living; and

(e) Instruction in self-advocacy that may include peer mentoring.

(7) If you need more individualized services (such as job coaching, orientation and mobility training, travel expenses, uniforms, or assistive technology), you must apply and be determined eligible for vocational rehabilitation services and develop and have an approved individualized plan for employment.

#### NEW SECTION

**WAC 388-891A-0765 What is job exploration counseling?** Job exploration counseling activities promote considerations of opportunities and informed decision-making regarding career options to help students with disabilities understand post-school choices and opportunities. Job exploration counseling may include, but is not limited to, discussion of:

(1) Your vocational interest inventory results;

(2) In-demand occupations;

(3) Career pathways; and

(4) Local labor market information.

#### NEW SECTION

**WAC 388-891A-0766 What are work-based learning experiences?** (1) Work-based learning experiences are in-school or after-school opportunities, or experiences outside the traditional school setting, that use the workplace or real work to provide students with disabilities the knowledge and skills that connect school experiences to real-life work activities and future career opportunities.

(2) Work-based learning experiences in a group setting may include, but are not limited to:

(a) Coordinating a school-based program of job training and informational interviews to research employers;

(b) Worksite tours to learn about necessary job skills;

(c) Job shadowing; and

(d) Mentoring opportunities in the community.

(3) Work-based learning experiences on an individual basis may include, but are not limited to:

(a) Work experiences to explore your area of interest through paid and unpaid internships;

(b) Apprenticeships (not including pre-apprenticeships and registered apprenticeships);

(c) Short-term employment; and

(d) On-the-job trainings located in the community.

(4) Work-based learning experiences are provided in an integrated environment in the community to the maximum extent possible.

(5) When paid, work-based learning experiences for students with disabilities must be compensated at a competitive wage to the extent competitive wages are paid to students without disabilities.

#### NEW SECTION

**WAC 388-891A-0767 What is counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education?** (1) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education in a group setting to students with disabilities may include, but is not limited to, information on:

- (a) Course offerings;
- (b) Career options;
- (c) The types of academic and occupational training needed to succeed in the workplace; and
- (d) Postsecondary opportunities associated with career fields.

(2) This information may also be provided on an individual basis to a student with a disability, and may include, but is not limited to, advising students and parents or representatives on:

- (a) Academic curricula;
- (b) College application and admissions processes;
- (c) Completing the Free Application for Federal Student Aid (FAFSA); and
- (d) Resources that may be used to support individual student success in education and training, which may include disability support services.

#### NEW SECTION

**WAC 388-891A-0768 What is workplace readiness training?** Workplace readiness training provides opportunities for students with disabilities to learn about and develop both social skills and independent living. Training may include, but is not limited to:

- (1) Workshops on workplace behavior, understanding employer expectations for punctuality and performance, and other soft skills necessary for employment;
- (2) Financial literacy;
- (3) Orientation and mobility skills; and
- (4) Job-seeking skills.

#### NEW SECTION

**WAC 388-891A-0769 What is instruction in self-advocacy?** (1) Self-advocacy instruction provides opportunities for students with disabilities to learn about rights, responsibilities, and how to request accommodations or services and supports needed during the transition from secondary to postsecondary education and employment. Self-advocacy instruction teaches students with disabilities to articulate their needs and make informed decisions about the supports necessary to meet those needs.

(2) Self-advocacy instruction may include peer mentoring from individuals with disabilities working in competitive integrated employment. Examples of self-advocacy instruc-

tion include but are not limited to workshops or job clubs in areas such as:

- (a) Developing goals;
- (b) Time management and organization;
- (c) Balanced life planning;
- (d) Peer support;
- (e) Mentoring groups;
- (f) Accessing community resources such as health care, recreation, and social opportunities; and
- (g) Using assistive technology to manage life skills.

#### NEW SECTION

**WAC 388-891A-0770 What is rehabilitation technology?** Rehabilitation technology means the use of technologies, engineering methods, or sciences to design, develop, test, evaluate, apply, and distribute technology to address those areas in which you experience functional loss, such as mobility, communication, hearing, vision, and cognition. Rehabilitation technology includes:

(1) Assistive technology devices, equipment, or products used to increase, maintain, or improve the functional capabilities of an individual with a disability including, but not limited to:

- (a) Telecommunications devices;
- (b) Sensory aids and devices, including hearing aids, telephone amplifiers and other hearing devices, captioned videos, taped text, Brailled and large print materials, electronic formats, graphics, simple language materials, and other special visual aids;
- (c) Vehicle modifications; and
- (d) Computer and computer-related hardware and software that is provided to address a disability-related limitation.

(2) Services that assist you in the selection, acquisition, or use of an assistive technology device, including services to:

- (a) Evaluate your needs in performing activities in your daily environment;
- (b) Select, design, fit, customize, adapt, apply, maintain, repair, or replace an assistive technology device, including written policies, plans, guarantees, or warranties (initial or extended);
- (c) Coordinate and use other therapies or services with assistive technology devices, such as education and rehabilitation plans and programs; and
- (d) Train or give technical assistance to professionals, employers, family members, or others who provide services to you, hire you, or are involved in your major life activities.

(3) Services that apply engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems you face in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, training, and integration into the community.

(4) Services that apply engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems you face in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, training, and integration into the community.

#### NEW SECTION

**WAC 388-891A-0785 What are self-employment services?** (1) Self-employment services include consultation,

technical assistance, and start-up costs to help you establish a small business to become self-employed.

(2) When you sign your individualized plan for self-employment, you agree to provide information about the income of your small business for up to one year after you successfully close your case.

(3) The conditions that apply for DVR to approve and pay for self-employment services are outlined in WAC 388-891A-0010, 388-891A-1100, 388-891A-1185, 388-891A-1186, 388-891A-1195, and 388-891A-1196.

#### NEW SECTION

**WAC 388-891A-0790 What vocational rehabilitation services may DVR provide for my family member(s)?** DVR may provide vocational rehabilitation services for a family member if the services are necessary for you to achieve an employment outcome. A family member is anyone who meets the definition of family member outlined in WAC 388-891A-0010(7).

#### NEW SECTION

**WAC 388-891A-0791 What types of nonpermanent structural modifications may be provided at the place where I live or where I work?** Nonpermanent structural modifications that make physical changes to the place where you live or your worksite are provided for necessary disability access or to conduct employment. The conditions that apply for DVR to pay for nonpermanent structural modifications are outlined in WAC 388-891A-1194, 388-891A-1195, and 388-891A-1196.

#### NEW SECTION

**WAC 388-891A-0800 What is substantial vocational rehabilitation counseling and guidance?** Substantial vocational rehabilitation counseling and guidance includes intensive counseling and guidance provided by a DVR counselor throughout the rehabilitation process to help you address medical, family, or social issues and exercise informed choice, including vocational counseling and other counseling and guidance that addresses a wider range of concerns than an employment-focused counseling and guidance relationship.

#### NEW SECTION

**WAC 388-891A-0805 What are tools, equipment, initial stocks, and supplies?** (1) Tools and equipment are materials and hardware you require to carry out the duties of your job.

(2) Initial stocks and supplies are specific to self-employment and include the goods for inventory required for you to start your small business.

#### NEW SECTION

**WAC 388-891A-0810 What are training services?** (1) Training services are designed to help you gain knowledge,

skills, and abilities needed to achieve an employment outcome. Training services include, but are not limited to:

- (a) On-the-job training;
- (b) Postsecondary training;
- (c) Occupational or vocational training;
- (d) Basic education or literacy training;
- (e) Apprenticeship training;
- (f) Job readiness training;
- (g) Disability related skills training; and
- (h) Other miscellaneous training.

(2) The conditions that apply for DVR to pay for postsecondary training services at an institution of higher education are outlined in WAC 388-891A-1160 through 388-891A-1163.

#### NEW SECTION

##### **WAC 388-891A-0815 What is on-the-job training?**

On-the-job training is training an employer provides to you once you are placed in a job to help you learn the skills you need. With on-the-job training, you are hired by an employer and DVR pays the employer a training fee to cover the extra costs associated with training you. There is an expectation that employment with the employer will continue when the on-the-job training is completed. The employer must sign an agreement to include at a minimum:

- (1) Training to be provided, including skills to be learned and training methods;
- (2) Duration or number of hours of training to be provided;
- (3) How and when the employer will evaluate and report your progress to DVR;
- (4) An agreed-upon fee based on the employer's costs to provide the training; and
- (5) Payment criteria.

#### NEW SECTION

**WAC 388-891A-0820 What is postsecondary training?** Postsecondary training means full-time or part-time academic training above the high school level leading to a degree, academic certificate, or other recognized educational credential. Postsecondary training is provided by a college or university, community college, junior college, or technical college.

#### NEW SECTION

**WAC 388-891A-0825 What is occupational or vocational training?** Occupational or vocational training is specific job skill training that does not lead to an academic degree, but is provided by a community college or business, vocational, technical, or trade school to prepare for work in a specific occupation.

#### NEW SECTION

**WAC 388-891A-0830 What is basic education or literacy training?** Basic education or literacy training is training that addresses basic academic skills, such as reading, that

are necessary to participate in further training on your IPE or work in competitive integrated employment.

NEW SECTION

**WAC 388-891A-0836 What is apprenticeship training?** Apprenticeship training is a work-based employment and training program registered with the Washington state department of labor and industries that provides:

- (1) A combination of hands-on, on-the-job work experience in a skilled occupation with related classroom instruction;
- (2) Structured mentoring;
- (3) Wage increases as an apprentice's skills increase; and
- (4) An industry recognized certificate of completion at the end of the program.

NEW SECTION

**WAC 388-891A-0837 What is job readiness training?** Job readiness training is training that prepares you for work, including but not limited to training that addresses:

- (1) Appropriate clothes and grooming for the job;
- (2) Getting to work on time;
- (3) Workplace behavior; and
- (4) How to increase productivity.

NEW SECTION

**WAC 388-891A-0838 What is disability-related skills training?** Disability-related skills training includes but is not limited to training that addresses:

- (1) Orientation and mobility;
- (2) The use of low vision aids;
- (3) Braille;
- (4) Speech reading;
- (5) Sign language; and
- (6) Cognitive training/retraining.

NEW SECTION

**WAC 388-891A-0840 What other training does DVR provide?** DVR provides other miscellaneous training services that are not identified in another section, such as high school completion and tutoring.

NEW SECTION

**WAC 388-891A-0855 What are transition services?** Transition services are any of the VR services listed under WAC 388-891A-0700 and are a coordinated set of activities for a student or youth with a disability that:

- (1) Promote movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Address your individual needs, taking into account preferences and interests;
- (3) Include instruction, community experiences, the development of employment and other post-school adult liv-

ing objectives, and, if appropriate, functional vocational evaluation and acquisition of daily living skills; and

- (4) Promote or facilitate the achievement of the employment outcome identified in your individualized plan for employment.

NEW SECTION

**WAC 388-891A-0860 What are translation services?** Translation services include oral and written translation into your primary language to access DVR services and communicate with DVR staff.

NEW SECTION

**WAC 388-891A-0865 What are transportation services?** Transportation services include travel and related expenses necessary for you to participate in VR services, such as a bus pass, fuel for a vehicle, services to facilitate your driving, the purchase or repair of a vehicle, or moving expenses. The conditions that apply for DVR to purchase and loan a vehicle to you are outlined in WAC 388-891A-1174, 388-891A-1175, and 388-891A-1176.

NEW SECTION

**WAC 388-891A-0866 What are transportation services to facilitate my driving?** Services to facilitate your driving include, but are not limited to:

- (1) Mileage/gasoline allowance;
- (2) Driver licenses;
- (3) Vehicle license tabs; and
- (4) Vehicle repairs.

NEW SECTION

**WAC 388-891A-0880 What other services does DVR provide?** With the exception of the items and services outlined in WAC 388-891A-1101 and 388-891A-1186, DVR provides other services not identified in this chapter when the service is needed for you to achieve an employment outcome as described in WAC 388-891A-0010(4) and the service is both legal and necessary to address a barrier to employment.

NEW SECTION

**WAC 388-891A-0890 What are post-employment services?** Post-employment services include one or more vocational rehabilitation services provided if:

- (1) Your case was closed because you achieved an employment outcome;
- (2) Your rehabilitation needs are limited in scope and duration; and
- (3) You need post-employment services to maintain, advance in, or regain employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

## VOCATIONAL ASSESSMENT AND IPE DEVELOPMENT

### NEW SECTION

**WAC 388-891A-0900 What is a vocational assessment?** (1) A vocational assessment helps to identify the type of assistance you will need to prepare for, secure, maintain, advance in, or regain employment. Each person determined eligible for VR services completes a vocational assessment to identify their VR needs.

(2) A comprehensive vocational assessment may be completed by each person determined eligible for VR services, and includes more specific information about VR needs than the DVR counselor considered during the eligibility determination.

(3) A comprehensive vocational assessment includes a variety of services, including counseling and guidance, to determine your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(4) The purpose of a comprehensive vocational assessment is to collect and review information you need to select your employment goal, including a thorough exploration of labor market information and job trends, as well as determining the VR services you need to achieve the employment outcome.

(5) A comprehensive vocational assessment is limited to services necessary to select an employment goal and develop a plan for employment.

(6) To the maximum extent possible and appropriate, DVR will use existing information to complete a comprehensive vocational assessment. Existing information may include, but is not limited to, information used to determine eligibility and information provided by you and your family.

(7) A comprehensive vocational assessment may include any one or more of the following as needed:

(a) Assessment(s) of the personality, interests, interpersonal skills, intelligence and related functional abilities, educational abilities, work experience, vocational aptitudes, personal and social adjustments, employment opportunities, and other vocational, educational, cultural, social, recreational, and environmental factors that affect your employment and rehabilitation needs;

(b) Assessment(s) of work, in paid or unpaid settings, as a method of evaluating and developing work behavior and capacities necessary to achieve an employment outcome, including work skills, attitudes, habits, tolerances, and social behavior;

(c) Referral for assistive technology services to assess whether services or devices could increase your ability to perform work;

(d) Benefits planning to recipients of Social Security disability insurance (SSDI) or supplemental security income (SSI) benefits under Title II or Title XVI of the Social Security Act to understand how income may affect those benefits.

### NEW SECTION

**WAC 388-891A-0905 When I am already receiving VR services under an IPE, are there circumstances in**

**which DVR requires me to participate in additional assessment activities?** (1) If the DVR counselor becomes aware of a condition or circumstance after you have developed an IPE that may affect your ability to achieve the employment outcome identified in your IPE, the DVR counselor may conduct necessary assessment services to determine whether you are capable of benefiting in terms of the specific employment outcome identified in your IPE.

(2) If you have a documented history of violent or predatory behavior that reasonably leads a DVR counselor to believe you may be a threat to yourself or others, you must participate in assessment services necessary to determine the level of risk.

(3) If a DVR counselor determines, based on an assessment conducted by a qualified professional, that your employment may pose a threat to the safety of you or others because you meet the conditions outlined in WAC 388-891A-0110, an appropriately qualified professional must evaluate the employment outcome and employment setting you choose for risk.

(4) If you decline to authorize the release of information to DVR or participate in VR services necessary to collect pertinent information and your refusal prevents the continued development of an appropriate IPE, the DVR counselor may close your case service record.

### NEW SECTION

**WAC 388-891A-0910 Do I need to tell my DVR counselor about my criminal history or negative actions that may appear in a background check for employment?** (1) You must disclose information to DVR before you develop a plan for employment about conditions or circumstances, such as a criminal record, actions against a professional license, identity and work status, that restrict the type of employment you can legally perform.

(2) If you select an employment outcome in a field that customarily requires a background check as a condition of employment, DVR must obtain a background check as described in WAC 388-891A-0103 that verifies you are not excluded from employment in the field or specific job prior to IPE development.

(3) If a DVR counselor receives information or records that reasonably lead the DVR counselor to believe you have a criminal history or history of actions against a professional license, a background check is required to determine the next steps in your IPE development. The DVR counselor may require you to participate in assessment(s) to determine the impact of your criminal history or history of other negative actions on achieving a successful employment outcome.

### NEW SECTION

**WAC 388-891A-0911 What is required for DVR to approve an IPE with a goal in self-employment?** (1) A DVR counselor will approve an IPE with an outcome in self-employment if:

(a) You complete assessment services as outlined in WAC 388-891A-0900 to determine VR service needs;

(b) You participate in a feasibility study for your self-employment business when you and your DVR counselor

agree that self-employment is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(c) The feasibility study indicates that the self-employment outcome is:

- (i) Feasible;
- (ii) Sustainable; and
- (iii) Adequate to meet your financial needs.

(2) The costs that DVR may pay to support an IPE with self-employment as the employment outcome are outlined in WAC 388-891A-1185.

(3) The costs that DVR must not pay to support an IPE with self-employment as the employment outcome are outlined in WAC 388-891A-1186.

(4) The projected income you will earn from your business must be at least comparable to the income received by other individuals who are self-employed in similar occupations or performing similar tasks and who have similar training, experience, and skills. DVR does not support activities that do not result in an income-producing self-employment outcome.

#### NEW SECTION

**WAC 388-891A-0912 What are the factors that a DVR counselor considers in determining whether to support self-employment as an employment outcome?** In addition to WAC 388-891A-0911, 388-891A-1185, 388-891A-1186, 388-891A-1195, and 388-891A-1196, the DVR counselor considers the following when determining whether to support self-employment as an employment outcome:

(1) The results of the feasibility study for your proposed self-employment outcome;

(2) Your ability to maintain and retain a self-employment business, including, but not limited to your:

- (a) Disability-related issues or concerns;
- (b) Barriers to employment and how self-employment addresses these barriers;
- (c) Strengths and interpersonal skills;
- (d) Resources, including financial resources;
- (e) Money management skills;
- (f) Credit history, including bankruptcy;
- (g) Overdue child support;
- (h) Tax or debt issues;
- (i) Other legal proceedings;
- (j) Long-term supports, if supported employment is required; and
- (k) Income needs.

(3) You must have resolved bankruptcy or other legal proceedings, overdue child support, and overdue taxes prior to the development of an individualized plan for employment (IPE) with self-employment as the employment outcome. DVR does not assist with the payment of court fees, attorney fees, fines, or penalties related to illegal acts that result from any civil or criminal legal proceedings or related matters.

#### NEW SECTION

**WAC 388-891A-0913 What conditions apply for DVR to support self-employment as a sole proprietorship or a limited liability company?** (1) DVR does not support

self-employment in a nonprofit organization because you do not have legal standing with a nonprofit organization.

(2) DVR supports self-employment:

- (a) As a sole proprietorship; or
- (b) As a partnership or limited liability company (LLC) if you manage and hold controlling interest (fifty-one percent or more).

(3) Any business partners must acknowledge through their signature that any equipment, tools, initial stocks, and supplies purchased by DVR are the property of DVR until transferred to you.

#### NEW SECTION

**WAC 388-891A-0915 What is an individualized plan for employment (IPE)?** An individualized plan for employment (IPE) is a DVR form that documents important decisions you and a DVR counselor make about vocational rehabilitation services. The contents of the IPE are described in WAC 388-891A-0940 and the IPE becomes effective as described in WAC 388-891A-0945.

#### NEW SECTION

**WAC 388-891A-0916 How long does it take to develop an IPE?** (1) You develop your IPE within ninety days after the date you are determined eligible for VR services, or when DVR is operating under an order of selection within ninety days after the date DVR releases your case from a waiting list for services.

(2) You and your DVR counselor may agree to extend the IPE development time frame to a specific date by which your IPE will be complete.

#### NEW SECTION

**WAC 388-891A-0920 What information does DVR provide to help me develop my IPE?** DVR provides the following information to help you develop an IPE:

- (1) Information about who may help you with developing an IPE;
- (2) Results of assessment activities or other evaluations relevant to developing your IPE;
- (3) Information that must be included in the IPE;
- (4) Financial conditions or restrictions that apply to an IPE;
- (5) Information about how to get help completing forms required by DVR;
- (6) Information about your rights if you disagree with a decision a DVR counselor makes relating to the IPE;
- (7) Information about the client assistance program (CAP) and how to contact the program; and
- (8) Other information you request.

#### NEW SECTION

**WAC 388-891A-0925 Who develops an IPE?** (1) When DVR is operating under an order of selection each eligible individual whose case DVR has released from the waiting list for services or their representative may develop an IPE.

(2) When DVR is not operating under an order of selection each eligible individual or their representative may develop an IPE.

#### NEW SECTION

**WAC 388-891A-0930 Who may help me with developing an IPE?** You may develop an IPE on your own or with help from others. If you choose to develop your IPE with help from others, the following conditions apply:

(1) You may develop an IPE with support and assistance from one or more of the following:

- (a) A VR counselor employed by DVR;
- (b) A VR counselor not employed by DVR, but who meets the minimum qualifications for a VR counselor established by DVR;
- (c) Another person you choose, such as a representative, family member, advocate, or other individual;
- (d) A disability advocacy organization.

(2) If you choose to develop the IPE with someone other than a DVR counselor, DVR may help you identify individuals that may help you develop your IPE, to the extent resources are available.

(3) DVR does not pay for any related costs or fees charged by other parties to develop an IPE.

(4) The IPE must include signatures that demonstrate that you agree to adhere to the terms, conditions, and other criteria, and your DVR counselor approves the IPE and makes it effective.

#### NEW SECTION

**WAC 388-891A-0940 What must be included on the individualized plan for employment?** An IPE must include:

(1) An employment outcome that is consistent with the definition of an employment outcome in WAC 388-891A-0010(4), except that in the case of an eligible individual who is a student or youth with a disability, the employment outcome may be a description of the individual's projected post-school employment outcome;

(2) The VR services you need to achieve the employment outcome;

(3) Timelines for each service on your IPE and for achieving the employment outcome;

(4) The name of the person or organization selected to provide each service included on the IPE and how you will obtain the services;

(5) Criteria you will use to evaluate whether you are making the progress agreed upon by you and the DVR counselor toward achieving the employment outcome;

(6) Terms and conditions, including:

(a) A description of what DVR has agreed to do to support your IPE; and

(b) A description of what you have agreed to do to reach your employment outcome, including:

(i) Steps you will take to achieve your desired employment outcome;

(ii) If applicable, services you agree to help pay for and how much you agree to pay; and

(iii) Services you agree to apply for and use that are available to you at no cost from another program;

(7) If you receive assistance from an employment network under the ticket to work and self-sufficiency program established under section 1148 of the Social Security Act (42 U.S.C. 1320b-19), a description of how responsibility for service delivery will be divided between the employment network and DVR;

(8) If you receive Social Security disability insurance (SSDI), supplementary security income (SSI), or both, and you have not received benefits planning services prior to developing your IPE, your DVR counselor may include benefits planning services in your IPE at the following times:

(a) Before job search activities begin; and

(b) Before you accept a job offer;

(9) Expected need for post-employment services and service providers necessary to maintain or regain employment prior to closing the case service record and, if appropriate, a statement of how post-employment services are arranged using comparable services and benefits;

(10) An IPE that includes a supported employment outcome must also document:

(a) Time-limited support services to be provided;

(b) Extended services or natural supports that are likely to be needed;

(c) Who will provide and pay for natural supports or extended services or if you and DVR cannot identify who will provide and pay for extended services or natural supports at the time the IPE is developed, the IPE must include a statement explaining the basis for determining that a resource is likely to become available;

(d) A goal for the number of hours per week you are going to work and a plan to monitor your progress toward meeting the goal;

(e) A description of how the services on your IPE are coordinated with other federal or state services you get under an individualized plan;

(f) That any job skills training will be provided on-site;

(g) A supported employment outcome in an integrated setting for the maximum number of hours possible based on your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(11) An IPE for a student with a disability, as defined in WAC 388-891A-0010(16) must also document:

(a) The pre-employment transition services necessary for achieving the individual's employment outcome or projected post-school employment outcome;

(b) The specific transition services and supports needed to achieve the individual's employment outcome or projected post-school employment outcome; and

(c) Coordination, to the extent possible, with an individualized education program, to achieve the goals and objectives and provide the services identified; and

(12) An IPE for a self-employment outcome must also document:

(a) Any approved start-up costs;

(b) Any identified self-employment consultant services;

(c) Specific timeframes for monitoring progress;

(d) The monthly financial reporting requirements such as income and expenses statements;

(e) The agreed upon steps that will be taken if satisfactory progress is not made including the conditions that would result in discontinuing DVR support;

(f) How you and the DVR counselor will handle unforeseen expenses that arise after the IPE is signed; and

(g) The closure criteria, including the agreed upon income level that is consistent with the projections outlined in the business plan.

#### NEW SECTION

**WAC 388-891A-0945 When does the IPE become effective?** (1) Both an initial IPE and an amended IPE become effective when you and your DVR counselor have signed the IPE form.

(2) Your signatures indicate that you agree to the terms and conditions of the IPE and your DVR counselor approves the IPE content.

(3) DVR gives you a copy of the signed IPE in writing or provides it in an alternate format if needed.

#### NEW SECTION

**WAC 388-891A-0950 Is the IPE reviewed and updated?** You and a DVR counselor review the IPE at least once a year, or more often, to assess your progress in achieving an employment outcome and to determine if an amendment is necessary under WAC 388-891A-0951.

#### NEW SECTION

**WAC 388-891A-0951 When would my IPE require an amendment?** You and your DVR counselor will amend your IPE if there are substantial changes in:

(1) Your desired employment outcome, even if the services on your IPE are substantially unchanged;

(2) The VR services required to address your disability-related barriers; or

(3) The service providers for IPE services.

#### NEW SECTION

**WAC 388-891A-0960 Will DVR support an employment outcome that involves activities that are illegal under federal, state, or local law?** DVR is prohibited from supporting employment outcomes that involve or promote activities that are illegal under federal, state, or local law.

#### NEW SECTION

**WAC 388-891A-0965 Does DVR support any job I choose?** (1) DVR provides services to support you in achieving an employment outcome as defined in WAC 388-891A-0010(4).

(2) The employment outcome you choose must be consistent with the information and results of the assessment of your VR needs described in WAC 388-891A-0900.

(3) There are some jobs that DVR will not support as employment outcomes in an individualized plan for employment, even when the conditions in subsections (1) and (2) of

this section have been met. These include, but are not limited to, jobs that are not permitted under WAC 388-891A-0960.

(4) If you choose a job that compensates you at a non-competitive wage or in a nonintegrated setting, the following conditions apply:

(a) DVR may provide you with information and referrals to other programs and services in your community;

(b) DVR may not provide any services beyond information and referrals to support you in such a job other than as described in WAC 388-891A-1000.

#### NEW SECTION

**WAC 388-891A-0966 What if the employment outcome I choose is religious in nature?** Article 1, section 11 of the Washington state Constitution prohibits DVR from supporting education or training for an employment outcome that is religious in nature.

#### NEW SECTION

**WAC 388-891A-0970 What happens if I am not making the agreed upon progress in my IPE?** (1) If you are not making the progress you agreed upon in your IPE, you and your DVR counselor determine the reason for the lack of progress and take the appropriate steps to address the issues or problems that are keeping you from making progress.

(2) If your actions or nonactions make it impossible to begin or continue VR services, your DVR counselor may close your case in accordance with WAC 388-891A-1300.

### SUPPORTED EMPLOYMENT

#### NEW SECTION

**WAC 388-891A-1000 What is supported employment?** Supported employment exists to support individuals with the most significant disabilities who need intensive services and supports to achieve an employment outcome. Employment outcomes in supported employment are:

(1) Competitive integrated employment, including customized employment, as described in WAC 388-891A-0010(2); or

(2) Employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice in an integrated setting while you work on a short-term basis toward a competitive wage.

#### NEW SECTION

**WAC 388-891A-1010 Who is eligible for supported employment?** You are eligible for supported employment services if:

(1) You are eligible for vocational rehabilitation services under WAC 388-891A-0500;

(2) You have been determined to be an individual with a most significant disability;

(3) You have not historically worked in competitive integrated employment or your experience in competitive inte-



grated employment has been interrupted or off and on due to the severity of your disability; and

(4) Based on a comprehensive assessment of your needs, including an evaluation of your rehabilitation, career, and job needs, you require intensive time-limited support services from DVR and extended services (long-term supports) to achieve an employment outcome.

#### NEW SECTION

**WAC 388-891A-1015 Who determines whether I am eligible for supported employment?** DVR determines whether you are eligible for supported employment services.

#### NEW SECTION

**WAC 388-891A-1030 When is a work setting integrated in supported employment?** (1) An integrated work setting in supported employment is a setting commonly found in the community, in which you interact with people without disabilities to the same extent that a person without disabilities in the same type of job interacts with other people.

(2) Interactions at your worksite between you and a supported employment service provider without disabilities do not meet the requirement for an integrated setting.

(3) Your work setting may only be considered integrated if your work unit, which refers to either the group of employees at your job who work together to accomplish tasks or to all employees with the same job category in an organization, includes individuals without disabilities to the same extent as found in the work unit of a person without disabilities performing the same job.

#### NEW SECTION

**WAC 388-891A-1040 What are supported employment services?** (1) Supported employment services are:

(a) Time-limited support services as described in WAC 388-891A-1045, including customized employment services as described in WAC 388-891A-0731; and

(b) Vocational rehabilitation services listed in WAC 388-891A-0700.

(2) Supported employment services may be provided to you:

(a) As part of your individualized plan for employment;  
(b) To support and maintain you in supported employment; and

(c) For a period of time not to exceed twenty-four months following job placement, unless under special circumstances, you and the DVR counselor agree to extend the time frame for providing these time-limited services in order to achieve the employment outcome in your individualized plan for employment.

#### NEW SECTION

**WAC 388-891A-1045 What are time-limited support services?** Time-limited support services are a type of supported employment service to help you get and keep a job. Time-limited support services include:

(1) An assessment of your employment situation at least twice a month at your worksite, or, under special circumstances and at your request, an assessment regarding your employment situation that takes place away from your worksite at least twice a month to:

(a) Determine what is needed to maintain job stability; and

(b) Coordinate services or provide specific intensive services that are needed at or away from your worksite to help you maintain job stability.

(2) Intensive job skill training for you at your job site by skilled job trainers;

(3) Job development, job placement, and job retention services;

(4) Social skills training;

(5) Regular observation or supervision;

(6) Follow-up services such as regular contact with your employer, you, your representatives, and other appropriate individuals to help strengthen and stabilize the job placement;

(7) Facilitation of natural supports at the worksite;

(8) Other services similar to services described in subsection (1) through (7) of this section; and

(9) Any other vocational rehabilitation service.

#### NEW SECTION

**WAC 388-891A-1050 What are extended services?**

Extended services are ongoing support services and other services based on your need to help support or maintain your work in supported employment after you have made the transition from DVR time-limited support services. Extended services may be available to you if you have a most significant disability and you are in supported employment.

#### NEW SECTION

**WAC 388-891A-1060 Who provides the extended services I need?** (1) Extended services are provided by non-profit private organizations such as community rehabilitation programs, state and local public agencies, employers, or any other appropriate resources.

(2) DVR may provide you with extended services on a case-by-case basis for up to four years from the date time-limited support services have ended or until you reach age twenty-five, under the following conditions:

(a) You are a youth with a disability as defined in WAC 388-891A-0010(19);

(b) You and your DVR counselor have discussed whether continuing time-limited supported employment services would be appropriate and you both have determined that no further time-limited supported employment services are necessary to support and maintain your supported employment before you transition to extended services; and

(c) No other source of extended services is available for your use.

(3) DVR must not provide extended services for anyone who does not meet the criteria in subsection (2) of this section.

NEW SECTION**WAC 388-891A-1065 What are natural supports?**

Natural supports are the people you ordinarily come into contact with at work or at home to help you with work routines and social interactions at the worksite. Natural supports can help you keep your job after DVR stops providing supported employment services.

NEW SECTION

**WAC 388-891A-1075 What is required for me to change from time-limited support services to extended services?** Prior to helping you change from time-limited services to extended services, a DVR counselor must ensure the following:

- (1) You have made substantial progress toward meeting the number of work hours per week you want to work as documented on your individualized plan for employment;
- (2) You and your DVR counselor agree that the job is satisfactory; and
- (3) Your DVR counselor has obtained verification that:
  - (a) Your job performance is stable and satisfactory to your employer;
  - (b) You have stabilized in the job; and
  - (c) You no longer need time-limited support services.
- (4) Extended services are readily available and may be provided to you without an interruption in services.

NEW SECTION

**WAC 388-891-1080 Under what conditions does DVR close my case service record for supported employment?** (1) If a DVR counselor determines that you require supported employment and has explored all available options for securing resources for extended services or natural supports and there is no reasonable expectation these services will become available, DVR must close your case service record.

(2) If you have stabilized in your supported employment outcome, DVR must wait at least ninety days after helping you change from supported employment services to extended services or natural supports before closing your case service record as having achieved an employment outcome in supported employment.

**Reviser's note:** The above new section was filed by the agency as WAC 388-891-1080. This section is placed among sections forming new chapter 388-891A WAC, and therefore should be numbered WAC 388-891A-1080. Pursuant to the requirements of RCW 34.08.040, the section is published in the same form as filed by the agency.

NEW SECTION

**WAC 388-891A-1090 Under what conditions does DVR provide time-limited support services as post-employment services?** DVR provides time-limited support services to you as post-employment services, as described in WAC 388-891A-0890, following the change from supported employment services to extended services if:

- (1) Your extended service provider cannot provide the services; and

- (2) You need specific services to keep, advance in, or regain your job.

**PAYING FOR VR SERVICES**NEW SECTION

**WAC 388-891A-1100 When does DVR provide or pay for vocational rehabilitation services to individuals?** DVR provides and pays for VR services when services are not available to you from, or paid for by, any other program administering or providing comparable services or benefits, as described in WAC 388-891A-0010(1), and:

- (1) You have completed the application requirements;
- (2) You have provided documents that verify your identity and legal work status;
- (3) DVR authorizes the services before the services begin; and
- (4) You have completed the financial statement, if required, and have agreed upon what portion, if any, you are required to contribute for your VR services, and:
  - (a) You need the services so that a DVR counselor can determine your eligibility for services; or
  - (b) You need the services to assist you and your DVR counselor as you:
    - (i) Identify your vocational rehabilitation needs; or
    - (ii) Prepare for, secure, maintain, advance in, or regain employment.

NEW SECTION

**WAC 388-891A-1101 Are there limits or activities that DVR does not pay for or support?** DVR will not pay for or support any of the following:

- (1) Court fees, attorney fees, fines, or penalties related to illegal acts that result from any civil or criminal legal proceedings or related matters;
- (2) The provision of usual living expenses as a maintenance service or services as described in WAC 388-891A-0735;
- (3) Insurance as outlined in WAC 388-891A-1180;
- (4) Bonds, including surety or fidelity bonds, that result in liability for DVR;
- (5) Construction of or permanent modifications to real property as prohibited by 34 C.F.R. Sec. 76.533;
- (6) Education or training for an employment outcome that is religious in nature, as specified in the Washington state Constitution and outlined in WAC 388-891A-0966;
- (7) Co-signing of loans;
- (8) The costs as listed in WAC 388-891A-1186 for an IPE with self-employment.

NEW SECTION

**WAC 388-891A-1102 Am I required to repay DVR funds that were overpaid to me?** (1) If you receive DVR funds as an overpayment, you must repay the amount you were overpaid to DVR.

- (2) An overpayment occurs when DVR issues a payment directly to you to purchase an approved VR service, you

signed a direct pay agreement outlining your responsibilities when receiving a direct payment from DVR, and either:

(a) The approved service costs less than the amount advanced to you for payment; or

(b) You do not provide itemized receipts or other itemized documentation of your purchase and its cost within twenty calendar days of the date of purchase.

(3) DVR will notify you in writing within 90 days of the date of the overpayment requesting that you repay any amount overpaid.

(4) DVR will refer the matter to the DSHS office of financial recovery (OFR) if:

(a) You do not repay the funds within the time allowed in DVR's written notice; and

(b) DVR has notified you in writing of the overpayment requirement in a timely manner.

(5) If you cannot afford to repay the overpayment, you may request that DVR notify OFR of your financial circumstances and ask that the repayment requirement be waived based on your financial circumstances.

#### NEW SECTION

**WAC 388-891A-1103 When must DVR make a referral to the DSHS office of fraud and accountability (OFA)?**

(1) When a DVR staff person suspects that a customer may have intentionally or knowingly misrepresented, concealed, or withheld facts in order to receive DVR funds, services, or equipment, DVR must make a referral to the DSHS office of fraud and accountability (OFA).

(2) Customer fraud has occurred when the customer:

(a) Has knowingly and intentionally not reported or under-reported income or resources that otherwise may affect the provision of VR services;

(b) Does not report assets (such as vehicles, boats, motor homes, etc.) on the financial statement, when required;

(c) Knowingly and intentionally misused DVR funds; or

(d) Is receiving DVR services under a false identity or by providing false information as a basis for their eligibility for VR services.

(3) DVR would not typically refer a customer with a significant mental health diagnosis, intellectual delay, or a significant learning disability that may have interfered with their decision making to the OFA for investigation.

#### NEW SECTION

**WAC 388-891A-1105 Does DVR require written authorization to purchase services?** (1) DVR must make a written authorization prior to purchasing services, unless exceptional circumstances require an oral authorization.

(2) DVR must issue a written authorization for purchase within five business days of an oral authorization.

#### NEW SECTION

**WAC 388-891A-1110 May DVR pay for VR services without determining whether comparable services and benefits are available from another program or organization?** DVR may provide and pay for the following services without determining whether a comparable service or benefit,

as defined in WAC 388-891A-0010(1), is available to you from, or paid for by, any other program administering or providing services or benefits:

(1) Assessment services to determine your eligibility, VR needs, or both;

(2) Counseling and guidance, including information and support services to assist you in exercising informed choice;

(3) Referral and other services to secure services you need from other agencies;

(4) Job-related services;

(5) Rehabilitation technology services;

(6) Post-employment services when providing the services listed in subsection (1) through (5) of this section.

#### NEW SECTION

**WAC 388-891A-1120 May DVR authorize or provide VR services before determining whether a comparable service or benefit is available to me to avoid delaying or interrupting my services?** (1) To avoid delaying or interrupting needed services, a DVR counselor may authorize or provide VR services before determining whether a comparable service or benefit, as defined in WAC 388-891A-0010(1), is available to you from, or paid for by, any other program administering or providing services or benefits, when:

(a) You are at extreme medical risk based on medical evidence provided by a qualified professional and require VR services;

(b) You will obtain an immediate job placement; or

(c) Your progress toward achieving the employment outcome identified on your individual plan for employment will be delayed or interrupted without VR services.

(2) If you receive VR services before services or benefits are available from another program, you must begin using the services and benefits from the other program when they become available to you.

#### NEW SECTION

**WAC 388-891A-1125 If comparable services and benefits are available from another program or organization, and I do not want to use them, who is responsible for the cost of the services?** (1) If you choose not to apply for and use comparable services and benefits that are available to you, as defined in WAC 388-891A-0010(1), you are responsible for the cost of the services.

(2) Except for the services outlined in WAC 388-891A-1110 and 388-891A-1120, DVR does not pay for services or benefits that can be provided to you or paid for by any other program.

#### NEW SECTION

**WAC 388-891A-1130 Do I have to pay a portion of my VR services if I receive assistance or income support from another public program?** You are not required to pay any portion of your VR services if you or your DVR counselor provide verification that you currently receive benefits from one of the following programs:

(1) A department of social and health services (DSHS) cash or food assistance program;

- (2) Medicaid; or
- (3) Supplemental security income (SSI) or social security disability insurance (SSDI).

NEW SECTION

**WAC 388-891A-1135 Does DVR require that I pay for part of my VR services using my own financial resources?** When the conditions outlined in WAC 388-891A-1130 do not apply to you and the information you provide for the financial statement shows that financial resources are available, DVR requires you to pay a portion of the cost of your VR services other than those outlined in WAC 388-891A-1145.

NEW SECTION

**WAC 388-891A-1136 When does DVR require that I pay for part of my VR services using my own financial resources?** If your annual or monthly income is a percentage of the federal poverty level that is higher than would qualify for children's medicaid in Washington state, as described in WAC 182-505-0100 (6)(b), DVR will require you to provide a complete financial statement that documents your financial status and calculates the amount available for you to pay for your VR services.

NEW SECTION

**WAC 388-891A-1137 How does DVR determine whether I must pay for VR services?** (1) DVR collects financial information from you to determine whether you must pay any part of the cost of VR services if neither you nor your DVR counselor can verify that you receive assistance or income support from any of the programs identified in WAC 388-891A-1130.

(2) You must complete and sign a DVR financial statement to document your financial status as follows:

(a) If you reported your income tax status as married filing jointly, married filing separately, or another person identified you as a registered domestic partner or dependent, complete the financial statement based on family resources.

(b) If you reported your income tax status as single and were not claimed as a dependent by another person, complete the financial statement based on your own financial resources.

(c) DVR requires you to provide copies of financial records (such as bank statements, tax returns, or documentation of SSI or SSDI benefits received) to establish your financial status. If you do not have copies of documentation to verify your receipt of benefits from public assistance programs, DVR may be able to assist you in obtaining that documentation at your request.

(3) The DVR financial statement requires you to disclose information from the following sources:

(a) Previous year's income tax return, if you filed taxes for the most recent tax year or you were claimed as a dependent on a family member's tax return;

(b) Previous month's bank statements reflecting all income received;

(c) If your previous year's income meets the conditions described in WAC 388-891A-1136, the financial statement requires the following information about your finances:

(i) Monthly income from all sources, including investments and trusts;

(ii) Real and personal assets, including but not limited to bank accounts; and

(iii) Monthly expenses, including housing, food, child care, transportation, health care, other necessities, credit or loan payments, disability-related expenses, and any other financial obligations.

(4) If the results of your financial statement show that you do not have resources available to help pay for your VR services, DVR provides the services at no cost to you.

(5) If your financial status changes, you must report these changes to your DVR counselor.

(6) If you decline to complete the financial statement or decline to contribute to the cost of VR services, DVR will provide only those services listed under WAC 388-891A-1145.

NEW SECTION

**WAC 388-891A-1140 How does DVR determine how much I pay for VR services?** When the financial statement indicates that you have financial resources to contribute, you and the DVR counselor will agree on how your resources will help pay for VR services. You and the DVR counselor will document the agreed upon contribution to the costs of services on the IPE.

NEW SECTION

**WAC 388-891A-1145 Which VR program services am I not required to help pay for?** You are not required to pay any portion of the following VR services, regardless of your financial status:

(1) Pre-employment transition services;

(2) Assessment services to determine eligibility, priority category, or VR needs;

(3) Any VR services as described in WAC 388-891A-0700 when provided directly by DVR staff;

(4) Information and referral services;

(5) Auxiliary aids, including interpreter and reader services needed to participate in VR services;

(6) Personal assistance services needed to participate in VR services;

(7) Job related services as described in WAC 388-891A-0730 through 388-891A-0734; and

(8) Post-employment services that include any of the services in subsections (1) through (7) of this section.

NEW SECTION

**WAC 388-891A-1150 May I select the services and service provider of my choice?** (1) You may select VR services that you need to achieve an employment outcome that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) You may select the service provider of your choice if the service provider meets the following conditions:

(a) DVR pays for services that meet your needs at the least cost to meet your needs as follows:

(i) If two or more providers of goods and services are adequate and available to meet your needs but differ in cost and you choose the higher cost provider, you are financially responsible for the difference in cost; and

(ii) DVR may pay for goods and services at a higher cost if the costs are reasonably similar;

(b) The service provider has operating capacity to serve you; and

(c) The service provider meets all federal, state, and DVR requirements.

#### NEW SECTION

**WAC 388-891A-1155 When does DVR pay for occupational or vocational training?** DVR pays for occupational or vocational training if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You require training services to achieve the employment outcome identified on your IPE;

(2) If the training agency or provider is eligible for federal financial aid, you and your DVR counselor have made maximum efforts to get and use available need-based gift aid, including Pell or state need grants, from other sources to pay for costs related to attendance; and

(3) The training agency or provider that you have chosen is licensed by the workforce training education coordinating board (WTECB) in the state of Washington as follows:

(a) The DVR counselor confirms the licensure status of an occupational or vocational training agency by verifying that status with the WTECB list of private career schools; and

(b) If you require training from an agency or provider that is not included on the WTECB list of private career schools, you may request an exception to subsection (3)(a) of this section as described in WAC 388-891A-0205.

#### NEW SECTION

**WAC 388-891A-1156 When does DVR pay for basic education or literacy training?** DVR pays for basic education or literacy training if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You require training services to achieve the employment outcome identified on your IPE;

(2) You have taken the entry test, if required by the school you have chosen, to assess your skills and develop an instructional plan as appropriate; and

(3) DVR does not require you to complete an application for financial aid to participate in basic education or literacy training.

#### NEW SECTION

**WAC 388-891A-1160 When does DVR pay for training services at an institution of higher education?** DVR pays for training services at an institution of higher education

if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You require training services to achieve your desired employment outcome as identified on your IPE;

(2) You and your DVR counselor have made maximum efforts to get and use available need-based gift aid, including Pell or state need grants, from other sources to pay for costs related to attendance;

(3) You provide the DVR counselor a copy of your student financial aid award or denial form, statement of unmet need and student budget, and other related documentation;

(4) You achieve the academic standards described in WAC 388-891A-1164; and

(5) You utilize all gift aid awarded to you toward the cost of attendance.

#### NEW SECTION

**WAC 388-891A-1161 Are there forms of financial assistance that I am required to apply for or access before DVR will assist with the cost of attendance at my institution of higher education?** (1) Before DVR may assist with the cost of attendance at an institution of higher education, DVR requires you to:

(a) Complete a free application for federal student aid (FAFSA); and

(b) Use all available need-based gift aid toward your cost of attendance.

(2) DVR does not require you to:

(a) Apply for academic awards and scholarships based on merit as comparable benefits; or

(b) Accept any available student loans.

#### NEW SECTION

**WAC 388-891A-1162 When does DVR pay for training at a private school or an out-of-state institution of higher education?** If you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and choose training services at a private or out-of-state program when an in-state or public program is available and adequate to meet your needs:

(1) DVR pays for training services up to the amount of the in-state or public program; and

(2) You are responsible for costs that are in excess of the public or in-state program costs.

#### NEW SECTION

**WAC 388-891A-1163 May DVR pay for other fees charged by my institution of higher education when those fees are required as a condition of registration?** (1) If an academic institution charges a fee to cover the cost of a student health clinic and the fee is required as a condition of registration, DVR pays this fee when financial aid funds are not adequate.

(2) If an academic institution charges a liability fee to cover the costs of a student to register in high-risk courses, practicums, internships, or externships and the fee is required as a condition of registration, DVR pays this fee.

(3) DVR must not pay for health insurance, as outlined in WAC 388-891A-1180.

#### NEW SECTION

**WAC 388-891A-1164 What academic standards does DVR have for education?** (1) DVR considers you to have met its minimum academic standards when you have achieved the greater of either:

(a) The minimum progress necessary to maintain good standing in your academic program and to graduate from your course of study; or

(b) The cumulative grade point average that you and your DVR counselor have agreed upon in your IPE, when appropriate.

(2) If your progress is delayed due to a disability-related issue, DVR will take the issue into consideration in evaluating satisfactory progress toward the completion of your academic program.

#### NEW SECTION

**WAC 388-891A-1165 When does DVR make a direct payment to me?** DVR makes a direct payment to you if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You sign a DVR direct payment agreement to acknowledge that you understand and accept the terms of the agreement;

(2) You only use direct payment funds to purchase VR services that you and your DVR counselor have agreed upon and that have been approved in advance;

(3) You give your DVR counselor the itemized receipts or other itemized documentation of your purchase and its cost for all purchases within twenty calendar days of the purchase;

(4) If you receive a direct payment in advance that is greater than the actual cost of the purchase, you must repay the difference between the cost of your purchase and the amount provided to you by DVR; and

(5) If you do not provide itemized receipts or other itemized documentation of your purchase and its cost, you must repay any funds directly paid to you as a maintenance service, as described in WAC 388-891A-1102.

#### NEW SECTION

**WAC 388-891A-1170 When does DVR pay for my moving expenses?** DVR pays to move your household goods so that you can participate in training services identified in your IPE, other approved VR services, or accept an offer of employment if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) The training or other VR service you need to achieve an employment outcome is not within commuting distance or a DVR counselor verifies that you have been offered a job that is:

(a) Contingent upon your relocation;

(b) Specialized in nature that narrows the availability of employment to the degree that relocation is required; or

(c) At a distance from your current residence that is not practical for commuting;

(2) A DVR counselor determines that the relocation is the most appropriate step toward reaching your desired employment outcome; and

(3) A DVR supervisor approves payment for the moving expenses to support your relocation, and if you choose to insure the relocation or moving of your household goods, you are responsible for the cost of your insurance.

#### NEW SECTION

**WAC 388-891A-1171 When DVR pays for relocation or moving expenses, may I move my own household belongings in a rental vehicle?** DVR only pays for moving services provided by a moving company that is licensed, insured, and bonded. DVR does not pay for a rental vehicle for the purpose of moving your own household belongings.

#### NEW SECTION

**WAC 388-891A-1172 When does DVR provide services to facilitate driving a personal vehicle?** (1) DVR provides services to facilitate driving a personal vehicle, as described in WAC 388-891A-0866, when the use of a personal vehicle is necessary for participation in VR services or to secure, maintain, advance in, or regain employment.

(2) DVR will not provide services to facilitate you or another driver driving a personal vehicle if:

(a) Either you or the driver is uninsured; or

(b) The DVR counselor has obtained information and documented any fact that raises a question regarding driving safety.

#### NEW SECTION

**WAC 388-891A-1173 When may DVR pay for the cost of fueling a personal vehicle as a transportation service?** DVR pays for the cost of fueling a personal vehicle as a transportation service if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, the conditions for DVR to pay for services that facilitate driving a personal vehicle in WAC 388-891A-1172, and the following additional conditions:

(1) When public transportation is not available or does not meet your needs (including your disability and accessibility needs):

(a) You provide DVR with documentation that shows:

(i) The vehicle is currently licensed and insured; and

(ii) Proof you or the driver of the personal vehicle has a valid driver's license;

(b) You provide documentation of point-to-point mileage using an online map service; and

(c) DVR staff calculates the point-to-point fuel allowance by multiplying the number of miles by the Internal Revenue Service (IRS) standard medical mileage rate; or

(2) When public transportation is available that meets your transportation needs (including your disability and accessibility needs), but you choose to use a personal vehicle:

(a) You provide DVR with documentation that shows:

(i) The vehicle is currently licensed and insured; and

(ii) Proof you or the driver of the personal vehicle has a valid driver's license; and

(b) DVR authorizes a fuel allowance up to the amount of the least cost bus pass available to you that meets your transportation needs.

#### NEW SECTION

**WAC 388-891A-1174 When does DVR purchase and loan a vehicle to you?** (1) DVR only purchases and loans a vehicle to you under exceptional circumstances and when providing a vehicle would be the least cost service to meet your transportation needs. In such exceptional circumstances, no other transportation options are available and it is not feasible for you to relocate or use other transportation options.

(2) You or the driver of your vehicle must participate in an assessment to determine that you, or if you are riding as the passenger in the vehicle, that the driver, can safely operate the vehicle. As part of that assessment, you, or if you are the passenger, the driver, must provide:

(a) A copy of a current, valid driver's license;

(b) A current copy of a driving record disclosing any moving violations and indicating no criminal convictions related to driving a vehicle;

(c) Documentation of your insurability and the anticipated expense of insuring the vehicle to meet DVR's minimum requirements, as outlined in WAC 388-891A-1178; and

(d) Documentation of your ability to maintain insurance coverage.

(3) If the assessment described in subsection (2) of this section reveals any fact that raises a question regarding driving safety, the DVR counselor must require a driving evaluation conducted by a state-certified driver training instructor, or another relevant evaluation, as appropriate.

(4) When the vehicle has been or will be modified for your use, the driving evaluation described in subsection (3) of this section must be conducted by a certified driver rehabilitation specialist.

(5) The DVR director must approve the purchase of the vehicle and the loan to you.

#### NEW SECTION

**WAC 388-891A-1175 What conditions apply for DVR to purchase and loan a vehicle to me?** In addition to meeting the circumstances described in WAC 388-891A-1174 and the conditions outlined in WAC 388-891A-1100 and 388-891A-1172, you must satisfy all of the following requirements for DVR to purchase and loan a vehicle to you:

(1) When you are the driver, the DVR counselor determines, based on disability-related documentation that your disability is stable or slowly progressive, and it is not likely to impair your ability to drive in the future.

(2) When the vehicle has been or will be modified for your use, you or the driver complete a driving evaluation with a certified driver rehabilitation specialist to verify driving ability and evaluate your rehabilitation needs.

(3) If you or the driver of your vehicle have a documented history of substance abuse in the past five years, you must provide or participate in a current substance use disorder assessment.

(4) At the time of vehicle purchase, DVR remains the legal owner and you are the registered owner.

(5) You must submit the following documents to DVR and agree to provide ongoing verification upon request of the DVR counselor:

(a) A copy of the current, valid driver's license for each driver;

(b) A current copy of the driving record for each driver that discloses any moving violations and indicates no criminal convictions related to driving a vehicle;

(c) A copy of motor vehicle insurance coverage with the following minimum coverage and conditions while DVR remains the legal owner of the vehicle:

(i) Liability in the amount of at least \$50,000/100,000/50,000;

(ii) Uninsured motorist in the amount of at least \$50,000/100,000/50,000;

(iii) Personal injury in the amount of at least \$100,000;

(iv) Replacement cost of the vehicle, including special equipment and vehicle modifications, if applicable;

(v) If your use of the vehicle is necessary for your specific job duties, including self-employment, sufficient insurance to cover any losses that occur while you are using a vehicle for your specific job duties;

(vi) A clause in your insurance policy provides written notification to DVR if the vehicle insurance lapses, is canceled, or the insured drivers have any driving infractions that raise safety questions;

(vii) DVR is listed as the lien holder on the policy; and

(viii) All drivers who use the vehicle are listed on the policy;

(d) A description of your IPE of how you will pay for vehicle insurance and what you will contribute toward maintenance and repair, as this is a requirement for subsequent ownership of the vehicle; and

(e) A signed agreement to return the vehicle to DVR upon request as long as DVR owns the vehicle.

#### NEW SECTION

**WAC 388-891A-1176 When does DVR transfer ownership of a vehicle that DVR purchased and loaned to you?** (1) DVR transfers ownership of a vehicle that DVR has purchased and loaned to you when you achieve an employment outcome, as described in WAC 388-891A-1310, and you maintain the employment for at least ninety days.

(2) Once you have maintained the employment for at least ninety days, and before DVR transfers ownership of a vehicle that DVR purchased and loaned to you, you must submit documentation to confirm:

(a) You are the registered owner of the vehicle;

(b) You have a current driver's license; and

(c) You have current insurance to cover the cost of replacement for loss or damage at the time DVR transfers ownership.

#### NEW SECTION

**WAC 388-891A-1177 When may DVR pay for vehicle modifications as a rehabilitation technology service?** DVR pays for vehicle modifications as a rehabilitation tech-

nology service if you meet the requirements for DVR to pay for a VR service as outlined in WAC 388-891A-1100, the conditions for DVR to pay for services that facilitate the driving of a personal vehicle in WAC 388-891A-1172, and the following additional conditions:

(1) The DVR counselor determines based on disability-related documentation that your disability is stable or slowly progressive and not likely to impair your driving ability in the future if you plan to drive the vehicle;

(2) You provide copies of documentation verifying that you or the driver of your vehicle is the legal and registered owner of the vehicle, except when DVR is the legal owner of the vehicle being modified;

(3) DVR obtains documentation of an inspection from a certified or journey-level auto mechanic that verifies the vehicle is in good operating condition and a vendor certified through the National Mobility Equipment Dealers Association (NMEDA) says it is capable of being modified;

(4) If you or the driver of your vehicle has a documented history of substance abuse in the past five years, you or the driver provide or participate in a current substance use disorder assessment;

(5) If you will be a driver of the vehicle, you demonstrate an ability to operate a motor vehicle safely by completing a driving evaluation with a certified driver rehabilitation specialist that verifies your driving ability and evaluates your rehabilitation needs;

(6) The certified driver rehabilitation specialist prescribes needed modifications to the vehicle, except that prescriptions are not required for:

(a) Placement of a wheelchair lift, ramp or scooter lift and tie downs;

(b) Passenger access only; and

(c) Wheelchair carriers;

(7) Provide documentation of vehicle insurance adequate to cover the cost of replacement for loss or damage, including the cost of the modification; and

(8) Demonstrate or provide documentation that verifies you or the driver of your vehicle can safely operate the vehicle as modified.

#### NEW SECTION

**WAC 388-891A-1179 When may DVR pay for vehicle repairs?** In order for DVR to pay for a vehicle repair you must meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, the conditions for DVR to pay for services that facilitate your driving in WAC 388-891A-1172, and the following additional conditions:

(1) Your transportation needs are such that the least cost option that is adequate to meet your needs requires the repair of the vehicle.

(2) You must provide DVR with documentation that shows you are the registered owner of the vehicle, with current vehicle insurance, and a valid driver's license. You and your DVR counselor may request an exception to this requirement under WAC 388-891A-0205 if:

(a) You ride as a passenger in a vehicle owned by a family member, as described in WAC 388-891A-0010(7), and

the family member who owns and drives the vehicle has current vehicle insurance and a valid driver's license; or

(b) You are the driver of a vehicle owned by a family member, as described in WAC 388-891A-0010(7), and the following additional conditions:

(i) You and the owner of the vehicle are named on the vehicle insurance policy;

(ii) You have a valid driver's license; and

(iii) You provide DVR with written consent for the repair from the owner.

(3) The DVR counselor must not authorize repairs if:

(a) The counselor has obtained information and documented that the vehicle is unsafe or beyond repair; or

(b) A vehicle repair business without automotive service excellence (ASE) certification or other certified mechanics performs the repairs.

#### NEW SECTION

**WAC 388-891A-1180 What types of insurance does DVR pay for?** (1) If you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, DVR pays to insure assistive technology devices, equipment, and products.

(2) DVR must not pay for any other types of insurance. Prohibited types of insurance include, but are not limited to, health, vehicle, home, and life insurance.

(3) DVR must not pay for bonds or guarantees that result in liability for DVR.

#### NEW SECTION

**WAC 388-891A-1181 What types of assistive technology insurance may DVR pay for?** DVR pays for insurance for assistive technology devices, equipment, and products to cover the cost of repairs or replacement if they are lost or damaged, if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) The individual with a disability is the holder of the device, equipment, or product;

(2) The individual with a disability is the named insured under the policy; and

(3) A third-party insurer pays for replacement or repair directly to the manufacturer or service provider.

#### NEW SECTION

**WAC 388-891A-1182 What types of assistive technology warranties may DVR pay for?** (1) At the time of purchase, DVR pays for an initial warranty for an assistive technology device, piece of equipment, or product if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, and the warranty:

(a) Is available from the manufacturer or service provider at the time of purchase;

(b) Offers a guarantee for a specified period of time following the date of purchase; and

(c) Guarantees repair or replacement of parts, or if necessary, the entire device, equipment, or product when the parts or workmanship are faulty.



(2) DVR pays for a warranty that extends beyond the period of coverage of an initial warranty for an assistive technology device, piece of equipment, or product if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and:

(a) The individual with a disability is the holder of the device, equipment, or product;

(b) The manufacturer or service provider provides a written guarantee for the materials and workmanship of the device, equipment, or product;

(c) The manufacturer or service provider replaces or repairs faulty parts and workmanship, replaces the device, equipment, or product in whole; and

(d) If the manufacturer or service provider does not directly perform repairs or replacement, the manufacturer or service provider must directly pay a third-party service provider to repair or replace parts and workmanship, or to repair or replace the device, equipment, or product in whole.

#### NEW SECTION

**WAC 388-891A-1185 What are the costs that DVR may pay to support my IPE with self-employment as the employment outcome?** DVR only pays for self-employment services that are required for you to achieve an employment outcome when you meet the conditions outlined in WAC 388-891A-1100, and:

(1) Start-up costs for your self-employment must only include those costs related to operating the business;

(2) Start-up costs must be specified in your feasibility study or business plan, depending on the complexity of your small business; and

(3) Start-up costs that DVR may support may include, but are not limited to:

(a) Licenses;

(b) Stocks of goods for inventory, not to exceed the first sixty days;

(c) Marketing costs;

(d) Financial record-keeping systems, software, or services;

(e) Security deposits or utility hook-ups at the location of your self-employment; and

(f) Consultations with a self-employment business consultant who DVR approves.

#### NEW SECTION

**WAC 388-891A-1186 What are the costs that DVR must not pay for to support an IPE with self-employment as the employment outcome?** DVR must not pay for the following costs related to self-employment:

(1) Salaries, wages, or cash for you, your business partners, or your employees;

(2) Leases, purchase of real property, insurance, or bonds, including surety or fidelity bonds, that result in liability for DVR;

(3) Construction, including modification, improvement, replacement, demolition, or removal of permanent structures or buildings;

(4) Installation of any item, piece of equipment, or product system as a permanent fixture on real property;

(5) Services related to a self-employment outcome when the outcome would establish an entity that is religious in nature, as specified in Article 1, section 11, of the Washington state Constitution and including those services outlined in WAC 388-891A-0966;

(6) Refinancing an existing business or personal debt; and

(7) Costs related to bankruptcies.

#### NEW SECTION

**WAC 388-891A-1190 When may DVR pay for child-care services?** DVR only pays for child-care services if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and you meet the following additional conditions:

(1) DVR only pays for child-care services to a child-care provider who is:

(a) Licensed or certified by the appropriate state agency responsible for the licensure of child-care providers; and

(b) A DVR vendor;

(2) DVR only pays for child-care services directly to the child-care provider; and

(3) DVR pays a child-care provider the provider's usual and customary fee.

#### NEW SECTION

**WAC 388-891A-1194 When may DVR pay for non-permanent structural modifications at my worksite?** If you meet the conditions outlined in WAC 388-891A-1100 and your employment is at risk, DVR pays for nonpermanent worksite modifications that an employer has refused to provide under the Americans with Disabilities Act (ADA) or section 504 of the Rehabilitation Act of 1973, as amended.

#### NEW SECTION

**WAC 388-891A-1195 When may DVR pay for non-permanent modifications where I live or at my place of self-employment?** DVR pays for nonpermanent modifications where you live or at the place of your self-employment if:

(1) You meet the conditions outlined in WAC 388-891A-1100;

(2) The DVR counselor determines that the modifications are the most effective solution for accessibility where you live or at your place of self-employment, or for the operation of your self-employment business;

(3) Nonpermanent modifications to the property contribute to participating in your individualized plan for employment to achieve an employment outcome or to maintain or advance in employment;

(4) You provide proof of current property ownership with up-to-date mortgage payments and property insurance, or if you are not the legal owner of the property, you and the DVR counselor determine whether the property owner is able and willing to pay for the modification(s) and:

(a) If the property owner is willing and able to pay for modification(s), DVR does not pay for them.

(b) If the property owner is not willing or able to pay for the modification(s), but agrees to the property modification, you provide DVR with the following from the property owner:

- (i) Written consent for the modification(s);
  - (ii) Proof of current property insurance; and
  - (iii) If you are renting, a statement to verify that you have a lease or rental agreement and there is no reason to believe that it will be terminated prematurely; and
- (5) All nonpermanent modifications must be completed by a licensed, insured, and bonded professional.

#### NEW SECTION

**WAC 388-891A-1196 Are there purchases related to nonpermanent modification(s) of my home or place of self-employment that DVR does not pay for?** DVR does not purchase land, pay to build a permanent structure, or pay for any construction that would result in a permanent modification to the real property of your home or place of self-employment.

### LOANING EQUIPMENT

#### NEW SECTION

**WAC 388-891A-1200 Under what conditions does DVR loan equipment, devices, or other items to me?** (1) If you need a device, tool, piece of equipment, or other item to participate in VR services or to prepare for, secure, maintain, advance in, or regain employment, DVR will loan a new or used item to you until you achieve an employment outcome as described in WAC 388-891A-0010(4). Before purchasing new items, DVR will loan an item from the existing DVR resources if available at the time needed and DVR determines it is adequate to meet your needs.

(2) Before DVR loans an item to you, you must sign an agreement with DVR to comply with the following conditions:

- (a) Immediately return the item upon request or pay for the item if you cannot return it to DVR; and
- (b) Maintain the item according to DVR instructions and manufacturer's guidelines, if applicable, and keep it secure from damage, loss, or theft.

#### NEW SECTION

**WAC 388-891A-1205 Are there instances in which DVR would issue equipment, devices, or other items directly to me without a loan agreement?** (1) When necessary for participation in VR services or directly related to an employment outcome, DVR may issue certain equipment, devices, or other items directly to you without a loan agreement.

(2) Items issued without a loan agreement are those that cannot, for practical, legal, or hygienic reasons, be reissued to another customer.

(3) If the DVR counselor determines an item could not be used by another individual if it were returned to DVR, the DVR counselor may issue the item directly to you without a

loan agreement and the item is owned by you at the time of issue.

#### NEW SECTION

**WAC 388-891A-1210 Does DVR provide items that require customization for my own personal needs?** (1) When you and your DVR counselor agree that you will require customized equipment, devices, or other items to address your disability-related personal needs, your DVR counselor will determine whether it is appropriate to loan those items to you or whether it is appropriate to issue those items directly to you.

(2) If another individual is unlikely to be able to reuse the item because of its disability-related customization, your DVR counselor will issue that equipment, device, or other item directly to you rather than requiring a loan agreement.

#### NEW SECTION

**WAC 388-891A-1230 What happens if I fail to return a device, tool, piece of equipment, or other item if requested by DVR?** If DVR directs you to return an item loaned to you and you do not immediately return it, DVR will report the loss to the DSHS office of financial recovery (OFR). The OFR will attempt to recover the item or payment for the item from you. If the OFR cannot recover the item or payment for the item from you, the OFR may report the loss to the local county prosecutor for legal action.

#### NEW SECTION

**WAC 388-891A-1240 What happens to a device, tool, piece of equipment, or other item that has been loaned to me by DVR if I will still need it after my case service record is closed?** (1) If you have achieved the employment outcome on your IPE and the DVR counselor agrees you will continue to need the device, tool, piece of equipment, or other item to keep your job, DVR may transfer ownership to you at the time a DVR counselor closes your case service record.

(2) If you have not achieved an employment outcome at the time a DVR counselor closes your case service record and requests the return of the loaned equipment, you may request an exception to WAC 388-891A-1200 as outlined in WAC 388-891A-0205 to retain the device, tool, piece of equipment, or other item that DVR loaned to you.

### CASE CLOSURE

#### NEW SECTION

**WAC 388-891A-1300 Why does DVR close a case service record?** A DVR counselor will close your case service record for any one or more of the following reasons:

(1) You achieve an employment outcome as described in WAC 388-891A-1310;

(2) DVR determines that you do not meet the eligibility criteria described in WAC 388-891A-0500 and you are not eligible or no longer eligible because:

(a) You accepted extended employment as defined in WAC 388-891A-0010(5);

(b) You are not capable of benefiting in terms of an employment outcome based on clear and convincing evidence found through trial work experiences, as described in WAC 388-891A-0527;

(c) You are not capable of benefiting in terms of an employment outcome because DVR cannot verify that you are legally authorized to work, as described in WAC 388-891A-0507;

(3) You are no longer available to participate in services, for reasons including, but not limited to one or more of the following:

(a) You have begun medical treatment that is expected to last longer than ninety days and prevents your continued participation;

(b) You entered and will reside in a medical institution for an indefinite or considerable period of time;

(c) You entered a correctional institution (such as a prison, jail, reformatory, work farm, or detention center) or other institution designed for confinement or rehabilitation of criminal offenders for an indefinite or considerable period of time; or

(d) You are a member of the reserve forces of the military and you have been called into active military service for a period to exceed 90 days;

(4) You ask DVR to close your case because you are no longer interested in receiving VR services;

(5) You cannot be located or you have not responded to repeated attempts to contact you using the contact information that you provided;

(6) You have been transferred to another agency that better meets your needs;

(7) You decline to participate in required or agreed upon conditions or services at any point after signing an application, including prior to the determination of eligibility;

(8) Your actions or nonactions make it impossible to begin or continue DVR services;

(9) You require supported employment services, have explored all available options for securing resources for extended services or natural supports with your DVR counselor, and there is no reasonable expectation these services will become available.

#### NEW SECTION

**WAC 388-891A-1310 How does DVR determine that I have achieved an employment outcome?** DVR determines that you have achieved an employment outcome and no longer need VR services if:

(1) You received services under an IPE that helped you achieve the employment outcome on your IPE;

(2) Your job matches your unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice;

(3) You have been working at the same job for at least ninety days to ensure the stability of your employment;

(4) If you are in supported employment, you have been working for at least ninety days after you have stabilized in your employment and have transitioned to extended services (including natural supports) provided by a source other than DVR; and

(5) You and a DVR counselor agree the job is satisfactory, that you are performing the job well, and that you no longer require VR services.

#### NEW SECTION

**WAC 388-891A-1311 When may DVR determine that I have achieved an employment outcome in self-employment?** DVR may determine that you have achieved an employment outcome in self-employment if you meet the conditions outlined in WAC 388-891A-1310 and the following:

(1) The business (or entity) has been operating independently of DVR funding (except self-employment consulting for monitoring and follow-up) for at least ninety days after start-up;

(2) Your income is at or above the agreed upon income level established in your IPE and is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or performing similar tasks and who have similar training, experience, and skills;

(3) You have provided financial statements to DVR that document the business is self-sustaining; and

(4) You and your DVR counselor have discussed closure, agree that you meet the requirements in subsections (1), (2), and (3) of this section, and you have the skills needed to operate the business.

#### NEW SECTION

**WAC 388-891A-1312 What does DVR do if it determines I have not achieved a self-employment outcome when my employment outcome is in self-employment?** When you are working towards a self-employment outcome as outlined in WAC 388-891A-1311, DVR will close your case if:

(1) Strategies determined necessary for the business to be successful have not worked or you decline to or are unable to try them;

(2) You are unwilling to consider other types of competitive integrated employment options; and

(3) Your business is not successful based on the criteria agreed to in your IPE.

#### NEW SECTION

**WAC 388-891A-1320 Am I involved in the decision to close my case?** (1) Before closing your case, you will have an opportunity to discuss the decision with a DVR counselor. DVR notifies you in writing, or another method of communication as appropriate, about the reason DVR has made the decision to close your case.

(2) DVR will provide information about your rights to appeal DVR's decision and the client assistance program (CAP) so that you may seek assistance from CAP if you are dissatisfied with the determination.

NEW SECTION

**WAC 388-891A-1330 When does DVR contact me after my case is closed?** (1) DVR contacts you to determine your interests, priorities, and needs with respect to competitive integrated employment or training for competitive integrated employment every six months for the first two years after your case service record is closed and annually after that when:

(a) You achieve a supported employment outcome and earn wages below the federal minimum wage according to section 14(c) of the Fair Labor Standards Act while working toward competitive integrated employment; or

(b) You choose extended employment as defined in WAC 388-891A-0010(5).

(2) DVR will review your case within twelve months and annually thereafter at your request if you received supported employment services from DVR and your case was closed because you and your DVR counselor were unable to find a source for extended services.

(3) If DVR closes your case after determining you are ineligible due to the severity of your disability, DVR will conduct a review of your ineligibility determination within twelve months.

(a) If you request, DVR will contact you annually to discuss your situation after the first twelve months.

(b) DVR will no longer conduct these requested annual reviews in situations in which you have declined such reviews, you are no longer present in the state, your whereabouts are unknown, or your medical condition is rapidly progressive or terminal.

(4) DVR may contact you periodically to request information about your participation in VR services for program improvement purposes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-891-0005 What is the purpose of this chapter?
- WAC 388-891-0010 What definitions apply to this chapter?
- WAC 388-891-0100 What personal information about me does DVR keep on file?
- WAC 388-891-0103 Can DVR obtain personal information about you?
- WAC 388-891-0110 What happens if DVR receives information that indicates I have a previous history of behavior involving violent or predatory acts?
- WAC 388-891-0120 Can I ask DVR to change incorrect information in my case service record?
- WAC 388-891-0130 Can DVR share personal information in my record with others?

- WAC 388-891-0135 How does DVR protect personal information about drug, alcohol, HIV/AIDS and sexually transmitted diseases?
- WAC 388-891-0140 Can I obtain copies of information in my case service record?
- WAC 388-891-0150 How does DVR protect personal information that is released for audit, evaluation or research?
- WAC 388-891-0200 Can a guardian or another representative act on my behalf with DVR?
- WAC 388-891-0205 How do I ask for an exception to a rule in this chapter?
- WAC 388-891-0210 What happens after I submit a request for an exception?
- WAC 388-891-0215 What if a DVR counselor makes a decision about my VR services that I don't agree with?
- WAC 388-891-0220 What is the client assistance program (CAP)?
- WAC 388-891-0225 What is mediation?
- WAC 388-891-0230 When can I ask for mediation?
- WAC 388-891-0235 Who arranges and pays for mediation?
- WAC 388-891-0240 Is information discussed during mediation confidential?
- WAC 388-891-0245 If the mediation session results in an agreement, do I receive a written statement of the results?
- WAC 388-891-0250 What is a fair hearing?
- WAC 388-891-0255 How do I request a fair hearing?
- WAC 388-891-0260 After I submit a request for a fair hearing, when is it held?
- WAC 388-891-0265 What is a prehearing meeting?
- WAC 388-891-0270 Do I receive a written fair hearing decision?
- WAC 388-891-0275 Is the fair hearing decision final?
- WAC 388-891-0295 Can DVR suspend, reduce or terminate my services if I request a fair hearing?
- WAC 388-891-0300 Under what conditions does DVR provide and/or pay for vocational rehabilitation services to individuals?
- WAC 388-891-0310 What VR services are provided without determining whether services or benefits are available from another program or organization?

WAC 388-891-0320	What if looking for services and benefits available from another program would delay or interrupt my progress toward achieving an employment outcome?	WAC 388-891-0520	What are the criteria for priority category 1—Individuals with most severe disabilities?
WAC 388-891-0325	Does DVR pay for a VR service if services and benefits are available from another program or organization, but I don't want to use them?	WAC 388-891-0530	What are the criteria for priority category 2—Individuals with severe disabilities?
WAC 388-891-0330	Does DVR consider academic awards and scholarships based on merit as comparable benefits?	WAC 388-891-0540	What are the criteria for priority category 3—Individuals with disabilities?
WAC 388-891-0340	How does DVR determine whether I must pay part of my VR services using my own financial resources?	WAC 388-891-0600	What vocational rehabilitation services are available to individuals from DVR?
WAC 388-891-0345	Do I have to pay a portion of my VR services if I receive assistance or income support from another public program?	WAC 388-891-0605	What are assessment services?
WAC 388-891-0350	What financial information does DVR use to decide if I need to help pay for VR services?	WAC 388-891-0610	What are independent living services and/or evaluation?
WAC 388-891-0355	How is the amount I pay for VR services determined?	WAC 388-891-0615	What are information and referral services?
WAC 388-891-0360	What personal resources are not counted in the decision about whether I have to help pay for services?	WAC 388-891-0620	What are interpreter services?
WAC 388-891-0365	What VR program services am I not required to help pay for?	WAC 388-891-0625	What are job placement services?
WAC 388-891-0370	Can I select the services and service provider of my choice?	WAC 388-891-0630	What are job retention services?
WAC 388-891-0400	What is informed choice?	WAC 388-891-0635	What are maintenance services?
WAC 388-891-0410	How does DVR support the informed choice process?	WAC 388-891-0640	What are occupational licenses?
WAC 388-891-0420	What if I don't know how to use the informed choice decision making process?	WAC 388-891-0645	What are personal assistance services?
WAC 388-891-0430	What decisions can I make using informed choice?	WAC 388-891-0650	What are physical and mental restoration services?
WAC 388-891-0440	What information and assistance will DVR provide to help me make informed choices about VR services and service providers?	WAC 388-891-0655	What are the medical treatments DVR does not pay for?
WAC 388-891-0500	What happens if DVR cannot serve every eligible person?	WAC 388-891-0660	What is rehabilitation technology?
WAC 388-891-0510	How are individuals selected for services when DVR is operating under an order of selection?	WAC 388-891-0665	Under what conditions does DVR provide vehicle modifications as a rehabilitation technology service?
		WAC 388-891-0670	What types of insurance can DVR pay for?
		WAC 388-891-0675	What types of assistive technology insurance can DVR pay for?
		WAC 388-891-0680	What types of assistive technology warranties can DVR pay for?
		WAC 388-891-0685	What are self-employment services?
		WAC 388-891-0690	What vocational rehabilitation services can DVR provide to my family member(s)?
		WAC 388-891-0695	What types of child care does DVR provide to my family members?
		WAC 388-891-0700	What is substantial counseling and guidance?

WAC 388-891-0705	What are tools, equipment, initial stocks and supplies?	WAC 388-891-0850	What are extended services?
WAC 388-891-0710	What are training services?	WAC 388-891-0855	Does DVR provide extended services?
WAC 388-891-0715	What is on-the-job training?	WAC 388-891-0860	Who provides the extended services I need?
WAC 388-891-0720	What is post-secondary training?	WAC 388-891-0865	What is natural support?
WAC 388-891-0725	What is technical or vocational training?	WAC 388-891-0875	What is required for me to change from supported employment services to extended services?
WAC 388-891-0730	What is basic education/literacy training?	WAC 388-891-0880	What if my counselor and I cannot secure a source of extended services or natural supports?
WAC 388-891-0735	What is community rehabilitation program (CRP) training?	WAC 388-891-0885	Under what conditions does DVR close my case service record for supported employment?
WAC 388-891-0740	What other training does DVR provide?	WAC 388-891-0890	Under what conditions does DVR provide supported employment services as post-employment services?
WAC 388-891-0745	What conditions apply to receiving training services at an institution of higher education?	WAC 388-891-0900	Who can apply for vocational rehabilitation services?
WAC 388-891-0750	Can I receive training services from a private school, an out-of-state training agency or an out-of-state college?	WAC 388-891-0910	Am I required to provide proof of my identity and work status?
WAC 388-891-0755	What are transition services?	WAC 388-891-0920	If I don't live in Washington, can I receive VR services?
WAC 388-891-0760	What are translation services?	WAC 388-891-0930	Can I receive VR services if I am legally blind?
WAC 388-891-0765	What are transportation services?	WAC 388-891-0940	Can I receive VR services if I am Native American?
WAC 388-891-0770	Under what conditions does DVR provide a vehicle?	WAC 388-891-0950	How do I contact DVR if I don't speak English?
WAC 388-891-0775	What happens if DVR has a question about my driving safety?	WAC 388-891-0960	What other methods of communication does DVR use?
WAC 388-891-0780	What other services does DVR provide?	WAC 388-891-0970	Does DVR translate written communication for people who don't speak English?
WAC 388-891-0790	What are post-employment services?	WAC 388-891-0980	How do I apply for VR services?
WAC 388-891-0800	What is supported employment?	WAC 388-891-1000	Who is eligible to receive VR services?
WAC 388-891-0810	Who is eligible for supported employment?	WAC 388-891-1005	How does DVR determine if I am eligible?
WAC 388-891-0815	Who decides if I am eligible for supported employment?	WAC 388-891-1010	After I submit my application to DVR, how long does it take DVR to make an eligibility decision?
WAC 388-891-0820	What is competitive work in supported employment?	WAC 388-891-1015	What if a DVR counselor cannot presume that I am capable of working as a result of receiving VR services because of the severity of my disability?
WAC 388-891-0825	What is an integrated setting in supported employment?		
WAC 388-891-0830	Is my work setting integrated if my interactions at the work site are with nondisabled supported employment service providers?		
WAC 388-891-0835	What is transitional employment?		
WAC 388-891-0840	What are supported employment services?		
WAC 388-891-0845	What are ongoing support services?		

WAC 388-891-1020 Am I eligible for VR services if I receive Social Security disability benefits?

WAC 388-891-1025 What criteria are not considered in the eligibility decision?

WAC 388-891-1030 What is involved in a trial work experience?

WAC 388-891-1035 What if I cannot participate in a trial work experience?

WAC 388-891-1040 What is an extended evaluation?

WAC 388-891-1045 What happens if DVR determines that I am not eligible or no longer eligible for VR services?

WAC 388-891-1050 If I am not eligible for VR services, can DVR help me find other services and programs to meet my needs?

WAC 388-891-1100 What is an assessment for determining vocational rehabilitation needs?

WAC 388-891-1105 Do I have to disclose criminal history information to DVR?

WAC 388-891-1110 What other assessments might be required?

WAC 388-891-1115 What is an individualized plan for employment (IPE)?

WAC 388-891-1120 Who develops an IPE?

WAC 388-891-1125 What information does DVR provide to help me develop my IPE?

WAC 388-891-1130 What are the options for developing an IPE?

WAC 388-891-1135 Does DVR support any job I choose?

WAC 388-891-1137 What if the employment goal I choose is religious in nature?

WAC 388-891-1140 What must be included on the IPE form?

WAC 388-891-1145 When does the IPE become effective?

WAC 388-891-1150 Is the IPE reviewed and updated?

WAC 388-891-1200 Under what conditions does DVR loan equipment, devices or other items to me?

WAC 388-891-1210 What if I need an item customized for my own personal needs?

WAC 388-891-1220 What conditions apply to the use of a device, tool, piece of equipment or other item that is loaned to me?

WAC 388-891-1230 What happens if I fail to return a device, tool, piece of equipment or other item if requested by DVR?

WAC 388-891-1240 What happens to a device, tool, piece of equipment or other item if I need it when my DVR case service record is closed?

WAC 388-891-1300 Why does DVR close a case service record?

WAC 388-891-1310 How does DVR determine that I have achieved an employment outcome?

WAC 388-891-1320 Am I involved in the decision to close my case?

WAC 388-891-1330 Under what conditions does DVR follow up with me after my case is closed?

**WSR 18-07-096**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)  
 [Filed March 20, 2018, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-055.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-145-1305 What definitions do I need to know to understand this chapter?, 388-145-1330 How does the department determine my suitability to become a licensed provider?, 388-145-1355 Am I required to comply with local ordinances?, 388-145-1400 Can employees, volunteers and subcontractors be disqualified from having access to the children in my facility?, 388-145-1405 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?, 388-145-1430 What are the requirements of an on-site program manager?, 388-145-1460 Do I need to employ consultants at my facility?, 388-145-1475 What are the requirements for volunteers working directly with children/youth at my facility?, 388-145-1560 What toilet and bathing facilities are required?, 388-145-1565 What is the ratio of persons normally on the premises to bathrooms at my facility?, 388-145-1610 What are the requirements for beds in a facility?, 388-145-1835 Am I required to assess a child's need for immediate medical attention?, 388-145-1855 What are the general requirements for managing a child's medication?, 388-147-1305 What definitions do I need to know to understand this chapter?, 388-147-1425 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?, 388-147-1450 What are the qualifications of a program manager?, 388-147-1565 Are alcoholic beverages, marijuana or

illegal drugs allowed at my agency or in our certified homes?, 388-148-1305 What definitions do I need to know to understand this chapter?, 388-148-1365 What are the character and personal requirements for foster parents?, 388-148-1530 Can children participate in everyday activities under my care?, and 388-148-1645 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?

The intent of these WAC revisions is to provide foster parents, child placing agencies, and group care facilities further instructions and additional clarity regarding the minimum licensing requirements. The changes include correcting grammatical errors, clarifying licensing standards, and improving rule content for increased understandability.

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 [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov) [DSHSRPAURulesCoordinator@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](mailto:Kildaja@dshs.wa.gov), by April 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these WAC amendments is to provide foster parents, child placing agencies, and group care facilities further instructions and additional clarity regarding the minimum licensing standards. The division of licensed resources (DLR) WAC were overhauled in 2015, and since that time both internal and external stakeholders have provided feedback to improve and increase the understandability of the WAC.

Reasons Supporting Proposal: Feedback has been received from both internal and external stakeholders including foster parents, children's administration (CA) staff, private agency staff, regional medical consultants, assistant attorney generals, the Foster Parent 1624 Statewide Consultation Team, and the CA Indian Policy Advisory Subcommittee. The feedback has been incorporated and will only improve the current WAC consistency, and will provide additional clarity regarding the minimum licensing requirements.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Wright, 1115 Washington S.E., Olympia, WA 98504, 360-902-8349.

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 amended WAC are not significant legislative rules under RCW 34.05.328 (5)(c)(iii), therefore a cost-benefit analysis is not required for this filing.

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rules do not impose more than minor costs on small businesses or small nonprofit organizations.

March 20, 2018  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-17-101, filed 8/19/16, effective 9/19/16)

**WAC 388-145-1305 What definitions do I need to know to understand this chapter?** The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 388-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

- (1) Under eighteen years old;
- (2) Up to twenty-one years of age and enrolled in services through the developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;
- (3) Up to twenty-one years of age and participates in the extended foster care program;
- (4) Up to twenty-one years of age with intellectual and developmental disabilities;
- (5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.



"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family and/or in need of emergency placement.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care staff" means persons who provide daily supervision and direct care to group care children and youth.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies and licensed group care facilities.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse and/or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for

children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or ~~((assigned DSHS worker))~~ CA. This does not include children in dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

(1) A decision issued by an administrative law judge;

(2) A final determination, decision, or finding made by an agency following an investigation;

(3) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action:

(4) A revocation, denial, or restriction placed on any professional license; or

(5) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or run-away youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant and antianxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"Volunteer" means a person who provides direct care services without compensation, for your facility.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1330 How does the department determine my suitability to become a licensed provider or an employee, intern, or volunteer of a licensed provider?** (1) The department determines your suitability as a licensed provider after receiving your application, background authoriza-

tion(s) for those listed in WAC 388-145-1325(2), and all required documentation outlined in this chapter.

(2) The department determines the suitability of a licensee, employee, intern, or volunteer after receiving their background authorization referenced in subsection (1) above.

(3) You, your employees, interns, and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being and long-term stability.

~~((3))~~ (4) You, your employees, interns, and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

~~((4))~~ (5) You must demonstrate that you, your employees, interns, and volunteers have:

(a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment.

~~((5))~~ (6) At any time, we may require you ~~((or))~~, your employees, interns, and volunteers to give us additional information. We may also require an evaluation of your facility or property, or of a staff person working for your facility or agency, by an evaluator we recommend. Any evaluation requested by the department will be at your expense. The evaluator must be given written permission to share information with us prior to and throughout the evaluation process.

~~((6))~~ (7) Any employee, intern, or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

~~((7))~~ (8) Before granting or renewing a license, your licensor will assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care. Your licensor will also determine that you meet training requirements.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1355 Am I required to comply with local ordinances?** You are responsible for obtaining a certificate of occupancy and for following all local and state regulations such as zoning regulations, community covenants, local building codes and fire codes. The department may require you to provide proof that you are complying with local regulations.

AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

**WAC 388-145-1400 ~~((Can))~~ Must prospective and current employees, volunteers, interns, and subcontractors be disqualified from having access to the children in my facility?** (1) The department must disqualify prospective and current employees, volunteers ~~((or))~~, interns, and subcontractors if they do not meet the regulations of chapter 388-145 WAC, or cannot have unsupervised access to children

because of their background check as outlined in chapter 388-06A WAC.

(2) ~~((We))~~ The department must disqualify prospective and current employees, interns, volunteers, and subcontractors if they have had a negative action taken on a license or contract, or have had a license denied or revoked by an agency that regulates the care of children or vulnerable adults, unless the department determines that the individual does not pose a risk to a child's safety, well-being, and long-term stability.

(3) Applicant's, employees, interns, volunteers, and subcontractors must demonstrate that they have the understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under their care.

(4) The department will notify ~~((you))~~ the licensee if a ~~((person in your facility))~~ prospective or current employee, intern, volunteer, or subcontractor is disqualified from having unsupervised access to children. ~~((This))~~ Hiring a person disqualified by DSHS or continuing to allow unsupervised access to children by a person disqualified by DSHS could also lead to denial, suspension, or revocation of your license issued under this chapter.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1405 What ~~((can))~~ may I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?** (1) You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within twenty-eight calendar days of receiving a certified letter with our decision (see chapter 34.05 RCW). To request a hearing you must send a letter to the Office of Administrative Hearings, P.O. Box 42489, Olympia, Washington ~~((98504-2456))~~ 98504-2489, 1-800-583-8271. The letter must have the following:

- (a) A specific statement indicating why you disagree with our decision and any laws you believe are related to your claim; and
- (b) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1430 What are the requirements of an on-site program manager?** (1) On days your facility is operational, you must have an on-site program manager at your facility during business hours when youth are present. Staffed residential facilities licensed for five or fewer are required to have an on-site program manager during business hours when youth are present if the focus of the program is behavioral and a child's behavior poses a risk. The on-site program manager must meet the qualifications to:

- (a) Coordinate the day-to-day operations of the program;
  - (b) Supervise the case management and direct care staff;
- and

(c) Have the responsibility to ensure the completion of each child's plan of care and treatment.

(2) When youth are not present and the program manager is not on-site, ~~((s/he))~~ he or she must be available by telephone.

(3) An on-site program manager must have one or more of the following:

(a) A master's degree in social services or a closely related field from an accredited school and one year of experience working with children or youth; ~~((or))~~

(b) A bachelor's degree in social services or a closely related field from an accredited school and two years of experience working with children or youth; ~~((or))~~

(c) Five years of successful full-time experience in a relevant field working with children or youth; and

(i) Supervisory abilities that promote effective staff performance; and

(ii) Relevant experience, training and demonstrated skills in each area that ~~((s/he))~~ he or she will be managing or supervising.

(4) An on-site program manager must not provide clinical oversight to case management staff unless they meet the supervision requirements in WAC 388-145-1440(3).

(5) A case management staff or person with equivalent training and experience of an on-site program manager may satisfy this requirement.

(6) For overnight youth shelters, the required prior experience must be in working with adolescents.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1460 Do I need to employ consultants at my facility?** (1) You must have case management consultants available as needed to work with your staff, the children you serve, and the children's families. Other consultants may be used for program support.

(2) A case management consultant is responsible ~~((to))~~ for:

(a) ~~((Review))~~ Reviewing treatment~~((s))~~ or case plans~~((s or adoption home studies))~~ as appropriate;

(b) ~~((Provide))~~ Providing one hour of consultation/supervision to case management staff for every twenty hours a person works. Staff consultations shall be documented and available to staff on an as-needed basis; and

(c) ~~((Monitor))~~ Monitoring staff's skill development in order to effectively manage their cases.

(3) Each case management consultant must have:

(a) A master's degree in social services or a closely related field from an accredited school;

(b) The training, experience, knowledge, and demonstrated skills for each area in which ~~((s/he))~~ he or she will be supervising or advising;

(c) The ability to ensure staff develop their skills, are adequately trained, and have the understanding needed to effectively manage cases; and

(d) Knowledge of mandatory child abuse and neglect reporting requirements.

(4) Consultants may be hired as staff or operate under a contract and must meet the full professional competency requirements and academic training in their respective fields.

(5) If you have consultants working in emergency respite centers, they must also have training and experience in early childhood education.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1475 What are the requirements for volunteers working directly with children~~(s)~~ and youth at my facility?** (1) These volunteers must meet the licensing requirements listed in this chapter, including meeting the qualifications for direct care staff and must:

(a) Be at least twenty-one years of age unless they are between eighteen and twenty-one years of age in an internship or practicum program as per WAC 388-145-1445; and

~~(b) ((Be supervised at all times by at least one paid staff member or designated volunteer meeting the qualifications of a program manager, working on-site. (Volunteers meeting program manager qualifications may provide direct care unsupervised.); and~~

~~(e))~~ Receive the facility's preservice training that addresses the needs of the population of children in care.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1560 What toilet and bathing facilities are required?** (1) You must meet the following requirements for toilets, sinks, and bathing facilities:

(a) Provide toilets, urinals, and hand-washing sinks appropriate to the height for the children served, or have a safe and easily cleaned step stool or platform that is water-resistant;

(b) Provide soap and clean towels, disposable towels or other approved hand-drying devices to the children in your care;

(c) Provide adequate grab-bars~~(s)~~ or nonskid pads convenient for children;

(d) Provide appropriate toilet training equipment for children. You must regularly maintain this equipment and keep it in sanitary condition. You must place toilet training equipment on washable, water-resistant surfaces and disinfect toilet training equipment after each child's use.

(2) If you care for children under the age of six, or children with intellectual and developmental disabilities, you must monitor the use of bathtub, shower, or other bathing facilities while in use.

(3) If you operate a group care facility for six or more children you must have a housekeeping sink or department of health approved method of drawing clean mop water and disposing of the wastewater.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1565 What is the ratio of persons normally on the premises to bathrooms at my facility?** (1)

You must maintain the following ratio of toilets, handwashing sinks, and bathing facilities:

FACILITY	TOILETS (flush-type)	HANDWASHING (hot and cold running water)	BATHING FACILITIES (hot and cold running water)
Group residential programs licensed for 5 or fewer	1 minimum	1 minimum	1 minimum
Group residential for 6 or more	2 minimum 1:8 ratio	2 minimum 1:8 ratio	1 minimum 1:8 ratio

(2) In programs providing care to expectant mothers, all sleeping areas must have at least one toilet and handwashing sink on the same floor.

(3) Children eighteen months of age or younger and other children who do not use a toilet need not be included when determining the number of required flush-type toilets.

~~(((4) All sleeping areas must have at least one toilet and handwashing sink on the same floor.))~~

AMENDATORY SECTION (Amending WSR 16-17-101, filed 8/19/16, effective 9/19/16)

**WAC 388-145-1610 What are the requirements for beds in a facility?** (1) You must provide an appropriately sized separate bed for each child, with clean bedding and a mattress in good condition.

(2) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(3) A mat may be used for napping but not as a substitute for a bed.

(4) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW, Consumer Product Safety Improvement Act of 2008. These regulations include:

(a) A maximum of 2 3/8" between vertical slats of the crib; and

(b) Cribs, infant beds, bassinets, and playpens must ~~(((have)))~~ be made of wood, metal, or approved plastic, with secure latching devices and clean, firm, snug fitting mattresses covered with waterproof material that can ~~(((be)))~~ easily be disinfected ~~(((and be made of wood, metal, or approved plastic with secure latching devices))).~~

(5) You must place infants on their backs for sleeping, unless advised differently by the child's licensed health care provider.

(6) You ~~(((may)))~~ must not have loose blankets, pillows, crib bumpers, or stuffed toys with a sleeping infant.

(7) You may swaddle infants using one lightweight blanket upon the advice and training of a licensed health care provider. You must keep the blanket loose around the hips and

legs when swaddling in order to avoid hip dysplasia. You may swaddle infants under two months of age unless a licensed health care provider directs otherwise. You ~~((may))~~ must not dress a swaddled infant in a manner that allows them to overheat.

(8) You ~~((may))~~ must not use wedges and positioners with a sleeping infant unless advised differently by the infant's licensed health care provider.

(9) You ~~((may))~~ must not use weighted blankets for children under three years of age or ~~((that have))~~ for children of any age with mobility limitations ~~((unless advised differently by the child's licensed health care provider))~~.

(10) ~~((If))~~ You may use a weighted blanket ~~((;))~~ upon the advice and training from a licensed health care provider for children over the age of three years who do not have mobility limitations. You must meet the following requirements:

(a) The weight of the blanket ~~((may))~~ must not exceed ten percent of the child's body weight;

(b) Metal beads are choking hazards and ~~((may))~~ must not be used in a weighted blanket; ~~((and))~~

(c) You ~~((may))~~ must not cover the child's head with a weighted blanket or place it above the middle of the child's chest ~~((;))~~;

(d) The weighted blanket must not hinder a child's movement; and

(e) The weighted blanket must not be used as a restraint.

(11) You ~~((may))~~ must not allow children to use loft style beds or upper bunks ~~((of beds if using them could hurt them because of children's))~~ if the child is vulnerable due to age, development or condition ~~((- Examples -))~~, such as preschool children, expectant mothers, and children with a disability.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1835 Am I required to assess a child's need for immediate medical attention?** (1) ~~((After))~~ When a child ~~((is admitted to your program))~~ first enters out-of-home care (other than overnight youth shelters) you must ensure that a child receives an initial health screen or physical exam as soon as possible but no later than five days after ~~((entering))~~ the child enters your program. The initial health screen involves a review of the child for any health needs requiring immediate attention. You do not need to take a child to get this screen if you received the ~~((children))~~ child directly from a hospital, pediatric interim care, or the child is receiving services through a child advocacy center or sexual assault clinic.

(2) You must also make reasonable attempts to obtain the following health history:

- (a) Allergies;
- (b) All currently prescribed medications; and
- (c) Any special physical or mental health issues.

(3) If the child remains in placement beyond seventy-two hours, you must contact the child's DSHS worker, child placing agency, parent, or legal guardian to obtain the following information:

- (a) The date of the child's last physical and dental exam;
- (b) A history of immunizations; and

(c) Clinical and medical diagnoses and treatment plans.

(4) When a child leaves the facility, the health history of the child must be provided to the child's DSHS worker or the next caregiver.

(5) You should refer to the department of health's dental care brochure as a guide for ensuring proper dental care for children.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1855 What are the general requirements for managing a child's medication?** (1) Medication must not be used for behavior control, unless prescribed for that purpose by a physician or another person legally authorized to prescribe medication.

(2) Only you, a licensed foster parent, or another authorized care provider, such as a respite provider, are allowed to have access to medications for a child in your care.

(3) You must not use medication in an amount or frequency other than that prescribed by an appropriately licensed health care provider or psychiatrist.

(4) You must not reduce or stop a child's prescribed medication without the written approval of the child's physician. You must report this information to the child's DSHS worker. In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker to determine what consent is needed. The social worker may need to obtain consent from the child age thirteen or older, the parent, or the court.

(5) You must follow the direction of the agency or court regarding giving or applying prescription and nonprescription medications if you care for children in the custody of another agency, or tribal or other court. If this is in conflict with children's administration policy, you must notify the child's DCFS worker.

(6) You must not give medications to a child that has been prescribed for someone else.

(7) You must keep a record of all prescription and nonprescription medications given to children in care. This documentation includes:

- (a) Child's name;
- (b) Time of medication;
- (c) Dosage of medication; and
- (d) Name of person administering medication.

(8) You must obtain a signature from a licensed health care provider within seventy-two hours of obtaining a medication order by phone.

AMENDATORY SECTION (Amending WSR 16-17-101, filed 8/19/16, effective 9/19/16)

**WAC 388-147-1305 What definitions do I need to know to understand this chapter?** The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Business hours" means hours during the day in which business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

"CA" means children's administration.

"Care provider" means any person who is licensed or authorized to provide care for children ((and/or)) and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-147 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

- (1) Under eighteen years of age;
- (2) Up to twenty-one years of age and enrolled in services through the developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;
- (3) Up to twenty-one years of age and participates in the extended foster care program;
- (4) Up to twenty-one years of age with intellectual and developmental disabilities;
- (5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency" or "(CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These

include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

- (1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or
- (2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care ((and)), custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services without compensation, for your agency.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1425 What ((ean)) may I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?** (1) You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within twenty-eight calendar days of receiving a certified letter with our decision (see chapter 34.05 RCW). To request a hearing you must send a letter to the Office of Administrative Hearings, P.O. Box 42489, Olympia Washington ((98504-2456)) 98504-2489, 1-800-583-8271. The letter must have the following:

- (a) A specific statement why you disagree with our decision and any laws you believe are related to your claim; and
- (b) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1450 What are the qualifications of a program manager?** (1) You must have a program manager available during business hours who meets the qualifications to:

- (a) Coordinate the day-to-day operations of the program;
  - (b) Supervise the case management and direct care staff; and
  - (c) Have the responsibility to ensure the completion of each child's plan of care and treatment, if applicable.
- (2) A program manager must have education and experience as follows:
- (a) A master's degree in social services or a closely related field from an accredited school and one year of experience working with children or youth; or
  - (b) A bachelor's degree in social services or a closely related field from an accredited school and two years of experience working with children or youth; or
  - (c) Five years of successful full-time experience working with youth in a relevant field.

(3) A program manager must also have supervisory abilities that promote effective staff performance, and relevant experience, training and demonstrated skills in each area that he or she will be supervising or managing.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1565 Are alcoholic beverages, marijuana or illegal drugs allowed at my agency ((or in our certified homes))?** (1) You must not have or consume alcohol, marijuana, or illegal drugs on the premises of your agency.

(2) You must not allow staff members who are under the influence of alcohol, marijuana, or illegal drugs to have contact with children in care.

**AMENDATORY SECTION** (Amending WSR 16-17-101, filed 8/19/16, effective 9/19/16)

**WAC 388-148-1305 What definitions do I need to know to understand this chapter?** The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years of age and older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children ((and/or)), and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means either:

- (1) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or
- (2) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-148 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

- (1) Under eighteen years ((of)) of age;
- (2) Up to twenty-one years of age and enrolled in services through developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;
- (3) Up to twenty-one years of age and participates in the extended foster care program;
- (4) Up to twenty-one years of age with intellectual and developmental disabilities;

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency or CPA" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time

or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned (~~and/or~~) or managed by you.

"Psychotropic medication" means a type of medicine prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, anti-depressant, and anti-anxiety medications.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Washington state patrol fire protection bureau or WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

AMENDATORY SECTION (Amending WSR 16-17-101, filed 8/19/16, effective 9/19/16)

**WAC 388-148-1365 What are the ~~((character and))~~ personal requirements for foster parents?** (1) You must be at least twenty-one years old to apply for a license.

(2) You must demonstrate you have:

(a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of children under your care; and

(b) ~~((The ability to furnish children with a nurturing, respectful, and supportive environment; and~~

~~(( )))~~ You must have sufficient regular income to maintain your own family, without the foster care reimbursement made for the children in your care.



(3) You may not use drugs or alcohol, whether legal or illegal, in a manner that affects your ability to provide safe care to children.

(4) You and everyone residing on your premises or who you allow to have unsupervised access to children must demonstrate they have the ability to furnish children with a nurturing, respectful, and supportive environment.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1530 ((~~Can~~) May children participate in everyday activities under my care?)** (1) You may decide what family or community activities are appropriate for foster children. These activities must be appropriately supervised and may not interfere with visitation with the child's parents.

(2) Children may participate in family, community or friend social activities, organized sports activities, or field trips. Overnight stays over seventy-two hours requires DSHS worker approval. Any activities requiring travel must comply with WAC 388-148-1435.

(3) All high risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high risk activities, children must:

(a) Be instructed on, and required to use appropriate safety equipment, such as helmets and life vests; and

(b) Be in continuous visual or auditory range at all times, unless approved by the child's DSHS worker.

(4) It may be appropriate for some children to obtain employment when:

(a) Laws regarding minors working are followed; and

(b) The child's work does not interfere with school.

(5) Youth may obtain a driver's license if you agree to act as the "parent/guardian" for the purposes of the Intermediate Driver's License Law. If you act in this capacity for ~~((the))~~ a youth in out-of-home care who is placed in your home, you will also be responsible for the ~~((child's))~~ youth's insurance until the ~~((child reaches eighteen years of age or another responsible adult assumes financial liability risks for the child))~~ youth leaves your home or ages out of care, or if you choose to cancel the youth's insurance. If you choose to cancel the youth's insurance, you must notify the youth's worker at least five days before the cancellation becomes effective.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1645 What ~~((can))~~ may I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?** (1) You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within twenty-eight calendar days of receiving a certified letter with our decision (see chapter 34.05 RCW and chapter 388-02 WAC). To request a hearing you must send a letter to the Office of Administrative Hearings, P.O. Box 42489, Olympia Washington ~~((98504-2456))~~ 98504-2489, 1-800-583-8271. The letter must have the following:

(a) A specific statement why you disagree with our decision and any laws you believe are related to your claim; and

(b) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check.

## WSR 18-08-011

### PROPOSED RULES

#### SHORELINE COMMUNITY COLLEGE

[Filed March 22, 2018, 2:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-020.

Title of Rule and Other Identifying Information: WAC 132G-300-010 Grievance procedure, Title IX.

Hearing Location(s): On May 11, 2018, at 2:00 p.m., at Shoreline Community College, Quiet Dining Room, Building 9000.

Date of Intended Adoption: May 23, 2018.

Submit Written Comments to: Veronica Zura, 16101 Greenwood Avenue North, email [scrulemaking@shoreline.edu](mailto:scrulemaking@shoreline.edu), fax 206-546-5850, by May 11, 2018.

Assistance for Persons with Disabilities: Contact services for students with disabilities, phone 206-546-4545, fax 206-533-5109, TTY 206-546-4520, email [ssd@shoreline.edu](mailto:ssd@shoreline.edu), by May 1, 2008 [2018].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current grievance procedure for Title IX is not required to be codified under WAC for Shoreline Community College under RCW 34.05.010(16).

Reasons Supporting Proposal: The grievance procedure for Title IX, WAC 132G-300-010, does not meet the definition of a "rule" under RCW 34.05.010(16) as [it] only serves to identify the procedure in place following receipt of a Title IX complaint. The college has adopted policy language reflecting best practices in Title IX procedures which do not need to be codified in WAC. With this in mind, the college is proposing the elimination of this unnecessary rule related to the Title IX grievance procedure.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alison Stevens, Administration Building 1000, Room 1003A, 206-546-4651.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to this college 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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 22, 2018  
Veronica Zura  
Director of Human Resources

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 132G-300-010 Grievance procedure, Title IX.

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 22, 2018

Veronica Zura

Director of Human Resources

**WSR 18-08-012**  
**PROPOSED RULES**

**SHORELINE COMMUNITY COLLEGE**

[Filed March 22, 2018, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-099.

Title of Rule and Other Identifying Information: Chapter 132G-160 WAC, Admissions and registration procedures.

Hearing Location(s): On May 11, 2018, at 10:00 a.m., at Shoreline Community College, Quiet Dining Room, Building 9000.

Date of Intended Adoption: May 23, 2018.

Submit Written Comments to: Veronica Zura, 16101 Greenwood Avenue North, email [scrulemaking@shoreline.edu](mailto:scrulemaking@shoreline.edu), fax 206-546-5850, by May 11, 2018.

Assistance for Persons with Disabilities: Contact services for students with disabilities, phone 206-546-4545, fax 206-533-5109, TTY 206-546-4520, email [ssd@shoreline.edu](mailto:ssd@shoreline.edu), by May 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current admissions and registration rule is not required to be codified under WAC for Shoreline Community College to complete the operational tasks of admitting and registering students per RCW 34.05.010(16).

Reasons Supporting Proposal: Per RCW 34.05.010(16), a rule required to be in WAC does NOT include "rules of institutions of higher education involving standards of admission, academic achievement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes." With this in mind, the college is proposing the elimination of this unnecessary rule related to admissions and registration at Shoreline Community College.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Trippel, Administration Building 1000, Room 1016, 206-546-4672.

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 cost-benefit analysis in RCW 34.05.328 does not apply to this college rule.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 132G-160-010	Availability of information.
WAC 132G-160-020	Admissions.
WAC 132G-160-030	Registration—Appointments.
WAC 132G-160-040	Registration—Change of program.
WAC 132G-160-050	Residency status.
WAC 132G-160-060	Matriculation fee.
WAC 132G-160-075	Refund of tuition and fees.
WAC 132G-160-080	Advanced registration payment—Foreign students.
WAC 132G-160-500	Graduation requirements.

**WSR 18-08-019**

**PROPOSED RULES**

**DEPARTMENT OF**

**ENTERPRISE SERVICES**

[Filed March 23, 2018, 2:18 p.m.]

Continuance of WSR 18-05-101.

Preproposal statement of inquiry was filed as WSR 17-16-137.

Title of Rule and Other Identifying Information: Debarment procedures, the proposed rules provide an option, at the discretion of the department of enterprise services (DES), to fine in lieu of debarment for certain statutory causes that otherwise could be a basis for debarment. A fine in lieu of debarment, if timely paid, would not be a debarment order. Of the numerous enumerated statutory reasons for debarment, fines in lieu of debarment could be available for:

- o *Serious Contract Violations*: "Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action: (i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of

the contractor may not be considered to be a basis for debarment[.]” See RCW 39.26.200 (2)(e).

- o *Ethic Violations*: "Violation of ethical standards set forth in RCW 39.26.020[.]” See RCW 39.26.200 (2)(f).

Hearing Location(s): On May 8, 2018, at 8:30 a.m. to 10:30 a.m., in Room 1213, 1500 Jefferson, Olympia, WA.

Date of Intended Adoption: May 15, 2018.

Submit Written Comments to: Jack Zeigler, online at <https://www.surveymonkey.com/r/DebarmentFines>, by May 11, 2018.

Assistance for Persons with Disabilities: Contact Jack Zeigler, phone 360-407-9209, email [jack.zeigler@des.wa.gov](mailto:jack.zeigler@des.wa.gov), by May 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2015, the Washington state legislature amended Washington's procurement code to provide DES additional authority, within the context of debarment, to correct behavior through fines in lieu of debarment. See 2015 c 44 (SHB 1447 amends RCW 39.26.200, which passed the House 96-1 and passed the Senate 49-0). The legislature, however, required DES to establish the fining process by rule.

This proposal changes chapter 200-305 WAC.

Reasons Supporting Proposal: This proposal is necessary to implement the rule-making requirements of RCW 39.26.-200 (2015) (chapter 44, Laws of 2015, as amended by SHB 1447). SHB 1447 allows DES to debar or impose civil fines. Civil fines must use debarment process.

Statutory Authority for Adoption: RCW 43.19.011 Director—Powers and duties.

Statute Being Implemented: RCW 39.26.200 (2015) (chapter 44, Laws of 2015, as amended by SHB 1447).

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

Name of Proponent: DES, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Greg Tolbert, 1500 Jefferson, Olympia, WA, 360-407-9038; Enforcement: Emily Beck, 1500 Jefferson, Olympia, WA, 360-407-8150.

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

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, DES does not voluntarily make section 201 applicable to this rule adoption nor to date, has the joint administrative rules review committee made section 201 applicable to this rule adoption.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 23, 2018  
Jack Zeigler  
Policy and Rules Manager

## NEW SECTION

**WAC 200-305-005 Purpose.** The purpose of this chapter is to provide rules for the department of enterprise services to implement the provisions of RCW 39.26.200, which authorize the department either to fine or to debar contractors. Fines in lieu of debarment provide a cost-effective, efficient, progressive enforcement mechanism to utilize state resources to police certain causes that otherwise would result in debarment and help ensure a vibrant, open, competitive procurement marketplace for bidders and the state of Washington.

**AMENDATORY SECTION** (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-010 Definitions.** The definitions set forth in chapter 39.26 RCW and in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Affiliate" means a person in a business relationship who either directly or indirectly controls or has the power to control the other or a third party who controls or has the power to control both. Factors used to determine control include:

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity organized following the debarment

or proposed debarment of a person which has the same or similar management, ownership, or ((principal)) employees as the person that was debarred or proposed for debarment.

(2) ("~~Agency~~" means ~~any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of state institutions.~~

(3) "~~Bid~~" means ~~an offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.~~

(4) "~~Bidder~~" means ~~an individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.~~

(5) "~~Contractor~~" means ~~an individual or entity awarded a contract with an agency to perform a service or provide goods.~~

(6) "Conviction" means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

~~((7)) (3) "Covered transaction" means submitting a bid, having a bid considered, entering into a state contract, or subcontracting on a state contract.~~

~~((8) "Debar" means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.~~

~~(9)) (4) "Debarring official" means the director of the department of enterprise services or the director's designee, who shall exercise the authority to debar or fine in lieu of debarment.~~

~~((10) "Department" means the department of enterprise services.~~

~~(11) "Director" means the director of the department of enterprise services.~~

~~(12) "Person" means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.~~

~~(13) "Principal" means:~~

~~(a) An officer, director, owner, partner, principal investigator, or other person within a bidder or contractor with management or supervisory responsibilities related to a covered transaction; or~~

~~(b) A consultant or other person, whether or not employed by the bidder or contractor, who:~~

~~(i) Is in a position to handle state funds;~~

~~(ii) Is in a position to influence or control the use of those funds; or~~

~~(iii) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.~~

~~(14)) (5) "Fine in lieu of debarment" means an alternative to debarment, for certain causes that otherwise could result in debarment, but for which a monetary penalty, under the circumstances, may be more appropriate than debarment.~~

~~(6) "Investigating official" means a person appointed to investigate the merits of a debarment referral.~~

~~(7) "Service" or "service of process" means, for any delivery required under this chapter ((means)), personal delivery, delivery by US postal mail service, electronic mail delivery, or delivery by other reasonable commercially acceptable means of delivery.~~

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-020 Causes for debarment.** The director may debar a contractor based on a finding of one or more of the causes specified in RCW 39.26.200(2). A contractor or affiliate also may be debarred for failure to timely pay a fine in lieu of debarment as provided in WAC 200-305-025. A debarment may include any affiliate of the contractor if specifically named and given notice of the proposed debarment pursuant to this chapter. ~~((The director may also debar a contractor or affiliate for any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.))~~

## NEW SECTION

**WAC 200-305-025 Causes for fine in lieu of debarment.** The director may fine a contractor in lieu of debarment based on a finding of one or more of the causes specified in RCW 39.26.200 (2)(e) or (f).

(1) The director shall decide whether to order debarment or a fine in lieu of debarment. Such decision shall rest with the sound discretion of the director but be informed by the aggravating and mitigating factors set forth in this chapter.

(2) A fine in lieu of debarment shall be set at an amount to:

(a) Negate any economic gain to the contractor from the violation; and

(b) Recover the cost to the state from the contractor's violation.

(3) In the event that a fine in lieu of debarment is ordered and the contractor does not timely pay such fine in lieu of debarment as set forth in the order, the fine in lieu of debarment shall be deemed, without further action, to be a debarment order for a period of three years. Notwithstanding any provision to the contrary, because the fine in lieu of debarment was subject to review, there shall be no further review of a debarment order that is the result of a fine in lieu of debarment that is not timely paid.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-030 Aggravating and mitigating factors.** The following are the mitigating and aggravating factors that the ~~((reviewing))~~ investigating official and debarring official may consider in determining whether to debar and the length of the debarment period, or to fine in lieu of debarment.

(1) The actual or potential harm or impact that resulted or may result from the wrongdoing.

(2) The frequency of incidents and/or duration of the wrongdoing.

(3) Whether there is a pattern or prior history of wrongdoing.

(4) Whether the contractor or affiliate has been excluded or disqualified by an agency of the federal government or has not been allowed to participate in state or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this rule.

(5) Whether the contractor or affiliate has entered into an administrative agreement with a federal agency or a state or local government that is not government-wide but is based on conduct similar to one or more of the causes for debarment specified in this rule.

(6) Whether the contractor or affiliate has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the cause for debarment.

(7) Whether the contractor or affiliate has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.

(8) Whether the contractor or affiliate has cooperated fully with the government agencies during the investigation

and any court or administrative action. In determining the extent of cooperation, the ~~((reviewing))~~ investigating official or debarment official may consider when the cooperation began and whether the contractor or affiliate disclosed all known pertinent information.

(9) The kind of positions held by the individuals involved in the wrongdoing.

(10) Whether the contractor or affiliate took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(11) Whether the contractor or affiliate brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(12) Whether the contractor or affiliate has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the ~~((reviewing))~~ investigating official or debarment official.

(13) Whether the contractor or affiliate had effective standards of conduct and internal control systems in place at the time the wrongdoing occurred.

(14) Whether the contractor or affiliate has taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the cause for debarment.

(15) Other factors appropriate to the circumstances of a particular case.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-040 Referring a person for debarment or fine in lieu of debarment.** (1) Any person may file a referral for debarment or fine in lieu of debarment with the department. The referral must be in writing. The referring party may complete the department's debarment referral form. The referral ~~((should))~~ must include the following information:

(a) The name and contact information of the person submitting the referral;

(b) The specific facts supporting the request for debarment or fine in lieu of debarment, including the dates and locations for all events upon which the referral is made;

(c) The cause or causes specified in RCW 39.26.200(2) upon which debarment or fine in lieu of debarment may be based that the referring party believes are supported by the facts presented; and

(d) The name of the contractor and any affiliates the referring party believes should be subject to debarment or fine in lieu of debarment.

~~(2) ((The person submitting the referral should provide additional information if requested by the department.~~

~~(3))~~ (3) The department will make an initial assessment of the ~~((submittal))~~ referral. If the department determines that the facts as presented, if true, support a debarment or fine in lieu of debarment, the department will conduct ~~((a review))~~ an investigation to substantiate the allegations. Otherwise, the department will reject the referral.

~~((4))~~ (3) The department will notify the referring party in writing and state whether the referral will be ~~((reviewed))~~ investigated or rejected.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-050 ~~((Review-))~~ Investigation.** (1) If the department accepts a debarment referral and conducts ~~((a review))~~ an investigation, the department will notify the contractor and affiliates in writing.

(2) The notice must:

(a) Provide a complete copy of the debarment referral;

(b) State the applicable cause(s) for debarment or fine in lieu of debarment, including the applicable statutory or administrative code provisions, and the factual allegations supporting each cause in terms sufficient to put the contractor and affiliates on notice of the specific reasons for the ~~((review))~~ investigation;

~~((b) Identify the statutory and administrative code provisions addressing debarment;))~~

(c) Request a written response to the allegations including any documents that support the response, and state that failure to respond will result in the department making a decision without the recipient's input; and

(d) State the effects of a debarment order or fine in lieu of debarment order.

(3) At the conclusion of the ~~((review))~~ investigation, the ~~((reviewing))~~ investigating official will issue a report that includes the following information:

(a) Facts found by the ~~((reviewing))~~ investigating official;

(b) Whether the facts support debarment or a fine in lieu of debarment; and

(c) ~~((Either))~~ A recommendation ((that)). The recommendation shall state whether the referral should be dismissed with no further action taken or ((that)) whether a debarment order or fine in lieu of debarment should be issued, including the duration of the debarment or the amount of the fine in lieu of debarment.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-060 Notice of recommended debarment or fine in lieu of debarment.** (1) If, based on the ~~((review))~~ investigation, the ~~((reviewing))~~ investigating official determines that the facts support debarment or a fine in lieu of debarment the ~~((reviewing))~~ investigating official shall notify the affected contractor and affiliates. The ~~((reviewing))~~ investigating official shall cause service of the notice of recommended debarment or fine in lieu of debarment on the affected contractor and affiliates. The notice shall include the following information:

(a) The effective date ((when the)) for any recommended debarment ((takes effect)) or fine in lieu of debarment;

(b) Each cause for the recommended debarment or fine in lieu of debarment and the facts that the ((reviewing)) investigating official found that support each cause;

(c) The period of the recommended debarment or the amount of the fine in lieu of debarment and the deadline for payment of such fine in lieu of debarment;

(d) Notice that, in the case of a fine in lieu of debarment, if such fine is not timely paid, the fact that such failure will cause the fine in lieu of debarment to be converted to a debar-

ment, without further action or process, and state the period of the recommended debarment in such event;

(e) How the recommended debarment or fine in lieu of debarment will impact either the contractor or affiliates or both;

~~((e))~~ (f) The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the debaring official may issue a final, unappealable debarment order or fine in lieu of debarment order.

(2) Either the contractor or affiliates or both, as applicable, may request a hearing in accordance with WAC 200-305-070 to dispute the recommended debarment or recommended fine in lieu of debarment or the recommended debarment period or the recommended amount of the fine in lieu of debarment. ~~((The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the debaring official shall issue a final, unappealable debarment order; and~~

~~(f))~~

(3) Where a hearing is requested, the recommended debarment order or fine in lieu of debarment order will not go into effect until the resolution of the hearing in accordance with WAC 200-305-080.

~~((2) In the event either an affected contractor or affiliate or both does not))~~ (4) If no one requests a hearing, the ~~((reviewing))~~ investigating official will provide the report and recommendation to the debaring official, who may issue the recommendation as a final debarment order or fine in lieu of debarment order. The order shall include the effective date and term of the debarment order or fine in lieu of debarment order. If the debaring official elects to impose a sanction that is more severe than the recommendation of the investigating official, a new notice will be provided and an opportunity to request a hearing under WAC 200-305-070 will be provided before the order becomes effective.

(5) A fine in lieu of debarment order shall not constitute a debarment order.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-070 Request for a hearing on recommended debarment or fine in lieu of debarment.** Either the contractor, or affiliate or both may request a hearing ~~((or))~~ to contest the recommended debarment or fine in lieu of debarment. The request must be ~~((filed))~~ served with the director within thirty days after the date the ~~((reviewing))~~ investigating official ~~((issued))~~ served the notice of recommended debarment or recommended fine in lieu of debarment on the contractor and affiliates. The person requesting the hearing must also serve a copy of the request on the ~~((reviewing))~~ investigating official.

The request for hearing must be in writing and must specify:

(1) The name of the person requesting the hearing and the person's contact information; and

(2) The ~~((items;))~~ facts ~~((or))~~, conclusions, penalties or other matters in the notice of recommended debarment or the notice of recommended fine in lieu of debarment that ~~((the requestor contests))~~ are contested.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-080 Hearing on recommended debarment or recommended fine in lieu of debarment.** (1) The director may hear the ~~((appeal))~~ contested matter personally or may delegate the authority to hold the hearing and draft a proposed decision to another person or to an administrative law judge pursuant to chapter 34.12 RCW. The ~~((reviewing))~~ investigating official, on behalf of the department, shall be the petitioner in the hearing, and the contractor and affiliates shall be the respondents.

(2) The ~~((reviewing))~~ investigating official shall have the burden of proving the basis for the cause for debarment and the debarment period or fine in lieu of debarment and fine amount as set forth in the notice for recommended debarment or the notice for recommended fine in lieu of debarment.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 1-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final decision in writing that includes findings of fact, conclusions of law, and, if appropriate, the debarment period or fine amount. The director shall cause service of the final decision on all parties.

(5) If the director's delegate or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and, if appropriate, the debarment period or fine amount. The proposed decision ~~((shall))~~ also shall include instructions on how to ~~((file))~~ serve objections and written arguments or briefs with the debaring official. Objections and written arguments and briefs must be ~~((filed))~~ served within twenty ~~((20))~~ days from the date of receipt of the proposed decision.

(6) The parties ~~((shall agree))~~ may stipulate to the method of service, as defined in WAC 200-305-010(14) for the proposed decision. Absent agreement or stipulation, the department will serve the final order by United States mail, with service complete on the date of mailing.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-090 Final decision.** (1) The debaring official shall review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW and any objections, written arguments and briefs timely filed by the parties. The debaring official may:

(a) Allow the parties to present oral arguments;

(b) Allow the parties to submit additional information if circumstances so warrant; or

(c) Remand the matter to the delegate or administrative law judge for further proceedings;

(2) The debaring official shall issue a final decision that adopts in whole or in part, modifies or rejects the proposed decision.

(a) If the decision is to issue a debarment order, the debarment becomes effective on the date specified in the

debarment order ~~((, but in no event will the debarment order go into effect sooner than five (5) days from the date issued))~~.

(b) If the decision is to issue a fine in lieu of debarment, the fine becomes due and effective on the date specified in the order.

(3) The debarring official shall cause service of the final decision on all parties. Either the contractor or affiliate or both may file a petition for review of the final decision to superior court. If neither the contractor nor affiliate appeals within the period set by RCW 34.05.542, the debarring official's decision is conclusive and binding on all parties. The appeal must be filed within ~~((30))~~ thirty days from service of the final decision.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-100 Effect of a debarment order on the contractor and affiliate.** The effects of a debarment order on the contractor and affiliate are:

(1) A debarred contractor (and, if applicable, affiliate) is ineligible to ~~((be a participant in any covered transaction or act as a principal of a person participating))~~ participate, directly or indirectly, in any covered transaction ((as defined in WAC 200-305-010(7)).

(2) Debarment constitutes debarment of all divisions or other organizational elements of the debarred person, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.

(3) A person's debarment shall be effective in every agency, unless the director states in writing the compelling reasons justifying continued business dealings between an agency and the debarred person.

(4) A fine in lieu of debarment shall not constitute a debarment order.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-110 Effect of a debarment order on state agencies.** The effects of a debarment order on state agencies are:

(1) Agencies shall not permit debarred persons to participate in covered transactions, unless the debarring official determines in writing that there is a compelling reason to do so.

(2) If the period of debarment expires or is terminated prior to award, ~~((the))~~ a contracting officer may, but is not required to, consider a debarred ~~((persons))~~ person's bid.

(3) Notwithstanding debarment, agencies may continue contracts or subcontracts in existence at the time the person was debarred unless the debarring official determines otherwise.

(4) Agencies shall not add new work, exercise options, or otherwise extend the duration of current contracts or orders for debarred persons, unless the debarring official makes a written determination of the compelling reasons for doing so.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

**WAC 200-305-130 Service and delivery ~~((to the department))~~.** (1) Any notice, objection or information that is required or allowed by these rules may be served or delivered to the department as follows:

(a) By courier delivery:

Department of Enterprise Services  
1500 Jefferson Street S.E.  
Olympia, WA 98504-1466  
Attn: Office of the Director

~~((2))~~ (b) Or, mailed, by certified mail, return receipt requested to:

Department of Enterprise Services  
Office of the Director  
1500 Jefferson Street S.E.  
MS: 41466  
Olympia, WA 98504-1466

~~((3))~~ (c) Or, electronically mailed to department of enterprise services at the following email address: director@des.wa.gov.

(d) Service is complete upon receipt by the department.

(2) Any notice, objection or information that is required or allowed by these rules may be served by the department by U.S. mail or by any alternative means agreed to by the parties. Unless otherwise agreed, service is complete upon mailing to the contractor's address as registered with the Washington secretary of state.

## WSR 18-08-021

### PROPOSED RULES

### DEPARTMENT OF HEALTH

[Filed March 23, 2018, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-132.

Title of Rule and Other Identifying Information: Chapter 246-470 WAC, Prescription monitoring program (PMP), the department of health (DOH) proposes to amend and add a new section to existing rules to expand the exchange of PMP data to DOH personnel, health care entities, and others to support coordination of care, patient safety, and quality improvement initiatives described in ESHB 1427 (chapter 297, Laws of 2017).

Hearing Location(s): On May 16, 2018, at 1:30 p.m., at DOH, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: May 23, 2018.

Submit Written Comments to: Gary Garrety, DOH, PMP, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by May 16, 2018.

Assistance for Persons with Disabilities: Contact Gary Garrety, phone 360-236-4806, fax 360-236-2901, TTY 360-

833-6388 or 711, email [prescriptionmonitoring@doh.wa.gov](mailto:prescriptionmonitoring@doh.wa.gov), by May 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1427 (2017) amended and added new sections to chapter 70.225 RCW affecting the prescription monitoring program to expand the exchange of PMP data to DOH personnel, health care entities, and others to support coordination of care, patient safety, and quality improvement initiatives described in the bill.

Reasons Supporting Proposal: The proposed rules would assure new entities gaining access to PMP under ESHB 1427 do so within the framework, structure and guidance for the exchange of PMP data that assures the integrity of protected patient information while providing meaningful dispenser and provider data. The proposed rules meet the objectives of chapter 70.225 RCW to improve health care quality and effectiveness by reducing the misuse and abuse of controlled substances, reducing duplicative prescribing of controlled substances, and improving controlled substance prescribing practices.

Statutory Authority for Adoption: RCW 70.225.020, 70.225.025, 70.225.040.

Statute Being Implemented: RCW 70.225.040.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Gary Garrety, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4802; Implementation: Chris Baumgartner, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4844; and Enforcement: Martin Pittioni, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2927.

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 Gary Garrety, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4802, fax 360-236-2901, TTY 360-833-6388 or 711, email [gary.garrety@doh.wa.gov](mailto:gary.garrety@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. There are no costs associated with these rules. Implementation will not result in administrative, intrinsic or actual costs to the regulated community. The amendments and new rules offer increased public benefit by supporting patient safety and care coordination, far outweighing any cost that could potentially result from the rules. For example, the new rules expand and support the coordination of care for both fatal and nonfatal overdose events, and the program vendor has agreed to operationalize the production of notices regarding those events at no cost. The program vendor has also agreed to operationalize prescriber information reports at no cost. The rule changes will expand and broaden the use of PMP data, reducing prescribing errors and increasing public safety. For these reasons, the rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

March 23, 2018

John Wiesman, DrPH, MPH

Secretary

**AMENDATORY SECTION** (Amending WSR 17-18-103, filed 9/6/17, effective 10/7/17)

**WAC 246-470-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Authentication" means information, electronic device, or certificate provided by the department or their designee to a data requestor to electronically access prescription monitoring information. The authentication may include, but is not limited to, a user name, password, or an identification electronic device or certificate.

(2) "Controlled substance" has the same meaning provided in RCW 69.50.101.

(3) "Department" means the department of health.

(4) "Dispenser" means a practitioner or pharmacy that delivers to the ultimate user a schedule II, III, IV, or V controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020, but does not include:

(a) A practitioner or other authorized person who only administers, as defined in RCW 69.41.010, a controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020;

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020; or

(c) A veterinarian licensed under chapter 18.92 RCW. Data submission requirements for veterinarians are included in WAC 246-470-035.

(5) "Indirect patient identifiers" means data that may include: Hospital or provider identifiers; a five-digit zip code, county, state, and country of residence; dates that include month and year; age in years; and race and ethnicity; but does not include the patient's first name; middle name; last name; Social Security number; control or medical record number; zip code plus four digits; dates that include day, month, and year; or admission and discharge date in combination.

(6) "Local health officer" means the legally qualified physician who has been appointed as the health officer for a county or district health department, consistent with RCW 70.05.010(2).

(7) "Qualifying medical test site" means a medical test site licensed by the department under chapter 70.42 RCW, and certified as a drug testing laboratory by the United States department of health and human services, substance abuse and mental health services administration.

~~((6))~~ (8) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

~~((7))~~ (9) "Patient address" means the current geographic location of the patient's residence. If the patient address is in care of another person or entity, the address of that person or entity is the "patient address" of record. When



alternate addresses are possible, they must be recorded in the following order of preference:

(a) The geographical location of the residence, as would be identified when a telephone is used to place a 9-1-1 call; or

(b) An address as listed by the United States Postal Service; or

(c) The common name of the residence and town.

~~((8))~~ (10) "Pharmacist" means a person licensed to engage in the practice of pharmacy.

~~((9))~~ (11) "Prescriber" means a licensed health care professional with authority to prescribe controlled substances or legend drugs.

~~((10))~~ (12) "Prescription monitoring information" means information submitted to and maintained by the prescription monitoring program.

~~((11))~~ (13) "Program" means the prescription monitoring program established under chapter 70.225 RCW.

~~((12))~~ (14) "Valid photographic identification" means:

(a) A driver's license or instruction permit issued by any United States state or province of Canada. If the patient's driver's license has expired, the patient must also show a valid temporary driver's license with the expired card.

(b) A state identification card issued by any United States state or province of Canada.

(c) An official passport issued by any nation.

(d) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(e) A merchant marine identification card issued by the United States Coast Guard.

(f) A state liquor control identification card. An official age identification card issued by the liquor control authority of any United States state or Canadian province.

(g) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses and are recognized by the liquor control board.

**AMENDATORY SECTION** (Amending WSR 17-18-103, filed 9/6/17, effective 10/7/17)

**WAC 246-470-050 Local health officer, pharmacist, prescriber or other health care practitioner and medical test site access to information from the program.** (1) Access.

(a) The local health officer or a licensed health care practitioner authorized by the local health officer may obtain prescription monitoring information for the purposes of patient follow-up and care coordination following a controlled substance overdose event.

(b) A pharmacist, prescriber, or licensed health care practitioner authorized by a prescriber or pharmacist may obtain prescription monitoring information relating to their patients, for the purpose of providing medical or pharmaceutical care.

~~((b))~~ (c) A qualifying medical test site may have access to prescription monitoring information for the purpose of providing assistance to a prescriber or dispenser for deter-

mining medications an identified patient, in the care of the prescriber or dispenser, is taking.

(2) Registration for access.

(a) A local health officer, pharmacist, prescriber, or licensed health care practitioner authorized by a local health officer, prescriber or pharmacist shall register by using the registration process established by the department in order to receive an authentication to access the electronic system.

(b) Staff of a qualifying medical test site, meeting requirements of (a) of this subsection may register for access by using the registration process established by the department.

(3) Verification by the department. The department shall verify the authentication and identity of the local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site before allowing access to any prescription monitoring information. The qualifying medical testing laboratory's registered substance abuse and mental health services administration responsible person must designate and report to the program those staff who may access the prescription monitoring information.

(4) Procedure for accessing prescription information.

(a) A local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site center may access information from the program electronically, using the authentication issued by the department or the department's designee.

(b) A local health officer, pharmacist, prescriber, or licensed health care practitioner authorized by a local health officer, prescriber or pharmacist may alternately submit a written request via mail or facsimile transmission in a manner and format established by the department.

(5) Reporting lost or stolen authentication. If the authentication issued by the department is lost, missing, or the security of the authentication is compromised, the local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the ~~((program's))~~ mandate as outlined in RCW 70.225.040 and this chapter.

**AMENDATORY SECTION** (Amending WSR 17-18-103, filed 9/6/17, effective 10/7/17)

**WAC 246-470-052 Facility and provider group access to information from the program.** (1) Access.

(a) A health care facility or entity may have access to prescription monitoring information for the purpose of providing medical or pharmaceutical care to the patients of the facility or entity ~~((#))~~ or for quality improvement purposes only under the following conditions:

(i) The facility or entity is licensed by the department, operated by the federal government, or a federally recognized Indian tribe; and

(ii) The facility or entity is a trading partner with the state's health information exchange.

(b) A health care provider group of five or more prescribers may have access to prescription monitoring information for the purpose of providing medical or pharmaceutical care to the patients ~~((#)), or for quality improvement purposes, only under the following conditions:~~

(i) All prescribers in the provider group are licensed by the department, ~~the provider group is operated by the federal government or a federally recognized Indian tribe;~~ and

(ii) The provider group is a trading partner with the state's health information exchange.

(2) Registration for access. A facility or entity licensed ~~((by the department,))~~ identified in subsection (1)(a) of this section or a provider group of five or more prescribers ~~((all licensed by the department))~~ identified in subsection (1)(b) of this section may register for access by using the registration process established by the department.

(3) Verification by the department. The department or its designee shall verify the authentication and identity of the ~~((licensed))~~ facility, entity, or provider group before allowing access to any prescription monitoring information.

(4) Procedure for accessing prescription information. A ~~((licensed))~~ facility, entity, or provider group identified in subsection (1) of this section must access information from the program electronically through the state health information exchange.

(5) If the connection between the facility, entity, or provider group and the health information ~~((exchanged))~~ exchange is compromised, the facility, entity, or provider group shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the ~~((program's))~~ mandate as outlined in RCW 70.225.040 and this chapter.

#### NEW SECTION

**WAC 246-470-053 The coordinated care electronic tracking program access to information from the program.** (1) Access. The coordinated care electronic tracking program may have access to data for the purposes of:

(a) Providing program data to emergency department personnel when the patient registers in the emergency department; and

(b) Providing notice to the patient's providers, appropriate care coordination staff, and prescribers listed in the patient's prescription monitoring program record when the patient has experienced a controlled substance overdose event.

(2) Registration for access. The coordinated care electronic tracking program may register for access by using the registration process established by the department.

(3) Verification by the department. The department or its designee shall verify the authentication and identity of the coordinated care electronic tracking program before allowing access to any prescription monitoring information.

(4) Procedure for accessing prescription data. The coordinated care electronic tracking program must access data

from the program electronically through the state health information exchange. The data shall only be retained long enough by the tracking program to create the report needed by emergency department personnel when the patient registered or to provide notice of an overdose event.

(5) If the secure connection between the coordinated care electronic tracking program and the state health information exchange is compromised, the coordinated care electronic tracking program shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

#### NEW SECTION

**WAC 246-470-054 Facility, entity, and provider group access to prescriber information.** (1) Access. Facilities, entities, and provider groups which have elected to receive information as identified in WAC 246-470-052 shall receive quarterly reports from the department with facility or entity and individual prescriber information for quality improvement purposes of the facility, entity, or provider group.

(2) Requesting a report. The facility, entity, or provider group shall submit a request for each quarterly report using a format established by the department and containing the names and credentials of the providers they employ.

(3) Verification. The department will establish a process for verifying the point of contact at each facility, entity or provider group who will receive the report.

(4) Providing a report. The department will establish a secure method for delivering the report to the facility, entity or provider group.

(5) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

#### NEW SECTION

**WAC 246-470-082 Access by the Washington state hospital association to information from the program.** (1) The department may provide dispenser and prescriber data that includes indirect patient identifiers to the Washington state hospital association's coordinated quality improvement program (CQIP).

(2) Before providing data to the association's CQIP the department will enter into a data use agreement that outlines the following:

(a) The data fields that will be provided;

(b) The security methods used to protect and transmit the data;

(c) Any allowed redisclosure of the data provided to the CQIP must be consistent with the purpose of the data use agreement; and

(d) How indirect patient identifiers will be protected from any attempts to reidentify the patient or their family.

(3) All requests for, uses of, and disclosures of prescription monitoring information by the requesting entity must be

consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

**WSR 18-08-030**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed March 27, 2018, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-037.

Title of Rule and Other Identifying Information: Amending chapter 82-75 WAC, related to the statewide all payer health care claims database. Specifically, the rules will address penalties for inappropriate disclosure or use of direct patient identifiers, indirect patient identifiers, or proprietary financial information.

Hearing Location(s): On May 8, 2018, at 9:30 a.m., at 302 Sid Snyder Avenue S.W., Fourth Floor, Room 440, Olympia, WA 98501.

Date of Intended Adoption: May 18, 2018.

Submit Written Comments to: Thea Mounts, 106 11th Avenue S.W., P.O. Box 43124, Olympia, WA 98504, email [apcd@ofm.wa.gov](mailto:apcd@ofm.wa.gov), by May 8, 2018.

Assistance for Persons with Disabilities: Contact office of financial management (OFM), phone 360-902-3092, TTY 360-753-4107, email [hayden.mackley@ofm.wa.gov](mailto:hayden.mackley@ofm.wa.gov), by May 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to establish the penalties for the inappropriate disclosure or use of direct patient identifiers, indirect patient identifiers, or proprietary financial information from the Washington all payer claims database, and the procedures for filing a complaint, investigation and finding of a violation, along with how to appeal a finding of a violation.

Reasons Supporting Proposal: Chapter 43.371 RCW directs OFM to establish a statewide all payer health care claims database to support transparent public reporting of health care information. To accomplish this requirement, OFM is further directed to select a lead organization to coordinate and manage the database. RCW 43.371.070 (1)(h) provides that the OFM director shall adopt rules necessary to implement this chapter including penalties associated with the inappropriate disclosure or use of the information referenced above.

Statutory Authority for Adoption: RCW 43.371.070 (1)(h).

Statute Being Implemented: Chapter 43.371 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, Insurance Building, Olympia, Washington, 360-902-0434; Implementation and Enforcement: Thea Mounts, Helen Sommers Building, Olympia, Washington, 360-902-0552.

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. OFM is not a listed agency in 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 rule content is explicitly and specifically dictated by statute.

March 27, 2018

Roselyn Marcus

Assistant Director for

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 17-22-121, filed 10/31/17, effective 12/1/17)

**WAC 82-75-030 Additional definitions authorized by chapter 43.371 RCW.** The following additional definitions apply throughout this chapter unless the context clearly indicates another meaning.

"Capitation payment" means a payment model where providers receive a payment on a per "covered person" basis, for specified calendar periods, for the coverage of specified health care services regardless of whether the patient obtains care. Capitation payments include, but are not limited to, global capitation arrangements that cover a comprehensive set of health care services, partial capitation arrangements for subsets of services, and care management payments.

"Claim" means a request or demand on a carrier, third-party administrator, or the state labor and industries program for payment of a benefit.

"Coinsurance" means the percentage or amount an enrolled member pays towards the cost of a covered service.

"Copayment" means the fixed dollar amount a member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

"Data management plan" or "DMP" means a formal document that outlines how a data requestor will handle the WA-APCD data to ensure privacy and security both during and after the project.

"Data policy committee" or "DPC" is the advisory committee required by RCW 43.371.020 (5)(h) to provide advice related to data policy development.

"Data release committee" or "DRC" is the advisory committee required by RCW 43.371.020 (5)(h) to establish a data release process and to provide advice regarding formal data release requests.

"Data submission guide" means the document that contains data submission requirements including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"Data use agreement" or "DUA" means the legally binding document signed by the lead organization and the data requestor that defines the terms and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Days" means calendar days.

"Deductible" means the total dollar amount an enrolled member pays on an incurred claim toward the cost of specified covered services designated by the policy or plan over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

"Director" means the director of the office of financial management.

"Fee-for-service payment" means a payment model where providers receive a negotiated or payer-specified rate for a specific health care service provided to a patient.

"Health benefits plan" or "health plan" has the same meaning as in RCW 48.43.005.

"Health care" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes, but is not limited to:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Lead organization" means the entity selected by the office of financial management to coordinate and manage the database as provided in chapter 43.371 RCW.

"Malicious intent" means the person acted willfully or intentionally to cause harm, without legal justification.

"Member" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

"Office" means the Washington state office of financial management.

"Person" means an individual; group of individuals however organized; public or private corporation, including profit and nonprofit corporations; a partnership; joint venture; public and private institution of higher education; a state, local, and federal agency; and a local or tribal government.

"PFI" means the proprietary financial information as defined in RCW 43.371.010(12).

"PHI" means protected health information as defined in the Health Insurance Portability and Accountability Act (HIPAA). Incorporating this definition from HIPAA, does not, in any manner, intend or incorporate any other HIPAA rule not otherwise applicable to the WA-APCD.

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for coverage under an insurance policy or member of a health benefit plan.

"WA-APCD" means the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"WA-APCD program director" means the individual designated by the office as responsible for the oversight and management of the operations of the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"Washington covered person" means any eligible member and all covered dependents where the state of Washington has primary jurisdiction, and whose laws, rules and regulations govern the members' and dependents' insurance policy or health benefit plan.

## **PENALTIES FOR INAPPROPRIATE DISCLOSURES OR USES**

### NEW SECTION

**WAC 82-75-600 Causes for penalties.** (1) The office may impose penalties for the inappropriate disclosure or use of direct patient identifiers, indirect patient identifiers, and proprietary financial information received from the WA-APCD.

(2) Any penalty imposed pursuant to this subchapter and in accordance with RCW 43.371.050 shall be in addition to and does not prevent the assessment of penalties authorized by state or federal law, contract, or court order.

(3) The following definitions apply to WAC 82-75-600 through 82-75-665.

(a) "Inappropriate disclosure" or "use" are those that are inconsistent or in violation of the requirements in RCW 43.371.050. In addition, inappropriate disclosure or uses also include defamatory or malicious use and disclosure or use and disclosure with the intent to cause harm.

(b) "Protected information" is direct patient identifiers, indirect patient identifiers and proprietary financial information.

### NEW SECTION

**WAC 82-75-605 Alleging a violation.** (1) Any person, as defined in WAC 82-75-030, may bring to the attention of the lead organization or the office information concerning the inappropriate disclosure or use of protected information as set forth in RCW 43.371.050 and WAC 82-75-600.

(2) The office must conduct an investigation unless it determines that the complaint is without merit for frivolous, regardless of how the office has received the information that led to that belief, including information derived from any audit conducted by or at the direction of the office.

### NEW SECTION

**WAC 82-75-610 Complaints.** (1) Any complaint filed pursuant to WAC 82-75-605 must be in writing and include the following information, if known:

(a) The name and contact information of the complainant;

(b) The specific facts supporting the violation alleged, including the dates, and locations for all events upon which the complaint is made;

(c) The facts upon which the complaint is based; and

(d) The name of the individual(s) and organization the complainant believes has committed an inappropriate disclosure or use of protected information and should be subject to penalties.

(2) If sufficient information is provided as required in subsection (1)(b) through (d) of this section, the office will

accept the complaint without the complainant's name and contact information. In cases when the name and contact information is not provided, the complainant waives any future contact or notification from the office regarding the complaint.

(3) The complainant must provide additional information if requested by the lead organization or the office.

(4) Complaints alleging the lead organization made inappropriate disclosure or use of protected information must be filed directly with the office. The complaint must contain the information required in subsection (1) of this section. If a complaint of this nature is filed with the lead organization, the lead organization must forward to the office within one business day of receipt, without further review or action.

(5) Regardless of whether the complaint was filed with the office or the lead organization, except as provided by subsection (4) of this section, the lead organization will review the complaint and compile any information it may have related to the complaint. The lead may review the complaint as to whether the facts as presented support the finding of an inappropriate disclosure or use of protected information. The lead organization must forward the complaint, and all supporting documents to the office, including the result of any initial review the lead may have undertaken.

(6) The office must review the information provided by the lead organization pursuant to subsection (5) of this section.

(a) If the office determines that the facts as presented, if true, support the finding of an inappropriate disclosure or use of protected information, the office will conduct an investigation to substantiate the allegations.

(b) If the office determines that the facts as presented, if true, do not support the finding of an inappropriate disclosure or use of protected information, the office will close the complaint without further action.

(c) The office may conduct the investigation, or contract with a third party, other than the lead organization or a subcontractor to the lead organization, to conduct the investigation.

(7) The office will notify the complainant in writing and state whether the complaint will be investigated or closed without action.

#### NEW SECTION

**WAC 82-75-615 Investigation.** (1) If the office accepts a complaint and conducts an investigation, the office will notify the person(s) that is the subject of the complaint in writing.

(2) The notice will include the following information:

(a) The factual allegations supporting each alleged inappropriate disclosure or use of protected information violation in terms sufficient to put the persons on notice of the specific reasons for the investigation;

(b) The statutory and administrative code provisions addressing the allegations, if applicable;

(c) A request that the person provide a written response to the allegations including any documents that support the response, and notice that failure to respond will result in the office making a decision without the person's input; and

(d) A directive to cease using or destroy the data received from the WA-APCD until the investigation has been completed and the person is notified that he/she may again use the data provided. The person shall complete an attestation that the person has complied with this directive. A violation of this directive shall be grounds for finding a separate violation of the inappropriate disclosure or use of protected information.

(3) The lead organization and the data vendor shall cooperate with the investigator and timely respond to requests for information or documents during the course of an investigation.

(4) At the conclusion of the investigation, the investigator will issue a report to the WA-APCD program director that includes the following information:

(a) Facts found by the investigator;

(b) Whether the facts support finding inappropriate disclosures or uses of protected information; and

(c) A recommendation to dismiss the complaint with no further action or to issue an order with a penalty, which recommendation may include a penalty amount and any other actions that the office should take as a result of the violation(s).

(5) A finding that the person inappropriately disclosed or used protected information is a violation for purposes of this section. In the case of a continuing inappropriate disclosure or use of protected information, each day of the inappropriate disclosure or use is a separate violation.

#### NEW SECTION

**WAC 82-75-620 Notice of violation and recommended penalty.** (1) If, based on the investigation, the WA-APCD program director determines that the facts support finding an inappropriate disclosure or use of protected information and imposition of a penalty as set forth in the investigation report, the WA-APCD program director shall notify the alleged violator. The WA-APCD program director shall cause service of the notice of violation and recommended penalty on each alleged violator. The notice shall include the following information:

(a) Date when the recommended penalty and other actions imposed will take effect, if not appealed;

(b) Each inappropriate disclosure or use of protected information found and the facts supporting each inappropriate disclosure or use of protected information;

(c) The recommended penalty, other monetary amounts to be assessed, including the cost of the investigation, and any other action authorized by WAC 82-75-625 and 82-75-630;

(d) If the person will be prohibited from receiving data from the WA-APCD in the future, the period of the recommended prohibition;

(e) Notice that each alleged violator may request a hearing in accordance with WAC 82-75-645 to dispute the finding of a violation, the recommended penalty, or both. The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the office shall issue a final, unappealable order.

(2) In the event the alleged violator or violators do not timely request a hearing, the WA-APCD program director

will provide the report and recommendation to the director, who shall issue a final order, which will include the date upon which the order becomes effective.

(3) The WA-APCD program director shall provide a copy of the investigation report and the notice prepared pursuant to subsection (1) of this section to all data suppliers with protected information identified in the report as having been inappropriately disclosed or used. This notice is separate and in addition to any other notice required by law.

NEW SECTION

**WAC 82-75-625 Monetary penalties that may be imposed upon finding a violation of inappropriate disclosures or uses.** (1) If a person has been found to have made inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers, and proprietary financial information received from the WA-APCD, the director may impose one or more of the following monetary penalties:

- (a) A civil penalty determined pursuant to the criteria and requirements in this chapter;
- (b) Cost, including reasonable investigative costs, that do not exceed the amount of any civil penalty;
- (c) The cost of any audit performed that uncovered the violation, or was conducted as a result of investigating an alleged violation; and
- (d) Up to three times the amount of financial gain received by the alleged violator or financial loss of any person whose protected information was inappropriately disclosed or used.

(2) The director shall include with the decision regarding the monetary penalty assessment, the director's reasoning for the specific penalty, or lack thereof, that is being assessed.

NEW SECTION

**WAC 82-75-630 Nonmonetary penalties that may be imposed upon finding a violation of inappropriate disclosures or uses.** In addition to the monetary penalties set forth in WAC 82-75-625, if a person has been found to have made inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers, and proprietary financial information received from the WA-APCD, the director may order the following nonmonetary penalties:

(1)(a) Direct WA-APCD program director to review the contract between the person and lead organization to determine whether the finding is a breach of that contract, and take appropriate action including requiring all WA-APCD data provided to be destroyed, termination of the contract, and seeking damages if the contract has been breached; or

(b) In lieu of (a) of this subsection, direct the lead organization to review whether the finding is also a breach of any contract between the person and the lead organization, and take appropriate action including requiring all WA-APCD data provided to be destroyed, termination of the contract, and seeking damages if the contract has been breached;

(2) Demand the destruction of all WA-APCD data provided and in the person's custody or contract, including proof of the destruction in the form and manner as prescribed by the office;

(3) Bar the person from receiving any data from the WA-APCD for a designated period of time; and

(4) Notify the funding entity of the violation, when the violation involves research funded by another entity, and any other regulatory agency that has oversight over the person or the data that the person requested.

NEW SECTION

**WAC 82-75-635 Penalty ranges based on culpability.**

(1) In determining the appropriate sanction, including the amount of any civil penalty, the director may consider the level of culpability associated with the violation. The levels of culpability, in the order of less severe to severe, are as follows:

- (a) Did not know. The person did not know and by exercising reasonable diligence, would not have known the violation had occurred.
- (b) Reasonable cause. The person knew, or by exercising diligence should have known, that the violation had taken place, but the person did not act with willful negligence.
- (c) Willful neglect - Corrected. The violation was due to the person's conscious, intentional failure or reckless indifference, and the violation was corrected within thirty days from the date the person knew or with reasonable diligence should have known of the inappropriate disclosure or use.
- (d) Willful neglect - Uncorrected. The violation was due to the person's conscious, intentional failure or reckless indifference, and the violation was not corrected within thirty days from the date the person knew or with reasonable diligence should have known of the inappropriate disclosure or use.

(2) The penalty ranges for each level of culpability and the yearly cap for violations of a similar nature are as follows:

Culpability Category	Penalty Range per Violation	Yearly Cap for Similar Violations
Did not know	\$5,000 - \$100,000	\$2,500,000
Reasonable cause	\$10,000 - \$250,000	\$2,500,000
Willful neglect - Corrected	\$50,000 - \$500,000	\$5,000,000
Willful neglect - Not corrected	\$100,000 - \$1,500,000	\$10,000,000

(3) Violations that involve malicious intent, as that term is defined in WAC 82-75-030, are not subject to the yearly caps set forth in subsection (2) of this section.

(4) The director may assess a penalty outside the penalty ranges set forth in subsection (2) of this section if the person has previously committed the same violation in the same culpability category.

NEW SECTION

**WAC 82-75-640 Other factors that may be considered in determining the penalty for a violation of this chapter.** In addition to the culpability category set forth in WAC 82-75-635, to determine the penalty amount, the director may consider the following factors:

(1) The nature and extent of the violation including, but not limited to, the number of persons affected, the duration of

the violation, and whether the violation was done with malicious intent.

(2) The nature and extent of the harm resulting from the violation including, but not limited to:

- (a) Whether the violation resulted in physical harm;
- (b) Whether the violation resulted in financial harm;
- (c) Whether the violation resulted in harm to a person's reputation;
- (d) Whether the violation hindered an individual's ability to obtain health care;
- (e) Whether the violation resulted in any other actual or potential harm.

(3) The history of compliance with the statutory, regulatory, and contractual provisions related to prior data release from the WA-APCD including, but not limited to:

- (a) Whether the current violation is the same or similar to previous noncompliance;
- (b) Whether and to what extent the person has attempted to correct previous noncompliance;
- (c) How the person has responded to the complaint, investigation and any assistance provided to correct and mitigate any effect from the violation;
- (d) How the person has responded to prior complaints for the same or similar violations including, but not limited to, changes in process or procedures for securing the confidentiality of the protected information, changes in recruitment, retention, or training requirements for employees or contractor with access to protected information.

(4) Any other factor relevant to the violation or the impact of the violation including, but not limited to:

- (a) The frequency of incidents and/or duration of the wrongdoing;
- (b) Whether there is a pattern or prior history of wrongdoing;
- (c) Whether the person has accepted responsibility for the wrongdoing and recognizes the seriousness of violation;
- (d) Whether the person paid or agreed to pay any criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution;
- (e) Whether the person has cooperated fully during the investigation and any administrative action. In determining the extent of cooperation, the director may consider when the cooperation began and whether the person disclosed all known pertinent information;
- (f) The kind of positions held by the individuals involved in the wrongdoing;
- (g) Whether the person fully investigated the circumstances surrounding the violation and, if so, made the result of the investigation available to the reviewing official, and took appropriate corrective action or remedial measures;
- (h) Whether effective standards of conduct and internal control systems were in place at the time the violation occurred;
- (i) Whether appropriate disciplinary action was taken against the individuals responsible for the activity that constitutes the violation.

#### NEW SECTION

**WAC 82-75-645 Process to appeal determination of a violation and assessed penalties.** (1) Each person to whom a notice of a violation and recommended penalty is issued may request a hearing to be conducted in accordance with WAC 82-75-655.

(2) The request for a hearing must be submitted to the director in writing within thirty days after receipt of written notification of the notice provided pursuant to WAC 82-75-620. The person requesting a hearing must also provide a copy of the request to the WA-APCD program director.

(3) The request for hearing must be in writing and specify:

- (a) The name of the person requesting the hearing and the person's or representative's contact information;
- (b) The items, facts, or conclusions in the notice of violation being contested; and
- (c) The basis for contesting the penalty, if applicable, including any mitigating factors upon which the person relies and the outcome the requestor is seeking.

#### NEW SECTION

**WAC 82-75-650 Informal dispute resolution prior to a hearing.** (1) The following procedures are available for informal dispute resolution prior to a hearing that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(2) Settlements. Any appeal of a notice of violation and recommended penalty before the director or director's designee, for which a hearing has not yet been held, may be resolved by settlement. The respondent shall communicate his or her request to the WA-APCD program director, setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(3) Stipulations. The WA-APCD program director and respondent may agree to terms of any stipulation of facts, violations, and/or penalty. If a stipulation is reached, the WA-APCD program director shall prepare the stipulation for presentation to the director.

(a) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The WA-APCD program director shall sign for the office. Any stipulation shall be provided no later than three business days preceding the hearing.

(b) The director has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the director accepts the stipulation or modifies the stipulation with the agreement of the parties, the director shall enter an order in conformity with the terms of the stipulation. If the director rejects the stipulation or one or both of the parties does not agree to the director's proposed modifications to the stipulation, then the hearing shall be scheduled and held.

(4) Informal dispute resolution negotiations shall be informal and without prejudice to the rights of the participants.

NEW SECTION

**WAC 82-75-655 Hearing.** (1) The director may conduct the hearing or delegate to an individual within the office or to an administrative law judge pursuant to chapter 34.12 RCW the authority to conduct the hearing and prepare a proposed decision. The WA-APCD program director, on behalf of the office, shall be the petitioner in the hearing, and the requestor shall be the respondent.

(2) The WA-APCD program director shall have the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 10-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final written decision that includes findings of fact, conclusions of law, and if appropriate, the penalty. The director shall cause service of the final decision on all parties.

(5) If the director's designee or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law and if appropriate the penalty. The proposed decision shall also include instructions on how to file objections and written arguments or briefs with the director. Objections and written arguments and briefs must be filed within twenty days from the date of receipt of the proposed decision.

NEW SECTION

**WAC 82-75-660 Final decision.** (1) The director shall review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW and any objections, written arguments and briefs timely filed by the parties. The director may:

- (a) Allow the parties to present oral arguments;
- (b) Allow the parties to submit additional information if circumstances so warrant; or
- (c) Remand the matter to the designee or administrative law judge for further proceedings.

(2) The director shall issue a final decision that adopts in whole or in part, modifies, or rejects the proposed decision. If the decision finds a violation and assesses monetary penalties, the decision shall include notice that payment must be made no later than forty-five days after service of the decision or the period to appeal has expired, whichever is later.

(3) The director shall cause service of the final decision on all parties. Any party to whom a violation is found, may file a petition for review of the final decision to superior court. If an appeal is not filed within the period set by RCW 34.05.542, the director's decision is conclusive and binding on all parties.

NEW SECTION

**WAC 82-75-665 Posting of information related to inappropriate disclosure or use of protected information.**

(1) Except as provided in subsection (2) of this section, the office will maintain a web site to provide public access to

information related to the inappropriate disclosure or use of protected information. For each complaint for which an investigation is conducted, the office will post the complaint, the information that the lead organization provided to the office pursuant to WAC 82-75-610(5), investigation report and final disposition of the complaint. In addition, if the complaint finds a violation, the office will post the notice of violation and the final hearing order, if a hearing is requested.

(2) If any of the records specified for posting in subsection (1) of this section contains confidential or protected information, that information is privileged and not subject to disclosure under the Public Records Act, chapter 42.56 RCW, and will be redacted from any documents posted on the office web site.

**WSR 18-08-039****PROPOSED RULES****DEPARTMENT OF COMMERCE**

[Filed March 28, 2018, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-185.

Title of Rule and Other Identifying Information: WAC 194-37-140(2) Documentation of renewable resource financial path for no-load growth utilities.

Hearing Location(s): On May 17, 2018, at 11:00 a.m., at the Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98504.

Date of Intended Adoption: May 18, 2018.

Submit Written Comments to: Glenn Blackmon, Washington Department of Commerce, P.O. Box 42525, Olympia, WA 98504, email eia@commerce.wa.gov, by May 17, 2018.

Assistance for Persons with Disabilities: Contact Carolee Sharp, phone 260-725-3118 [360-725-3118], TTY 360-586-0772, email carolee.sharp@commerce.wa.gov, by May 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revises the method of determining whether a qualifying utility is eligible to use the no-growth compliance method under RCW 19.285.040 (2)(d) of the Energy Independence Act. The revision is proposed in response to a request from the state auditor for an interpretation of the existing calculation rule. The proposed method more closely tracks the language in the statute. The proposed method supports the policy objectives of the Energy Independence Act by clarifying and limiting the application of the no-growth cost cap provision.

Reasons Supporting Proposal: The proposed amendment will improve clarity by identifying the baseline year. The statute is ambiguous in that it specifies that a utility's weather-adjusted load "for the previous three years on average did not increase over that time period" without stating the baseline to which the three year average must be compared. The proposed rule specifies that the baseline period is the year prior to the three year period. The proposed rule will maintain consistency and fairness by establishing a single calculation method applicable to all qualifying utilities in all compliance years. The proposed rule will support the ability



of qualifying utilities to make plans based on expected eligibility or ineligibility to use the no-growth method.

Statutory Authority for Adoption: RCW 19.285.080(2).

Statute Being Implemented: RCW 19.285.040 (2)(d).

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

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Glenn Blackmon, Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-725-3115; Implementation: Washington State Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000; and Enforcement: Attorney General of Washington, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504-0100, 360-753-6200.

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 department of commerce.

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 rule applies to fourteen entities, none of whom is a small business. The rule does not impose any additional cost on any entity.

March 28, 2018  
Jaime Rossman  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-04-015, filed 1/24/14, effective 2/24/14)

**WAC 194-37-140 Documentation of renewable resource financial path for no-load growth utilities.** For each year that a utility meets the renewable energy financial cost cap, associated with no load growth, identified in RCW 19.285.040 (2)(d), the utility must document the following by January 1:

(1) That it used a consistent methodology from year to year to weather-adjust its retail load;

(2) That ~~((its weather-adjusted load for the most recent prior year is lower than the third year prior))~~ the average of weather-adjusted loads over the three previous years did not increase over the weather-adjusted load in the year immediately prior to the three-year period;

(3) That it invested at least one-percent of its total annual revenue requirement in each target year on eligible renewable resources, RECs, or a combination of both;

(4) That it executed contracts, dated no later than January 1 of the target year, for power purchases of sufficient eligible renewable resources and/or RECs;

(5) The quantity of megawatt-hours for each target year for which the utility:

(a) Commenced or renewed ownership of nonrenewable resources, other than coal transition power, after December 7, 2006; or

(b) Made electricity purchases from nonrenewable energy resources, other than coal transition power, incremen-

tal to its annual electricity purchases made or contracted for before December 7, 2006.

Sources of power for daily spot market purchases are not included in this calculation;

(6) The RECs the utility acquired, in addition to any RECs acquired for subsection (3) of this section, to offset power purchases listed in subsection (5) of this section; and

(7) Annual revenue requirement for the target year.

## WSR 18-08-049

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 29, 2018, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-075.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-0950 What services may I receive under the residential care discharge allowance? and 388-106-0955 Am I eligible for residential care discharge allowance? The department is also proposing to create two new sections as WAC 388-106-0960 Are there limits to the community transition or sustainability services I may receive? and 388-106-0965 Are there waiting lists for community transition or sustainability services?

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: The department proposes to do the following: (1) Increase the maximum service limit to match the limit available under community first choice (CFC) community transition services (CTS); and (2) expand the definition of the service to ensure continuity of services after the conclusion of the Washington roads program when funding for the state-only funded program ends. Washington roads provides stabilizing goods and services to individuals already residing in the community who are at risk of losing their current setting of care. Without these changes, some individuals currently served under the Washington roads program would not be able to access necessary stabiliz-

ing goods and services, putting the client at risk of institutionalization in a nursing home or hospital.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Blackner, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2557.

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. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

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

March 27, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0950 What services may I receive under ~~((the residential care discharge allowance))~~ community transition or sustainability services? ~~((The residential care discharge allowance is a one-time payment used))~~ Community transition or sustainability services are nonrecurring setup items or services necessary to ~~((help))~~ assist you to establish ~~((or))~~, resume ~~((living in))~~, or stabilize your ~~((own))~~ home or community-based residential setting. ~~((You may receive up to eight hundred and sixteen dollars to cover necessary equipment, remodeling, rent, and utilities))~~ Community transition or sustainability services may include, but are not limited to:**

(a) Security deposits that are required to lease an apartment or home, including first month's rent.

(b) Activities to assess need, arrange for, and procure necessary household furnishings.

(c) Setup fees or deposits for utilities, including telephone, electricity, heating, water, and garbage.

(d) Services necessary for your health and safety such as pest eradication and nonrecurring extreme cleaning.

(e) Moving expenses.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

**WAC 388-106-0955 Am I eligible for ~~((residential care discharge allowance))~~ community transition or sustainability services? You ~~((are))~~ may be eligible for ~~((a residential discharge allowance))~~ community transition or sustainability services if you:**

(1) Meet eligibility criteria to receive long-term ~~((care))~~ services and supports from home and community services;

(2) Are ~~((being discharged))~~ transitioning to the community from a hospital, nursing facility, ~~((a))~~ licensed assisted living facility, enhanced services facility, or adult family home ~~((to your own home)), or are living in the community and need stabilization services to remain there; and~~

(3) Do not have other programs, services, or resources to assist you with these costs; and

~~((4))~~ (a) Have needs beyond what is covered under ~~((the))~~ community transition services (under ~~((COPES))~~ community first choice)(-); or

(b) Are not eligible for community transition services (under community first choice).

#### NEW SECTION

**WAC 388-106-0960 Are there limits to the community transition or sustainability services I may receive?** Community transition or sustainability services:

(1) Do not include recreational or entertainment items, such as a television, cable, or a DVD player;

(2) Do not include room and board; and

(3) May not exceed eight hundred fifty dollars per transition or occurrence of instability that threatens the loss of your home in the community.

#### NEW SECTION

**WAC 388-106-0965 Are there waiting lists for community transition or sustainability services?** There are no waiting lists for community transition or sustainability services. Instead of waiting lists, the department may revise rules to reduce the type of available services, the number of individuals served, or maximum rate, in order to stay within the legislative appropriation.

#### **WSR 18-08-050**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 29, 2018, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-102.

Title of Rule and Other Identifying Information: The department is planning to amend WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?

The proposed amendment deals with distribution of support payments when a noncustodial parent (NCP) has more than one child support case, to allow the division of child support (DCS) to apply a payment in the manner specified by an Indian tribe, when the tribe sends money to DCS representing a tribal benefit received by an NCP who is a member of that tribe. DCS is proposing the amendment at the request of several tribes who wish to have payments applied in a manner

consistent with tribal law or custom, or an order from the tribal court.

Note: The CR-101 Preproposal statement of inquiry filed as WSR 17-23-102 included an intent to clarify language concerning when DCS may apply money to a specific case when the allocation or distribution of funds is contained in a court order; at this time, DCS is not going forward with that part of the proposal.

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 DSHSRPAURulesCoordinator@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: Current rules in chapter 388-14A WAC set out the procedures for distribution of child support collections, and in particular WAC 388-14A-5007 sets out the requirements for distribution when the NCP has more than one case. Several Indian tribes in Washington have requested that DCS adopt rules allowing the tribe to specify that certain payments be applied in a manner consistent with tribal law or custom, or an order from the tribal court.

The proposed rule provides that, when an NCP has more than one case, a tribe may request that DCS apply a payment submitted by the tribe to one or more, but not all, or [of] NCP's cases when the tribe sends money to DCS representing a tribal benefit received by an NCP who is a member of that tribe.

Reasons Supporting Proposal: WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS. WAC 388-14A-5006 sets out the requirements for distribution when the NCP has more than one case. As a general rule, most support collections are distributed among the NCP's cases proportionally. However, WAC 388-14A-5007 sets out the conditions under which DCS can apply support collections to only one or more specific cases when such application would result in one or more of the NCP's cases not getting any part of the collection.

DCS proposes to add a new condition under which a collection may be distributed in a way that does not proportionally share the payment among all of an NCP's cases. Because of the sovereign nature of Indian tribes, DCS does not have the authority or ability to require a tribe to withhold funds that are payable from the tribe or a tribal business. However, a tribe may choose to withhold all or part of an NCP's tribal benefit for child support purposes. Depending on the tribal law or custom, or an order from the tribal court, the tribe may designate that funds withheld from a tribal benefit not be

applied proportionately among all of the NCP's cases, but that the funds be applied only to one or more of the NCP's child support cases.

Statutory Authority for Adoption: RCW 26.23.035, 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Koptur, DCS Rules Coordinator, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5065.

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. Although this rule may meet the definition of a significant legislative rule under RCW 34.05.328, the requirement for a cost-benefit analysis does not apply under RCW 34.05.328 (5)(b)(vii).

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This proposal does not affect small businesses.

March 28, 2018  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

**WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?** (1) The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts owed to different families, when:

(a) Proportionate distribution is administratively inefficient; or

(b) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; ((or))

(c) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case; or

(c) An Indian tribe has designated that funds withheld from a tribal benefit should not be applied to all of the cases of a particular noncustodial parent (NCP), but rather should be distributed based on a tribal court order, tribal law, or tribal custom.

(2) If the collection is the result of an automated enforcement of interstate (AEI) transaction under RCW 74.20A.188, DCS applies the payment as provided in WAC 388-14A-5006, even if the requesting state wants the payment applied to a specific case.

**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.

**WSR 18-08-051**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed March 29, 2018, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-025.

Title of Rule and Other Identifying Information: WAC 458-20-183 (Rule 183) ~~Amusement, recreation, and physical fitness services~~ Recreational services and activities, explains the tax reporting instructions for persons who provide certain recreational services and activities.

Hearing Location(s): On May 9, 2018, at 10:00 a.m., in Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 16, 2018.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by May 9, 2018.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5717 or 360-725-7514, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to update Rule 183 for the purpose of:

- Removing multiple definitions that are no longer relevant to the scope of the revised rule;
- Including information on the services and activities that are subject to retail sales tax;
- Providing multiple examples of recreational services and activities and how they are taxable; and
- Removing information regarding physical fitness services, initiation fees and membership dues, as those topics will be addressed in a different rule.

Reasons Supporting Proposal: The department is amending Rule 183 to incorporate changes due to legislation passed in 2015 (HB 1550). This legislation became effective on January 1, 2016, and resulted in significant changes to the taxability of these activities and services. Amending Rule 183 will provide clarity to businesses that provide these types of services and activities.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.050.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by 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. The proposed rule language for WAC 458-20-183 provides information to businesses on how to report income received from providing certain recreational services and activities to the public. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new tax rate, tax measure, reporting or recordkeeping requirements not already established by statute.

March 29, 2018  
 Erin T. Lopez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-22-100, filed 11/1/95, effective 12/2/95)

**WAC 458-20-183 ((~~Amusement, recreation, and physical fitness services~~)) Recreational services and activities. ((1) ~~Introduction.~~ This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.**

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin-operated amusement devices should refer to WAC 458-20-187 (Coin-operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) ~~Definitions.~~ The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made

for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join

an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

### (3) Business and occupation tax:

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

**(4) Receiving income in the form of dues and/or initiation fees:**

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

**(i) Actual records of facilities usage.**

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

**(ii) Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

**(5) Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segrega-

tion of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.) (1) **Introduction.** This rule explains the tax reporting instructions for persons who provide the services and activities described in RCW 82.04.050(15). This rule refers to these services and activities as "recreational services and activities." This rule does not address charges for:

(a) Operating an "athletic or fitness facility" (refer to RCW 82.04.050(3) for information about the taxability of operating an athletic or fitness facility); or

(b) Day camps offered by a nonprofit organization or a state or local government entity that provides youth not older than age eighteen, or that are focused on providing individuals with disabilities or mental illness, the opportunity to participate in a variety of supervised activities.

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-20-118 Sale or rental of real estate, license to use real estate.

(b) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, and similar lodging businesses.

(c) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.

(d) WAC 458-20-187 Tax responsibility of vending machine owners and operators.

(e) WAC 458-20-189 Sales to and by the state of Washington and municipal corporations including, counties, cities, towns, school districts, and fire districts.

(f) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(g) WAC 458-20-244 Food and food ingredients.

(3) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(4) **Taxability of recreational services and activities.**

(a) Charges, however labeled, to consumers for engaging or participating in the recreational services and activities listed in subsection (6) of this rule are retail sales subject to retailing business and occupation (B&O) tax and retail sales tax. Unless otherwise specified in this rule or in RCW 82.04.050, charges to engage or participate in a recreational service or activity include the furnishing of any related equipment and charges for instructional lessons in the service or activity.

(b) When there is a sale of two or more distinct and identifiable products that includes a charge for a product subject to retail sales tax and a charge for a product not subject to retail sales tax, then retail sales tax applies to the entire selling price, unless prices are separately identified by product on binding sales or other supporting sale-related documentation made available to the customer. For additional information about bundled transactions, see RCW 82.08.190 and 82.08.195.

(c) Separate charges for the sale or rental of tangible personal property, including equipment, gear, and supplies used to engage or participate in recreational services and activities are subject to retailing B&O and retail sales tax. Refer to WAC 458-20-211 for more information about these charges.

(d) A person who provides recreational services and activities must pay retail sales or use tax on the purchase or rental of tangible personal property the person uses as a consumer to provide such services and activities, including equipment and supplies. Retail sales or use tax need not be paid if a person purchases tangible personal property for resale without intervening use. For additional information on sales for resale, refer to WAC 458-20-102 Reseller permits.

(5) **Exclusions and exemptions.**

(a) Educational institutions. Charges made by an educational institution, as defined in RCW 82.04.170, to its students and staff for recreational services and activities listed in subsection (6) of this rule, are not retail sales and therefore are not subject to retailing B&O and retail sales tax. However, charges made by an educational institution to its alumni or to other members of the public for these same services and activities are retail sales subject to retailing B&O and retail sales tax.

(b) Nonprofit youth organizations. RCW 82.08.0291 exempts the sale of recreational services and activities by a nonprofit youth organization to its members from retail sales tax, but does not exempt the sale of these services and activities from retailing B&O tax. For purposes of this rule, a nonprofit youth organization is a nonprofit organization engaged in character building of youth that qualifies for an exemption from property tax under RCW 84.36.030(3).

(c) Fairs, carnivals, and festivals. Charges for admission to, and rides or attractions at, fairs, carnivals, and festivals are not retail sales and therefore not subject to retailing B&O and retail sales tax. For purposes of this rule, fairs, carnivals, and festivals are events that do not exceed twenty-one consecu-

five days and a majority of the amusement rides, if any, are not affixed to real property.

(d) Diver training. Charges made by a vocational school for commercial diver training that is licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, are not retail sales and therefore not subject to retailing B&O and retail sales tax.

(6) **Retail recreational services and activities.** Gross income received from providing the following exclusive list of recreational services and activities is subject to retailing B&O tax and retail sales tax:

(a) **Air sports.** Charges for ballooning, hang gliding, indoor or outdoor sky diving, paragliding, parasailing, and similar activities.

(b) **Amusement park, theme park, and water park facilities.** Charges for admission to an amusement park, theme park, or water park, and locker or cabana rentals at such facilities. For purposes of this rule, an amusement park or theme park is a location that provides permanently affixed amusement rides, games, and other entertainment, but does not include parks or zoos where the primary purpose is the exhibition of wildlife, or fairs, carnivals, and festivals as described in subsection (5)(c) of this rule. Separate charges for rides, attractions, or other entertainment that are in addition to the admission charge are not retail sales under this subsection.

**Example 1.** Adventure Land is an amusement park that has an admission charge of ten dollars per person per day. The admission charge grants guest access to most of the park's rides and attractions. In addition, Adventure Land has a wooden roller coaster that guests must pay a separate charge of two dollars per person to ride. The charge for admission is subject to retailing B&O tax and retail sales tax. The charge for the wooden roller coaster is subject to service and other activities B&O tax.

(c) **Bowling.** Charges for:

(i) Bowling;

(ii) Rental of bowling shoes;

(iii) Bowling lessons; and

(iv) The opportunity to participate in competitive bowling events or tournaments when a participant pays a fee to the bowling facility operator. This includes amounts paid by event organizers to the bowling facility operator if the amounts vary based on the number of participants.

**Example 2.** A high school is sponsoring and organizing a bowling tournament that will be held at Bowling Alley Z to raise money for new band uniforms. To enter the tournament, participants pay a fee of twenty dollars per person to the local high school. The local high school contracts with Bowling Alley Z to use its facilities for five hundred dollars regardless of the number of participants. The fee does not vary based on the number of participants. On the day of the tournament, the high school submits full payment to Bowling Alley Z. If participants need to rent bowling shoes, they pay Bowling Alley Z directly on the day of the tournament. The amount the high school pays to Bowling Alley Z is subject to service and other activities B&O tax because the high school is paying Bowling Alley Z on behalf of the participants and the fee is not based on the number of participants. Any fee to rent bowling shoes is subject to retailing B&O tax and retail sales tax.



(d) **Climbing activities.** Charges for climbing on artificial climbing structures, whether indoors or outdoors.

(e) **Day trips for sightseeing purposes.** Charges for sightseeing trips, whether for educational, instructional, or recreational purposes, that last less than twenty-four hours. Examples of day trips for sightseeing purposes include wine tours, scenic tours, culinary tours, educational or nature-related tours, or cultural tours. For information on multiday sightseeing tours, refer to WAC 458-20-258 Travel agents and tour operators.

(f) **Fishing.** Charges to fish, access to private fishing areas, and charges for chartered or guided fishing tours.

(g) **Golf.** Charges for golfing activities where golf balls or golf clubs are used including charges for:

(i) Playing golf or miniature golf;

(ii) Golfing lessons, if the charge for the lesson is not stated separately from other golf facility charges;

(iii) Hitting golf balls at a driving range;

(iv) Using a golf simulator;

(v) Renting a golf cart;

(vi) Players to use their own golf cart; and

(vii) Players to participate in competitive golf events or tournaments where the participant pays a fee to the golf facility operator. This includes amounts paid by event organizers to the golf facility operator if the amounts vary based on the number of participants.

**Example 3.** A charity is sponsoring and organizing a golf tournament to raise funds to renovate a neighborhood playground. To participate, players must pay fifty dollars per person to the golf course facility on the day of the tournament. This charge does not include the rental of a golf cart, which some participants elect to rent for twenty dollars per golf cart. The amounts paid to the golf course facility by the participants are subject to retailing B&O tax and retail sales tax. Amounts paid to rent a golf cart are also subject to retailing B&O and retail sales tax.

**Example 4.** A local golf course offers footgolf, a sport that combines components of soccer and golf using a soccer ball, every Tuesday and charges ten dollars per person to play one round. Amounts paid by participants to play footgolf are subject to the service and other activities B&O tax because footgolf is not considered a golfing activity, as described in (g) of this subsection, in which golf balls or golf clubs are used.

(h) **Horseback riding.** Charges for individual or group rides, guided or unguided, offered to the public if the seller furnishes the horse to the rider and the primary focus of the ride is not instructional.

(i) **Hunting.** Charges for guided hunting and hunting at game farms and shooting preserves.

(j) **Motorized activities.** Charges for go-karting, bumper cars, snowmobiles, all-terrain vehicles, and other motorized activities where the seller provides both the vehicle and the premises where the buyer will operate the vehicle. If the seller provides the vehicle, but not the premises to operate the vehicle, then the charge is considered a rental of tangible personal property and is subject to retailing B&O and retail sales tax.

**Example 5.** For an hourly fee, City D racetrack provides customers the opportunity to use its racetrack to ride all-ter-

rain vehicles and dirt bikes. Customers are required to provide their own all-terrain vehicles and dirt bikes to ride on the racetrack. Because City D only provides the premises on which customers ride their vehicles and bikes, the hourly fee to use the racetrack is subject to service and other activities B&O tax.

(k) **Playground activities.** Charges for indoor or outdoor playground activities such as: Inflatable bounce structures and other inflatables, mazes, trampolines, slides, ball pits, games of tag, including laser tag and soft-dart tag, and human gyroscope rides, regardless of whether the activities occur at the seller's place of business.

**Example 6.** Kidz Learning for Life is an enrichment and physical development center for children under eight years old. The center offers physical coordination classes for infants and toddlers, and dance, music, and art classes for older children. The center also provides an outdoor trampoline for children ages four to eight years old. Parents are required to stay at the center during classes, and depending on the class, may be required to participate with their child. Parents can either pay a monthly membership charge that allows for unlimited classes or may pay on a per class basis. Both charges are subject to the service and other activities B&O tax because the types of classes offered by Kidz Learning for Life are not considered playground activities for the purposes of (k) of this subsection.

**Example 7.** Fun Zone Extreme is an indoor playground facility that offers multiple unstructured play activities for children seventeen and under. Some of the activities include laser tag, inflatable bounce structures, ball pits, and climbing structures, such as a rock wall. To participate in all of the activities Fun Zone Extreme offers, customers pay an admission fee based on their age and the fee allows the participant unlimited use of the facility for the entire day. The admission fee charged to customers is subject to retailing B&O and retail sales tax because the activities at Fun Zone Extreme are considered playground activities for the purposes of (k) of this subsection.

**Example 8.** Each autumn, a local farmer opens his property to the public to use for various family-related activities. The property is open to visitors, free of charge, from September 15th through October 31st. Activities available on the property include a corn maze, inflatable bounce structures for children, and a petting zoo. Although general admission is free, the owner charges a fee of five dollars per person to go through the corn maze. The fee charged to customers to use the corn maze is subject to retailing B&O and retail sales tax.

(l) **Shooting sports and activities.** Charges to the public to engage in shooting sports and activities, such as target shooting, skeet, sporting clays, "5" stand, and archery.

(m) **Skating.** Charges to the public to participate in skating, including ice skating, roller skating, and inline skating.

(n) **Snow sports and activities (nonmotorized).** Charges to the public for the use of land or facilities to engage in the following nonmotorized snow sports and activities: Downhill and cross-country skiing, snowboarding, ski jumping, sledding, snow tubing, snowshoeing, and similar snow sports and activities. This includes charges for the use of ski lifts and tows for snow sports and activities and daily or sea-

son passes for access to trails or other areas where nonmotorized snow sports and activities are conducted.

The snow sports and activities listed in (n) of this subsection may occur at an outdoor facility in natural or artificial snow, or at an indoor facility with no snow or artificial snow.

**Example 9.** During the summer months, Flurry Mountain ski lodge allows the public access to its land for hiking. Flurry Mountain charges a daily fee to hike on the land and a fee to use the ski lift to obtain access to elevated hiking areas. Because the fees for hiking and using the ski lift are not considered snow sports and activities, both fees are subject to service and other activities B&O tax.

(o) **Swimming.** Charges for recreational or fitness swimming that is open to the public, such as open swim, lap swim, and special events like kids night out and pool parties during open swim time, and pool parties for private events, such as birthdays, family gatherings, and employee outings. Charges for swimming lessons or participating in swim meets or swim competitions are not retail sales unless provided by an athletic or fitness facility as defined in RCW 82.04.050.

**Example 10.** Swim Center, Inc. is an aquatics center that provides swimming lessons and water fitness classes. All swimming lessons and water fitness classes are subject to separate monthly fees. Swim Center, Inc. is not considered an "athletic or fitness facility" as that term is defined in RCW 82.04.050. Accordingly, charges for swimming lessons are subject to service and other activities B&O tax. However, fees charged for water fitness classes are subject to retailing B&O and retail sales tax.

(p) **Table games.** Charges to play air hockey, billiards, pool, foosball, shuffleboard, ping-pong, and similar games.

(q) **Water sports and activities.** Charges for scuba diving, snorkeling, river rafting, surfing, kiteboarding, flyboarding, water slides, water trampolines, water pillows, water rollers, and similar water sports and activities such as canoeing and kayaking.

**Example 11.** Main Street Marina charges separately for kayak and canoe rentals and private lessons on how to operate the watercraft. The charge to rent a kayak or canoe is considered the rental of tangible personal property and is subject to retailing B&O and retail sales tax. Charges for kayaking and canoeing lessons are also subject to retailing B&O and retail sales tax.

(r) **Miscellaneous recreational services and activities.** Charges for bungee jumping, zip lining, activities involving riding inside a ball, such as zorbing or water walking, paintball activities, airsoft activities, batting cage activities, and darts, both electronic and nonelectronic.

Hearing Location(s): On May 9, 2018, at 11:00 a.m., at the Washington State Criminal Justice Training Center, Cascade Center, Room C-113, 19010 1st Avenue South, Burien, WA; and on May 10, 2018, at 11:00 a.m., at the West Central Community Center, Newton Lounge, 1603 North Belt Street, Spokane, WA.

Date of Intended Adoption: May 11, 2018.

Submit Written Comments to: Max Weeks, Department of Licensing, P.O. Box 9027, Olympia, WA 98507-9027, email MWeeks@dol.wa.gov, by May 8, 2018.

Assistance for Persons with Disabilities: TTY 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Replace all existing sections and add new sections to chapter 308-30 WAC to implement the provisions of chapter 42.45 RCW, Revised uniform law on notarial acts, effective July 1, 2018.

Reasons Supporting Proposal: SSB 5081 repealed the current statute and requires new rules for physical and electronic notarizations.

Statutory Authority for Adoption: RCW 42.45.250.

Statute Being Implemented: Chapter 42.45 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Max Weeks, 405 Black Lake Boulevard S.W., Olympia, WA, 360-664-1406; Implementation and Enforcement: Dee Sharp, 405 Black Lake Boulevard S.W., Olympia, WA, 360-664-6501.

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. Department of licensing is exempt under RCW 24.05.328 [34.05.328] (5)(a).

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

Is exempt under RCW 19.85.090(3).

Explanation of exemptions: This rule affects only individual licensees (applies to all above proposed rules).

April 2, 2018

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-010 ((Size and form of notary seal or stamp.)) Authority. ((A notary seal shall be one and five-eighths inches minimum in diameter. If a notary stamp is used the following requirements shall apply:~~

~~(1) The type shall be a minimum of 8 point type.~~

~~(2) The stamp shall be minimum one and five-eighths inches in diameter. If a rectangular stamp is used the minimum dimensions shall be one inch wide by one and five-eighths inches long.~~

~~(3) The imprint shall be affixed with indelible ink only.~~

## WSR 18-08-059

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed April 2, 2018, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-057.

Title of Rule and Other Identifying Information: Chapter 308-30 WAC, Notaries public.

(4) The face of any notary stamp shall contain permanently affixed letters and numerals and shall not be pre-printed.

(5) The use of the Washington state seal on the notary stamp or seal is prohibited.

(6) A vendor may not provide a notarial seal, or stamp, either inking or embossing, to a person claiming to be a notary, unless the person presents a photo copy of the person's Notary Certificate.

(7) A notary applying for a seal or stamp as a result of a name change shall present a copy to the vendor of the certificate evidencing the notary's name change from the director.)) This chapter implements the revised uniform law on notarial acts, chapter 42.45 RCW.

AMENDATORY SECTION (Amending WSR 06-20-061, filed 9/29/06, effective 11/1/06)

**WAC 308-30-020 ((What fees may a notary public charge?)) Definitions. ((1) The maximum fees a notary may charge for notarial acts are:**

<b>NOTARIAL ACT</b>	<b>FEE</b>
Witnessing or attesting a signature	\$10.00
Taking acknowledgement or verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Receiving or noting a protest of a negotiable instrument	\$10.00
Being present at demand, tender, or deposit, and noting the same	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

(2) A notary public need not charge for notarial acts. A notary who chooses to charge for notarial acts shall conspicuously display in their place of business, or present to each customer outside their business, an English language schedule of fees for notarial acts. No part of the displayed notarial fee schedule may be printed in smaller than 10 point type.

(3) A notary may charge actual costs of copying any instrument or record.

(4) A notary may charge a travel fee when traveling to perform a notarial act if:

(a) The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary explains to the person requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.)) Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:  
(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

**WAC 308-30-030 ((Applications for appointment as notary public.)) Application process for notary public commission. ((Applications for appointment as notary public may be obtained from the department of licensing. Every application submitted for appointment as a notary public must be accompanied by the required surety bond and the prescribed fee and shall in all ways comply with the requirements of chapter 42.44 RCW.)) (1) To apply for a notary public commission, an applicant who meets the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:**

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) A notary public shall reapply with the department for each commission term before performing notarial acts.

(7) A notary public may elect not to apply for an electronic records notary public endorsement.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-040 ((Resignation or revocation of notary appointment.))~~ **Approval or denial of application.** ((Voluntary resignation by a notary public shall be submitted in writing to the department of licensing. If a notary public voluntarily resigns his or her notary appointment or if the notary appointment is revoked, suspended or restricted, the notary public must mail or deliver his or her notary stamp or seal to the department of licensing. No voluntary resignation of a notary appointment shall be effective until the notary seal or stamp is mailed or delivered to the notary section.)) (1) Upon the applicant's fulfillment of the requirements for a notary public commission or an electronic records notary public endorsement, the department shall approve the application and issue the commission or endorsement.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts before receiving a notary public commission from the department.

(4) A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.

(5) The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-050 ((Replacement of lost or stolen notary seals or stamps.))~~ **Term of commission.** ((When a notary seal or stamp is lost or stolen the department of licensing is to be notified by certified mail. The notice must set forth the fact that the notary seal or stamp has been lost or stolen and be signed by the notary public. The notary public may then obtain a replacement notary seal or stamp. The new notary seal or stamp must contain some variance from the original seal or stamp. If the lost or stolen notary seal or stamp is found or recovered after a replacement has been obtained the original seal or stamp shall be surrendered to the department of licensing.)) (1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement is valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-060 ((Department to be notified of change of name or address.))~~ **Application fees.** ((When a notary public changes his or her name or address, the department of licensing must be notified in writing of such name and/or address change. The notification of name change must be accompanied by a bond rider from the bonding company amending the notary bond, and the prescribed fee for a name change which provides a duplicate notary certificate showing the new name. There is no charge for an address change.)) The following fees shall be charged by the department:

<u>Title of Fee</u>	<u>Fee</u>
<u>Application for notary public commission</u>	<u>\$30.00</u>
<u>Application for electronic records notary public endorsement</u>	<u>\$15.00</u>
<u>Renewal of notary public commission</u>	<u>\$30.00</u>
<u>Renewal of electronic records notary public endorsement</u>	<u>\$15.00</u>
<u>Duplicate certificate of commission (including name change)</u>	<u>\$15.00</u>

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-070 ((Requests for evidence of authenticity.))~~ **Size and form of official seal or stamp.** ((Requests for evidences of authenticity of notarial commission must be in writing, accompanied by the prescribed fee, the original document, and mailed to the department of licensing.)) An official seal or stamp shall conform to the following requirements:

(1) The seal or stamp shall include the following information:

- (a) The words "notary public";
- (b) The words "state of Washington";
- (c) The notary public's name as commissioned;
- (d) The notary public's commission expiration date; and
- (e) The notary public's commission number.

(2) The type on this seal or stamp shall be a minimum of 8 point type.

(3) The seal or stamp shall conform to the following physical requirements:

(a) The seal or stamp shall be minimum one and five-eighths inches diameter if circular, or one inch wide by one and five-eighths inches long if rectangular;

(b) The face of the seal or stamp shall be permanently affixed; and

(c) If the stamp is affixed to a tangible record, it shall be applied in permanent ink and shall be capable of being photocopied.

(4) The seal or stamp shall not contain the Washington state seal.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-080 ((Appeals of denials and revocations of notary appointments.)) **Acquiring official seal or stamp.** ((Notices of appeals of denials and revocations of notary appointments must be in writing and mailed or delivered to the department of licensing. The written notification of appeal must be received by the department within twenty days of the date of denial or revocation or the right to appeal is waived. When the notification of appeal is mailed, the post-marked date will be accepted as the date of receipt by the department of licensing. Procedures on appeal will be as provided in the Administrative Procedure Act, chapter 34.05 RCW, and rules adopted thereunder.)) (1) A notary public shall procure an official seal or stamp only after receiving a certificate evidencing the notary public's commission from the department, and shall provide this certificate to their chosen seal or stamp vendor as part of procuring the stamp.~~

~~(2) A notary public with a commission in effect on July 1, 2018, may continue to use their notarial seal until the commission's date of expiration. A notary public who procures an official seal or stamp after July 1, 2018, is subject to and shall comply with the rules in WAC 308-30-070.~~

~~(3) The stamp a notary public acquires is the exclusive property of the notary public, and shall not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the seal or for the notary's bond or appointment fees.~~

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-090 ((Forms.)) **Replacement of lost or stolen official seal or stamp.** (((1) The forms in RCW 42.44.100 are only suggested certificates with the sufficient information included. These forms may be used; however, when a specific form is required by a specific statute, the required form shall be used.~~

~~(2) A nonattorney notary may complete notarial certificates, and may not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act. This does not preclude a notary who is duly qualified in a particular profession from giving advice relating to matters in that professional field.)) (1) When an official seal or stamp is lost or stolen the notary public shall notify the department in writing within ten business days of discovering the seal or stamp was lost or stolen.~~

~~(2) The notary public may not obtain a replacement official seal or stamp until they have properly notified the department that the original was lost or stolen.~~

~~(3) A replacement official seal or stamp must contain some variance from the original seal or stamp.~~

~~(4) If the lost or stolen official seal or stamp is found or recovered after a replacement has been obtained, the original seal or stamp shall be destroyed.~~

AMENDATORY SECTION (Amending WSR 05-12-047, filed 5/26/05, effective 6/26/05)

~~WAC 308-30-100 ((Fees.)) **Notary signature.** ((The following fees shall be charged by the director of the department of licensing:~~

<u>Title of Fee</u>	<u>Fee</u>
Application for notary appointment	\$30.00
Renewal of notary appointment	30.00
Duplicate certificate of appointment (including change of name)	15.00
Evidence of verification of notarial commission	15.00
Apostille	15.00))

~~In addition to the requirements listed in RCW 42.45.130, a notary public signing the notarial certificate of a completed notarial act shall sign the notarial certificate using the exact name that appears on the notary's certificate of commission and their seal or stamp.~~

NEW SECTION

~~WAC 308-30-110 **Requirements for notarial acts.** (1) In performing a notarial act, the notary public shall be physically within the geographic borders of the state of Washington.~~

~~(2) A notarial officer who certifies that an event has occurred or an act has been performed shall determine, from personal knowledge or satisfactory evidence, that the occurrence or performance took place.~~

~~(3) Electronic notarial acts shall conform to the requirements listed in these rules and RCW 42.45.040 on signing parties appearing before the notary.~~

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

~~WAC 308-30-120 ((Notary signature.)) **Authorized electronic notarial acts.** ((Upon completion of a notarial act,~~

the notary must sign the notary certification using his/her name exactly as it appears on the notary certificate of appointment and the stamp or seal. The notary's name must be legibly printed or stamped directly below their signature.)) A notary public who has received an electronic records notary public endorsement from the department may perform the following electronic notarial acts:

- (1) Taking an acknowledgment;
- (2) Taking a verification on oath or affirmation;
- (3) Witnessing or attesting a signature;
- (4) Certifying or attesting a copy;
- (5) Certifying that an event has occurred or an act has been performed; and
- (6) Noting a protest of a negotiable instrument, if the notary public is:
  - (a) Licensed to practice law in the state of Washington;
  - (b) Acting under the authority of an attorney who is licensed to practice law in this or another state; or
  - (c) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

**WAC 308-30-130 ((Expired stamp or seal.) Requirements for technologies and technology providers.** ((The use of a stamp or seal with an expired date is prohibited.)) A tamper-evident technology shall comply with these rules:

- (1) A technology provider shall enroll only notaries public who have been issued an electronic records notary public endorsement pursuant to WAC 308-30-030.
- (2) A technology provider shall take reasonable steps to ensure that a notary public who has enrolled to use the technology has the knowledge to use it to perform electronic notarial acts in compliance with these rules.
- (3) A tamper-evident technology shall require access to the system by a password or other secure means of authentication.
- (4) A tamper-evident technology shall enable a notary public to affix the notary's electronic signature and seal or stamp in a manner that attributes such signature and seal or stamp to the notary.
- (5) A technology provider shall provide prorated fees to align the usage and cost of the tamper-evident technology with the term limit of the notary public electronic records notary public endorsement.
- (6) A technology provider shall suspend the use of any tamper-evident technology for any notary public whose endorsement has been revoked, suspended, or canceled by the state of Washington or the notary public.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

**WAC 308-30-140 ((Notification of legal actions.)) Refusal of requests to use system.** ((The notary must notify the department of licensing of any conviction against him or her of official misconduct, and/or civil or criminal charges. Notification must be submitted within thirty days of such

happening.)) In addition to the reasons listed in RCW 42.45.060, a notary public shall refuse a request to:

- (1) Use a tamper-evident technology that the notary does not know how to operate; or
- (2) Perform an electronic notarial act if the notary has a reasonable belief that a tamper-evident technology does not meet the requirements set forth in these rules.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

**WAC 308-30-150 ((Continuous qualification required.)) Completion of electronic notarial certificate.** ((A notary public must continue to meet the requirements of RCW 42.44.020 (1)(b) or (c) throughout the term of appointment. A notary who fails to meet any one or more of the aforementioned requirements shall resign, or the director shall institute hearings to determine if the requirements have been met by the notary.)) (1) For every electronic notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the physical presence of the principal.

AMENDATORY SECTION (Amending WSR 93-05-009, filed 2/5/93, effective 3/8/93)

**WAC 308-30-160 ((Testimonials.)) Certification of electronic notarial acts.** ((A notary may not endorse or promote any service, contest, or other offering if the notary's seal or title is used in the endorsement or promotional statement.)) A notary public shall sign each electronic notarial certificate with an electronic signature that complies with WAC 308-30-170 and authenticate an electronic notarial act with an official stamp that complies with WAC 380-30-180.

AMENDATORY SECTION (Amending WSR 97-10-052, filed 5/1/97, effective 6/1/97)

**WAC 308-30-170 ((Application of brief adjudicative proceedings.)) Electronic notarial signature.** ((The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482, for the categories of matters set forth below. Brief adjudicative proceedings will be limited to a determination of one or more of the following issues:

- (1) Whether an applicant for an appointment meets the minimum criteria for an appointment as a notary public in this state and the department proposes to deny the application;
- (2) Whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the department; and
- (3) Whether an appointment holder requesting renewal has submitted all required information and whether an appointment holder meets minimum criteria for renewal.)) (1) A notary public shall use a tamper-evident technology that complies with WAC 308-30-130 of these rules to pro-

duce the notary's electronic signature in a manner that is capable of independent verification.

(2) A notary public shall take reasonable steps to ensure that no other individual may possess or access a tamper-evident technology used to produce the notary's electronic signature.

(3) A notary public shall keep in the sole control of the notary all or any part of a tamper-evident technology whose exclusive purpose is to perform electronic notarial acts.

(4) For the purposes of this section, "capable of independent verification" means that any interested individual may confirm through the department that a notary public who signed an electronic record in an official capacity had authority at that time to perform electronic notarial acts.

AMENDATORY SECTION (Amending WSR 97-10-052, filed 5/1/97, effective 6/1/97)

**WAC 308-30-180 ((Preliminary record in brief adjudicative proceedings-)) Electronic notarial stamp. ((+))** The preliminary record with respect to an application for appointment or reappointment shall consist of:

(a) The application for appointment or reappointment and all associated documents;

(b) All documents relied upon by the director in proposing to deny the appointment or reappointment; and

(c) All correspondence between the applicant for appointment or reappointment and the director regarding the application.

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

(a) The previously issued final order or agreement;

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

(c) All correspondence between the appointment holder and the director regarding compliance with the final order or agreement; and

(d) All documents relied upon by the director showing that the appointment holder has failed to comply with the previously issued final order or agreement.)) (1) An electronic stamp may be used to authenticate an electronic notarial act if the electronic notarial certificate conforms to the rules set forth in RCW 42.45.130 and 42.45.140.

(2) An electronic stamp of a notary public used to authenticate an electronic notarial act shall conform to RCW 42.45.150 and WAC 308-30-070.

(3) The electronic stamp of a notary public shall be a digital image that appears in the likeness or representation of a traditional physical notary public official stamp meeting the requirements of RCW 42.45.150 and WAC 308-30-070.

(4) The tamper-evident technology used to create a notary public's electronic stamp shall not be used for any purpose other than performing electronic notarial acts under chapter 42.45 RCW and these rules.

(5) Only the notary public to whom the tamper-evident technology is registered shall generate an official stamp.

AMENDATORY SECTION (Amending WSR 97-10-052, filed 5/1/97, effective 6/1/97)

**WAC 308-30-190 ((Conduct of brief adjudicative proceedings-)) Journal of notarial acts required. ((+))** Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall not have personally participated in the decision which resulted in the request for a brief adjudicative proceeding.

(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 department expertise as a basis for the decision.

(6) The presiding officer for brief adjudicative proceedings shall 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.)) (1) A notary public shall record each notarial act in a journal at the time of notarization in compliance with RCW 42.45.180 and these rules.

(2) If a notary public performs notarial acts involving different statements or documents for the same individual on the same date, the notary public may record a single entry in the journal for all of the statements or documents. The entry shall include the number of statements or documents notarized and shall otherwise conform to RCW 42.45.180 and these rules.

(3) The fact that the notary public's employer or contractor keeps a record of notarial acts shall not relieve the notary of the duties required by these rules.

#### NEW SECTION

**WAC 308-30-200 Format of journals of notarial acts.**

(1) A tangible notarial journal shall:

(a) Be a permanent, bound book with numbered pages; and

(b) Have the capacity to record for each notarial act:

(i) The information required by RCW 42.45.180(4);

(ii) A description of the notary public's method of identifying the principal; and

(iii) The principal's signature, or the signature of an authorized party in compliance with RCW 42.45.070.

(2) If a notary public keeps an electronic journal pursuant to RCW 42.45.180(3), the electronic journal shall:

(a) Be maintained only in addition to the tangible journal;

(b) Have the capacity to record the information required for a tangible notarial journal;

(c) Enable access by a password or other secure means of authentication;

(d) Be tamper-evident;

- (e) Create a duplicate record of the journal as a backup; and
- (f) Be capable of providing tangible or electronic copies of any entry made in the journal.

(3) A notary public's journal is the exclusive property of the notary public, and shall not be surrendered to an employer upon demand or termination, whether the employer paid for the journal or the notary's bond or application fees.

NEW SECTION

**WAC 308-30-210 Disposition of journal.** (1) Ten years after the performance of the last notarial act chronicled in a tangible journal, the journal is to be destroyed by shredding or other destruction that leaves any entry in the journal illegible.

(2) Ten years after the performance of the last notarial act chronicled in an electronic journal, the journal is to be destroyed by deleting any remaining records pertaining to the electronic journal and deleting any remaining tamper-evident technology in the notary's possession.

(3) The personal representative or guardian of a notary public shall follow RCW 42.45.180(6) related to the disposition of the notary public's journals upon the death or adjudication of incompetency of the notary public.

(4) Nothing in this section shall require a notary to dispose of their notarial journal or journals if doing so would be in conflict with the law of another jurisdiction that requires a notary to keep their journal for a longer period of time.

(5) The notary public, or the notary's personal representative, shall provide access instructions to the department for any electronic journal maintained or stored by the notary, upon commission resignation, revocation, or expiration without renewal, or upon the death or adjudicated incompetence of the notary.

NEW SECTION

**WAC 308-30-220 Fees for notarial acts.** (1) The maximum fees a notary may charge for notarial acts are:

<b>Notarial Act</b>	<b>Fee</b>
Witnessing or attesting a signature	\$10.00
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

- (2) A notary public need not charge for notarial acts.
- (3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.
- (4) A notary public may additionally charge the actual costs of copying any instrument or record.
- (5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

NEW SECTION

**WAC 308-30-230 Testimonials.** A notary may not endorse or promote any service, contest, or other offering if the notary's seal or title is used in the endorsement or promotional statement.

NEW SECTION

**WAC 308-30-240 Forms.** (1) The forms in RCW 42.45.140 are examples of certificates with the sufficient information included. When a specific form is required by another statute of this state, the required form shall be used.

(2) A nonattorney notary may not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act. This does not preclude a notary who is duly qualified in a particular profession from giving advice relating to matters in that professional field.

NEW SECTION

**WAC 308-30-250 Change of name or address.** (1) When a notary public changes his or her name or address, the department of licensing must be notified of such change on forms prescribed by the department.

(2) A name change notification must be accompanied by a bond rider from the bonding company amending the notary bond, and the prescribed fee for a name change which provides a duplicate notary certificate showing the new name. There is no charge for an address change and a new certificate is not issued.

(3) A notary that submits a name change notification shall continue to use their original notary stamp or seal and their original name and signature until they receive a new commission certificate and seal or stamp with the new information.

NEW SECTION

**WAC 308-30-260 Evidence of authenticity.** Requests for evidence of authenticity should be addressed to the Washington office of the secretary of state, corporations and charities division.

NEW SECTION

**WAC 308-30-270 Termination or suspension of commission or endorsement.** (1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary



public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

#### NEW SECTION

**WAC 308-30-280 Change of application information.** If any of the information submitted on a notary public's commission or endorsement applications pursuant to WAC 308-30-030 changes, the notary public shall report this change to the department in writing within fifteen days.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-30-005 Mailing address.

WAC 308-30-155 Satisfactory evidence of identity.

**WSR 18-08-063**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed April 2, 2018, 11:14 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-236 WAC, Licenses and radiation safety requirements for irradiators, the department of health (department) is proposing to adopt a new rule chapter to incorporate United States Nuclear Regulatory Commission's rules to be consistent with 10 C.F.R. Part 36 - Licenses and radiation safety requirements for irradiators.

Hearing Location(s): On June 27, 2017 [2018], at 10:00 a.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Room 145, Tumwater, WA 98501.

Date of Intended Adoption: July 2, 2018.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by June 27, 2018.

Assistance for Persons with Disabilities: Contact Nerissa Lancendorfer, phone 360-236-3214, TTY 360-833-6388 or

711, email [nerissa.lancendorfer@doh.wa.gov](mailto:nerissa.lancendorfer@doh.wa.gov), by June 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to create a new chapter of rules in order to adopt federally required rules related to licensing and radiation safety requirements for irradiators under 10 C.F.R. Part 36. Irradiators are machines that expose products to gamma radiation to kill germs and insects or for other purposes. This new rule chapter is being proposed to assure public health protection by adopting requirements so that irradiators are used safely and to protect operators and workers.

Reasons Supporting Proposal: There are two licensees in Washington using irradiators that must comply with federal regulations. It is now necessary for the department to adopt rules to be compatible with federal regulations. The two licensees have a special condition on their license which requires the licensees to be in compliance with the federal rule. The special condition ensures that the irradiators are being used safely until the department can adopt the new rule chapter which is equivalent with 10 C.F.R. Part 36. The rule making for the new chapter is required to comply with RCW 70.98.050 State radiation control agency and 70.98.110 Federal-state agreements. Under the formal state agreement between the governor and the United States Nuclear Regulatory Commission, the department is required to remain compatible with the United States Nuclear Regulatory Commission rules. To remain compatible, this is done through rule making.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050 and 70.98.-110.

Rule is necessary because of federal law, 58 F.R. 7728, 76 F.R. 56963, 77 F.R. 39906, and 80 F.R. 54234.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3147; Implementation: James Killingbeck, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3224; and Enforcement: Mike Elsen, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3210.

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

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

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

Is exempt under RCW 19.85.061 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: 10 C.F.R. Part 36. If the department does not adopt this new rule chapter, the department would be out of compliance with state compatibility requirements of the United States Nuclear Regulatory Commission, and RCW 70.98.110 Federal-state agreements.

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

April 2, 2018  
Clark Halvorson  
Assistant Secretary

### Chapter 246-236 WAC

## LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

### GENERAL PROVISIONS

#### NEW SECTION

**WAC 246-236-001 Purpose and scope.** (1) The purpose of this chapter is to:

(a) Establish requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation;

(b) Establish radiation safety requirements for operating irradiators.

(2) This chapter applies to panoramic or beam-type irradiators that have either dry or wet storage of the radioactive sealed sources and to underwater irradiators in which both the source and the product being irradiated are under water.

(3) This chapter applies to irradiators whose dose rates exceed five grays (five hundred rads) per hour at one meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(4) This chapter does not apply to self-contained dry-source-storage irradiators (those in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel), medical radiology or teletherapy, radiography (the irradiation of materials for non-destructive testing purposes), gauging, or open-field (agricultural) irradiations.

(5) The requirements of this chapter apply to applications and licenses subject to this chapter and are in addition to other requirements of the following chapters:

(a) Chapter 246-220 WAC, Radiation protection—General provisions;

(b) Chapter 246-221 WAC, Radiation protection standards;

(c) Chapter 246-222 WAC, Radiation protection—Worker rights;

(d) Chapter 246-231 WAC, Packaging and transportation of radioactive material;

(e) Chapter 246-232 WAC, Radioactive material—Licensing applicability;

(f) Chapter 246-235 WAC, Radioactive materials—Specific licenses;

(g) Chapter 246-237 WAC, Radiation protection—Physical protection of category 1 and category 2 quantities of radioactive material; and

(h) Chapter 246-254 WAC, Radiation protection—Fees.

(6) Nothing in this chapter relieves the licensee from complying with other applicable federal, state, and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

#### NEW SECTION

**WAC 246-236-005 Interpretations.** Except as specifically authorized by the department in writing, no interpretation of the meaning of this chapter by any officer or employee of the department, other than a written interpretation by the Washington state office of the attorney general, will be recognized to be binding upon the department.

#### NEW SECTION

**WAC 246-236-010 Definitions, abbreviations, and acronyms.** The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Annually"** means either:

(a) At intervals not to exceed one year; or

(b) Once per year, at about the same time each year (plus or minus one month).

(2) **"Commencement of construction"** means taking any action defined as "construction" or any other activity at the site of a facility subject to this chapter that has a reasonable nexus to radiological health and safety.

(3) **"Construction"** means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to this chapter that are related to radiological safety or security. The term "construction" does not include:

(a) Changes for temporary use of the land for public recreational purposes;

(b) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this chapter;

(e) Excavation;

(f) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(g) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(h) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) Taking any other action that has no reasonable nexus to radiological health and safety.

(4) **"Department"** means the Washington state department of health.

(5) **"Doubly encapsulated sealed source"** means a sealed source in which the radioactive material is sealed within a capsule and that capsule is sealed within another capsule.

(6) **"Irradiator"** means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding five grays (five hundred rads) per hour exist at one meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

(7) **"Irradiator operator"** means an individual who has successfully completed the training and testing described in WAC 246-236-051 and is authorized by the terms of the license to operate the irradiator without a supervisor present.

(8) **"NRC"** means the U.S. Nuclear Regulatory Commission.

(9) **"Panoramic or beam-type dry-source-storage irradiator"** means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage irradiators in which only a narrow beam of radiation is produced for performing irradiations.

(10) **"Panoramic or beam-type irradiator"** means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel.

(11) **"Panoramic wet-source-storage irradiator"** means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

(12) **"Pool irradiator"** means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

(13) **"Product conveyor system"** means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

(14) **"Radiation room"** means a shielded room in which irradiations take place. Underwater irradiators do not have radiation rooms.

(15) **"Radiation safety officer"** means an individual with responsibility for the overall radiation safety program at the facility.

(16) **"Sealed source"** means any radioactive material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(17) **"Seismic area"** means any area where the probability of a horizontal acceleration in rock of more than three-tenths times the acceleration of gravity in two hundred fifty years is greater than ten percent, as designated by the United States geological survey.

(18) **"Underwater irradiator"** means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

## SPECIFIC LICENSING REQUIREMENTS

### NEW SECTION

#### **WAC 246-236-011 Application for a specific license.**

A person, as defined in WAC 246-220-010, may file an application for a specific license authorizing the use of sealed sources in an irradiator on a form approved for this purpose by the department.

(1) Each application for a license must be accompanied by the fee prescribed in chapter 246-254 WAC.

(2) The application must be sent to the department.

### NEW SECTION

#### **WAC 246-236-013 Specific licenses for irradiators.**

The department shall approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the following requirements:

(1) The applicant shall satisfy the general requirements specified in WAC 246-235-020 and 246-235-030, and the requirements in this chapter.

(2) The application must describe the training provided to irradiator operators including:

- (a) Classroom training;
- (b) On-the-job or simulator training;
- (c) Safety reviews;

(d) Means employed by the applicant to test each operator's understanding of the department's rules and licensing requirements and the irradiator operating and emergency procedures; and

(e) Minimum training and experience of personnel who may provide training.

(3) The application must include an outline of the written operating and emergency procedures listed in WAC 246-236-053 that describes the radiation safety aspects of the procedures.

(4) The application must describe the organizational structure for managing the irradiator, specifically the radiation safety responsibilities and authorities of the radiation safety officer and those management personnel who have important radiation safety responsibilities or authorities. In particular, the application must specify who, within the management structure, has the authority to stop unsafe opera-

tions. The application must also describe the training and experience required for the position of radiation safety officer.

(5) The application must include a description of the access control systems required by WAC 246-236-023, the radiation monitors required by WAC 246-236-029, the method of detecting leaking sources required by WAC 246-236-059 including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

(6) If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the department. The description must include the:

- (a) Instruments to be used;
- (b) Methods of performing the analysis; and
- (c) Pertinent experience of the individual who analyzes the samples.

(7) If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization specifically authorized by the NRC or an agreement state to load or unload irradiator sources.

(8) The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by WAC 246-236-061.

#### NEW SECTION

##### **WAC 246-236-015 Commencement of construction.**

(1) Commencement of construction of a new irradiator may not occur prior to the submission to the department of both an application for a license for the irradiator and the fee required by chapter 246-254 WAC.

(2) Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of chapter 70.98 RCW, and rules and administrative orders issued under chapters 34.05 and 70.98 RCW.

(3) Commencement of construction as defined in WAC 246-236-010 may include nonconstruction activities if the activity has a reasonable nexus to radiological safety and security.

#### NEW SECTION

##### **WAC 246-236-017 Applications for exemptions. (1)**

The department may, upon application of any interested person or upon its own initiative, grant any exemptions from the requirements in this chapter that the department determines are authorized by law and will not endanger life or property and are otherwise in the public interest.

(2) Any application for a license or for amendment of a license authorizing use of a teletherapy-type unit for irradiation of materials or objects may include proposed alternatives to the requirements of this chapter. The department shall approve the proposed alternatives if the applicant provides adequate rationale for the proposed alternatives and demon-

strates the alternatives are likely to provide an adequate level of safety for workers and the public.

#### NEW SECTION

##### **WAC 246-236-019 Request for written statements.**

(1) After the filing of the original application, the department may request further information necessary to enable the department to determine whether the application should be granted or denied.

(2) Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the department's request, submit written statements to enable the department to determine whether the license should be modified, suspended, or revoked.

#### **DESIGN AND PERFORMANCE REQUIREMENTS FOR IRRADIATORS**

#### NEW SECTION

**WAC 246-236-021 Performance criteria for sealed sources. (1) Requirements.** Sealed sources installed after July 1, 1993, must meet the following requirements:

(a) Must have a certificate of registration issued under 10 C.F.R. 32.210;

(b) Must be doubly encapsulated;

(c) Must use radioactive material that is as nondispersible as practical and that is as insoluble as practical if the source is used in a wet-source-storage irradiator or underwater irradiator;

(d) Must be encapsulated in a material resistant to general corrosion and to localized corrosion, such as 316L stainless steel or other material with equivalent resistance if the sources are for use in irradiator pools; and

(e) In prototype testing of the sealed source, must have been leak tested and found leak-free after each of the tests described in subsections (2) through (7) of this section.

(2) Temperature. The test source must be held at minus forty degrees Celsius for twenty minutes, six hundred degrees Celsius for one hour, and then be subjected to a thermal shock test with a temperature drop from six hundred degrees Celsius to twenty degrees Celsius within fifteen seconds.

(3) Pressure. The test source must be twice subjected for at least five minutes to an external pressure (absolute) of two million newtons per square meter.

(4) Impact. A two-kilogram steel weight, two and one-half centimeters in diameter, must be dropped from a height of one meter onto the test source.

(5) Vibration. The test source must be subjected three times for ten minutes each to vibrations sweeping from twenty-five hertz to five hundred hertz with a peak amplitude of five times the acceleration of gravity. In addition, each test source must be vibrated for thirty minutes at each resonant frequency found.

(6) Puncture. A fifty-gram weight and pin, three-tenths-centimeter pin diameter, must be dropped from a height of one meter onto the test source.

(7) Bend. If the length of the source is more than fifteen times larger than the minimum cross-sectional dimension, the

test source must be subjected to a force of two thousand newtons at its center equidistant from two support cylinders, the distance between which is ten times the minimum cross-sectional dimension of the source.

#### NEW SECTION

**WAC 246-236-023 Access control.** (1) Each entrance to a radiation room at a panoramic or beam-type irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel if the sources are not in the shielded position. Product conveyor systems may serve as barriers as long as they reliably and consistently function as a barrier. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return promptly to their shielded position. The personnel entrance door or barrier must have a lock that is operated by the same key used to move the sources. The doors and barriers must not prevent any individual in the radiation room from leaving.

(2) In addition, each entrance to a radiation room at a panoramic or beam-type irradiator must have an independent backup access control to detect personnel entry while the sources are exposed. Detection of entry while the sources are exposed must cause the sources to return to their fully shielded position and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is on-site of the entry. That individual shall be trained on how to respond to the alarm and prepared to promptly render or summon assistance.

(3) A radiation monitor must be provided to detect the presence of high radiation levels in the radiation room of a panoramic or beam-type irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access when radiation levels are high. Attempted personnel entry while the monitor measures high radiation levels must activate the alarm described in subsection (2) of this section. The monitor may be located in the entrance (normally referred to as the maze) but not in the direct radiation beam.

(4) Before the sources move from their shielded position in a panoramic or beam-type irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.

(5) Each radiation room at a panoramic or beam-type irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

(6) Each radiation room of a panoramic or beam-type irradiator must contain a control that prevents the sources from moving from the shielded position unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

(7) Each entrance to the radiation room of a panoramic or beam-type irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must be posted as required by WAC 246-221-120. Radiation postings for panoramic or beam-type irradiators must comply with the posting requirements of WAC 246-221-120, except that signs may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

(8) If the radiation room of a panoramic or beam-type irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. This requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

(9) Underwater irradiators must have a personnel access barrier around the pool which must be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm must alert an individual (not necessarily on-site) who is prepared to respond or summon assistance.

#### NEW SECTION

**WAC 246-236-025 Shielding.** (1) The radiation dose rate in areas that are normally occupied during operation of a panoramic or beam-type irradiator may not exceed two-hundredths millisievert (two millirems) per hour at any location thirty centimeters or more from the wall of the room when the sources are exposed. The dose rate must be averaged over an area not to exceed one hundred square centimeters having no linear dimension greater than twenty centimeters. Areas where the radiation dose rate exceeds two-hundredths millisievert (two millirems) per hour must be locked, roped off, or posted.

(2) The radiation dose at thirty centimeters over the edge of the pool of a pool irradiator may not exceed two-hundredths millisievert (two millirems) per hour when the sources are in the fully shielded position.

(3) The radiation dose rate at one meter from the shield of a panoramic or beam-type dry-source-storage irradiator when the source is shielded may not exceed two-hundredths millisievert (two millirems) per hour and at five centimeters from the shield may not exceed two-tenths millisievert (twenty millirems) per hour.

#### NEW SECTION

**WAC 246-236-027 Fire protection.** (1) The radiation room at a panoramic or beam-type irradiator must have heat and smoke detectors. The detectors must activate an audible alarm. The alarm must be capable of alerting a person who is prepared to summon assistance promptly. The sources must automatically become fully shielded if a fire is detected.

(2) The radiation room at a panoramic or beam-type irradiator must be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel

into the room. The system for the radiation room must have a shut-off valve to control flooding into unrestricted areas.

#### NEW SECTION

**WAC 246-236-029 Radiation monitors.** (1) Irradiators with automatic product conveyor systems must have a radiation monitor with an audible alarm located to detect loose radioactive sources that are carried toward the product exit. If the monitor detects a source, an alarm must sound and product conveyors must stop automatically. The alarm must be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed stationary tube are exempt from the requirements of this subsection.

(2) Underwater irradiators that are not in a shielded radiation room must have a radiation monitor over the pool to detect abnormal radiation levels. The monitor must have an audible alarm and a visible indicator at entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm must be capable of alerting an individual who is prepared to respond promptly.

#### NEW SECTION

**WAC 246-236-031 Control of source movement.** (1) The mechanism that moves the sources of a panoramic or beam-type irradiator must require a key to actuate. Actuation of the mechanism must cause an audible signal to indicate that the sources are leaving the shielded position. Only one key may be in use at any time, and only operators or facility management may possess it. The key must be attached to a portable radiation survey meter by a chain or cable. The lock for source control must be designed so that the key may not be removed if the sources are in an unshielded position. The door to the radiation room must require the same key.

(2) The console of a panoramic or beam-type irradiator must have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit, and when the sources are exposed.

(3) The control console of a panoramic or beam-type irradiator must have a control that promptly returns the sources to the shielded position.

(4) Each control for a panoramic or beam-type irradiator must be clearly marked as to its function.

#### NEW SECTION

**WAC 246-236-033 Irradiator pools.** (1) For licenses initially issued after July 1, 1993, irradiator pools must either:

- (a) Have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool; or
- (b) Be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination. In either case, the licensee shall have a method to safely store the sources during repairs of the pool.

(2) For licenses initially issued after July 1, 1993, irradiator pools must have no outlets more than one-half meter below the normal low water level that could allow water to drain out of the pool. Pipes that have intakes more than one-half meter below the normal low water level and that could

act as siphons must have siphon breakers to prevent the siphoning of pool water.

(3) A means must be provided to replenish water losses from the pool.

(4) A visible indicator must be provided in a clearly visible location to indicate if the pool water level is below the normal low water level or above the normal high water level.

(5) Irradiator pools must be equipped with a purification system designed to be capable of maintaining the water during normal operation at a conductivity of twenty microsiemens per centimeter or less and with a clarity so that the sources can be seen clearly.

(6) A physical barrier, such as a railing or cover, must be used around or over irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection, and service operations.

(7) If long-handled tools or poles are used in irradiator pools, the radiation dose rate on the handling areas of the tools may not exceed two-hundredths millisievert (two millirems) per hour.

#### NEW SECTION

**WAC 246-236-035 Source rack protection.** If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack must be protected by a barrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

#### NEW SECTION

**WAC 246-236-037 Power failures.** (1) If electrical power at a panoramic or beam-type irradiator is lost for longer than ten seconds, the sources must automatically return to the shielded position.

(2) The lock on the door of the radiation room of a panoramic or beam-type irradiator may not be deactivated by a power failure.

(3) During a power failure, the area of any irradiator where sources are located may be entered only when using an operable and calibrated radiation survey meter.

#### NEW SECTION

**WAC 246-236-039 Design requirements.** Irradiators whose construction begins after July 1, 1993, must meet the design requirements of this section.

(1) Shielding. For panoramic or beam-type irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete and design the walls, wall penetrations, and entranceways to meet the radiation shielding requirements of WAC 246-236-025. If the irradiator will use more than two hundred petabecquerels (five million curies) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

(2) Foundations. For panoramic or beam-type irradiators, the licensee shall design the foundation, with consider-

ation given to soil characteristics, to ensure it is adequate to support the weight of the facility shield walls.

(3) Pool integrity. For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all outlets or pipes meet the requirements of WAC 246-236-033(2), and that metal components are metallurgically compatible with other components in the pool.

(4) Water handling system. For pool irradiators, the licensee shall verify that the design of the water purification system is adequate to meet the requirements of WAC 246-236-033(5). The system must be designed so that water leaking from the system does not drain to unrestricted areas without being monitored.

(5) Radiation monitors. For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required under WAC 246-236-029(1). The licensee shall verify that the product conveyor is designed to stop before a source on the product conveyor would cause a radiation overexposure to any person. For pool irradiators, if the licensee uses radiation monitors to detect contamination under WAC 246-236-059(2), the licensee shall verify that the design of radiation monitoring systems to detect pool contamination includes sensitive detectors located close to where contamination is likely to concentrate.

(6) Source rack. For pool irradiators, the licensee shall verify that there are no crevices on the source or between the source and source holder that would promote corrosion on a critical area of the source. For panoramic or beam-type irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack, and that source rack drops due to failure of cables (or alternate means of support) will not cause loss of integrity of sealed sources. For panoramic or beam-type irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it with minimal risk to personnel.

(7) Access control. For panoramic or beam-type irradiators, the licensee shall verify from the design and logic diagram that the access control system will meet the requirements of WAC 246-236-023.

(8) Fire protection. For panoramic or beam-type irradiators, the licensee shall verify that the number, location, and spacing of the smoke and heat detectors are appropriate to detect fires and that the detectors are protected from mechanical and radiation damage. The licensee shall verify that the design of the fire extinguishing system provides the necessary discharge patterns, densities, and flow characteristics for complete coverage of the radiation room and that the system is protected from mechanical and radiation damage.

(9) Source return. For panoramic or beam-type irradiators, the licensee shall verify that the source rack will automatically return to the fully shielded position if off-site power is lost for more than ten seconds.

(10) Seismic. For panoramic or beam-type irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in

the event of an earthquake by designing to the seismic requirements of an appropriate source such as American Concrete Institute Standard ACI 318-89, "*Building Code Requirements for Reinforced Concrete*," chapter 21, "*Special Provisions for Seismic Design*," or local building codes, if current.

(11) Wiring. For panoramic or beam-type irradiators, the licensee shall verify that electrical wiring and electrical equipment in the radiation room are selected to minimize failures due to prolonged exposure to radiation.

#### NEW SECTION

**WAC 246-236-041 Construction monitoring and acceptance testing.** The requirements of this section must be met for irradiators whose construction begins after July 1, 1993. The requirements must be met prior to loading sources.

(1) Shielding. For panoramic or beam-type irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

(2) Foundations. For panoramic or beam-type irradiators, the licensee shall monitor the construction of the foundations to verify that their construction meets design specifications.

(3) Pool integrity. For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that outlets and pipes meet the requirements of WAC 246-236-033(2).

(4) Water handling system. For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter, and the water level indicators operate properly.

(5) Radiation monitors. For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on the product conveyor system and the related alarms and interlocks required under WAC 246-236-029(1). For pool irradiators, the licensee shall verify the proper operation of the radiation monitors and the related alarm if used to meet the requirements under WAC 246-236-059(2). For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms, and interlocks required under WAC 246-236-029(2).

(6) Source rack. For panoramic or beam-type irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing must include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements of WAC 246-236-035 are met for protection of the source rack and the mechanism that moves the rack; testing must include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves the rack from moving product carriers.

(7) Access control. For panoramic or beam-type irradiators, the licensee shall test the completed access control system to assure that it functions as designed and that all alarms, controls, and interlocks work properly.

(8) Fire protection. For panoramic or beam-type irradiators, the licensee shall test the ability of the heat and smoke detectors to detect a fire, to activate alarms, and to cause the source rack to automatically become fully shielded. The licensee shall test the operability of the fire extinguishing system.

(9) Source return. For panoramic or beam-type irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without off-site power.

(10) Computer systems. For panoramic or beam-type irradiators that use a computer system to control the access control system, the licensee shall verify that the access control system will operate properly if off-site power is lost and shall verify that the computer has security features that prevent an irradiator operator from commanding the computer to override the access control system when it is required to be operable.

(11) Wiring. For panoramic or beam-type irradiators, the licensee shall verify that the electrical wiring and electrical equipment that were installed meet the design specifications.

## OPERATION OF IRRADIATORS

### NEW SECTION

**WAC 246-236-051 Training.** (1) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must be instructed in:

(a) The fundamentals of radiation protection applied to irradiators (including the differences between external radiation and radioactive contamination, units of radiation dose, department radiation dose limits under this chapter and chapter 246-221 WAC, why large radiation doses must be avoided, how shielding and access controls prevent large doses, how an irradiator is designed to prevent contamination, the proper use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator);

(b) The requirements of this chapter and chapter 246-222 WAC that are relevant to the irradiator;

(c) The operation of the irradiator;

(d) Those operating and emergency procedures listed in WAC 246-236-053 that the individual is responsible for performing; and

(e) Case histories of accidents or problems involving irradiators.

(2) Before an individual is permitted to operate an irradiator without a supervisor present, the individual shall pass a written test on the instruction received consisting primarily of questions based on the licensee's operating and emergency procedures that the individual is responsible for performing and other operations necessary to safely operate the irradiator without supervision.

(3) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must have received on-the-job training or simulator training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those

portions of the operating and emergency procedures that he or she is to perform.

(4) The licensee shall conduct safety reviews for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review must include, to the extent appropriate, all of the following:

(a) Changes in operating and emergency procedures since the last review, if any;

(b) Changes in rules and license conditions since the last review, if any;

(c) Reports on recent accidents, mistakes, or problems that have occurred at irradiators, if any;

(d) Relevant results of inspections of operator safety performance;

(e) Relevant results of the facility's inspection and maintenance checks; and

(f) A drill to practice an emergency or abnormal event procedure.

(5) The licensee shall evaluate the safety performance of each irradiator operator at least annually to ensure that rules, license conditions, and operating and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator and shall instruct the operator on how to correct any mistakes or deficiencies observed.

(6) Individuals who will be permitted unescorted access to the radiation room of the irradiator or the area around the pool of an underwater irradiator, but who have not received the training required for operators and the radiation safety officer, shall be instructed and tested in any precautions they should take to avoid radiation exposure, any procedures or parts of procedures listed in WAC 246-236-053 that they are expected to perform or comply with, and their proper response to alarms required in this chapter. Tests may be oral.

(7) Individuals who must be prepared to respond to alarms required under WAC 246-236-023 (2) and (9), 246-236-027(1), 246-236-029 (1) and (2), and 246-236-059(2) shall be trained and tested on how to respond. Each individual shall be retested at least once a year. Tests may be oral.

### NEW SECTION

**WAC 246-236-053 Operating and emergency procedures.** (1) The licensee shall have and follow written operating procedures for:

(a) Operation of the irradiator, including entering and leaving the radiation room;

(b) Use of personnel dosimeters;

(c) Surveying the shielding of panoramic or beam-type irradiators;

(d) Monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;

(e) Leak testing of sources;

(f) Inspection and maintenance checks required under WAC 246-236-061;

(g) Loading, unloading, and repositioning sources, if the operations will be performed by the licensee; and

(h) Inspection of movable shielding required under WAC 246-236-023(8), if applicable.



(2) The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for:

- (a) Sources stuck in the unshielded position;
  - (b) Personnel overexposures;
  - (c) A radiation alarm from the product exit portal monitor or pool monitor;
  - (d) Detection of leaking sources, pool contamination, or alarm caused by contamination of pool water;
  - (e) A low or high water level indicator, an abnormal water loss, or leakage from the source storage pool;
  - (f) A prolonged loss of electrical power;
  - (g) A fire alarm or explosion in the radiation room;
  - (h) An alarm indicating unauthorized entry into the radiation room, area around pool, or another alarmed area;
  - (i) Natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility; and
  - (j) The jamming of automatic conveyor systems.
- (3) The licensee may revise operating and emergency procedures without approval of the department only if all of the following conditions are met:
- (a) The revisions do not reduce the safety of the facility;
  - (b) The revisions are consistent with the outline or summary of procedures submitted with the license application;
  - (c) The revisions have been reviewed and approved by the radiation safety officer; and
  - (d) The users or operators are instructed and tested on the revised procedures before they are put into use.

#### NEW SECTION

**WAC 246-236-055 Personnel monitoring.** (1) Irradiator operators shall wear a personnel dosimeter that is processed and evaluated by an accredited national voluntary laboratory accreditation program processor while operating a panoramic or beam-type irradiator or while in the area around the pool of an underwater irradiator. The personnel dosimeter processor must be accredited for high energy photons in the normal and accident dose ranges per WAC 246-221-090(3). Each personnel dosimeter must be assigned to and worn by only one individual. Film badges must be processed at least monthly, and other personnel dosimeters must be processed at least quarterly.

(2) Other individuals who enter the radiation room of a panoramic or beam-type irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of this subsection, a check of their response to radiation must be done at least annually. Acceptable dosimeters must read within plus or minus thirty percent of the true radiation dose.

#### NEW SECTION

**WAC 246-236-057 Radiation surveys.** (1) A radiation survey of the area outside the shielding of the radiation room of a panoramic or beam-type irradiator must be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool

of pool irradiators must be conducted after the sources are loaded but before the facility starts to operate. Additional radiation surveys of the shielding must be performed at intervals not to exceed three years and before resuming operation after addition of new sources or any modification to the radiation room shielding or structure that might increase dose rates.

(2) If the radiation levels specified in WAC 246-236-025 are exceeded, the facility must be modified to comply with the requirements of WAC 246-236-025.

(3) Portable radiation survey meters must be calibrated at least annually to an accuracy of plus or minus twenty percent for the gamma energy of the sources in use. The calibration must be done at two points on each scale or, for digital instruments, at one point per decade over the range that will be used. Portable radiation survey meters must be of a type that does not saturate and read zero at high radiation dose rates.

(4) Water from the irradiator pool, other potentially contaminated liquids, and sediments from pool vacuuming must be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations must not exceed those specified in WAC 246-221-290 Table III "Releases to Sewers," or column 2 of Table II "Effluent Concentration" in water.

(5) Before releasing resins for unrestricted use, they must be monitored before release in an area with a background level less than one-half microsievert (five-hundredths millirem) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter used must be capable of detecting radiation levels of one-half microsievert (five-hundredths millirem) per hour.

#### NEW SECTION

**WAC 246-236-059 Detection of leaking sources.** (1) Each dry-source-storage sealed source must be tested for leakage at intervals not to exceed six months using a leak test kit or method approved by the NRC or an agreement state. In the absence of a certificate from a transferor that a test has been made within the six months before the transfer, the sealed source may not be used until tested. The test must be capable of detecting the presence of two hundred becquerels (five-thousandths microcurie) of radioactive material and must be performed by a person approved by the NRC or an agreement state to perform the test.

(2) For pool irradiators, sources may not be put into the pool unless the licensee tests the sources for leaks or has a certificate from a transferor that leak test has been done within the six months before the transfer. Water from the pool must be checked for contamination each day the irradiator operates. The check may be done either by using a radiation monitor on a pool water circulating system or by analysis of a sample of pool water. If a check for contamination is done by analysis of a sample of pool water, the results of the analysis must be available within twenty-four hours. If the licensee uses a radiation monitor on a pool water circulating system, the detection of above normal radiation levels must activate an alarm. The alarm set-point must be set as low as practical, but high enough to avoid false alarms. The licensee

may reset the alarm set-point to a higher level if necessary to operate the pool water purification system to clean up contamination in the pool if specifically provided for in written emergency procedures.

(3) If a leaking source is detected, the licensee shall arrange to remove the leaking source from service and have it decontaminated, repaired, or disposed of by an NRC or an agreement state licensee that is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities, and irradiated product for radioactive contamination. No product may be shipped until the product has been checked and found free of contamination. If a product has been shipped that may have been inadvertently contaminated, the licensee shall arrange to locate and survey that product for contamination. If any personnel are found to be contaminated, decontamination must be performed promptly. If contaminated equipment, facilities, or products are found, the licensee shall arrange to have them decontaminated or disposed of by an NRC or an agreement state licensee that is authorized to perform these functions. If a pool is contaminated, the licensee shall arrange to clean the pool until the contamination levels do not exceed the appropriate concentration in WAC 246-221-290 in column 2 of Table II "Effluent Concentration." The licensee shall comply with the reporting requirements of WAC 246-221-250, 246-221-260, and 246-221-265.

#### NEW SECTION

##### **WAC 246-236-061 Inspection and maintenance.** (1)

The licensee shall perform inspection and maintenance checks that include, as a minimum, each of the following at the frequency specified in the license or license application:

- (a) Operability of each aspect of the access control system required under WAC 246-236-023;
- (b) Functioning of the source position indicator required under WAC 246-236-031(2);
- (c) Operability of the radiation monitor for radioactive contamination in pool water required under WAC 246-236-059(2) using a radiation check source, if applicable;
- (d) Operability of the over-pool radiation monitor at underwater irradiators as required under WAC 246-236-029(2);
- (e) Operability of the product exit monitor required under WAC 246-236-029(1);
- (f) Operability of the emergency source return control required under WAC 246-236-031(3);
- (g) Leak-tightness of systems through which pool water circulates (visual inspection);
- (h) Operability of the heat and smoke detectors and extinguisher system required under WAC 246-236-027 (but without turning extinguishers on);
- (i) Operability of the means of pool water replenishment required under WAC 246-236-033(3);
- (j) Operability of the indicators of high and low pool water levels required under WAC 246-236-033(4);
- (k) Operability of the intrusion alarm required under WAC 246-236-023(9), if applicable;
- (l) Functioning and wear of the system, mechanisms, and cables used to raise and lower sources;

(m) Condition of the barrier to prevent products from hitting the sources or source mechanism as required under WAC 246-236-035;

(n) Amount of water added to the pool to determine if the pool is leaking;

(o) Electrical wiring on required safety systems for radiation damage;

(p) Pool water conductivity measurements and analysis as required under WAC 246-236-063(2).

(2) Malfunctions and defects found during inspection and maintenance checks must be repaired without undue delay.

#### NEW SECTION

**WAC 246-236-063 Pool water purity.** (1) The pool water purification system must be run sufficiently to maintain the conductivity of the pool water below twenty microsiemens per centimeter under normal circumstances. If pool water conductivity rises above twenty microsiemens per centimeter, the licensee shall take prompt actions to lower the pool water conductivity and shall take corrective actions to prevent future recurrences.

(2) The licensee shall measure the pool water conductivity frequently enough, but no less than weekly, to assure that the conductivity remains below twenty microsiemens per centimeter. Conductivity meters must be calibrated at least annually.

#### NEW SECTION

##### **WAC 246-236-065 Attendance during operation.** (1)

Both an irradiator operator and at least one other individual, who is trained on how to respond and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present on-site whenever:

- (a) The irradiator is operated using an automatic product conveyor system; and
- (b) The product is moved into or out of the radiation room when the irradiator is operated in a batch mode.

(2) At a panoramic or beam-type irradiator at which static irradiations (no movement of the product) are occurring, a person who has received the training on how to respond to alarms described in WAC 246-236-051(7) must be on-site.

(3) At an underwater irradiator, an irradiator operator must be present at the facility whenever the product is moved into or out of the pool. Individuals who move the product into or out of the pool of an underwater irradiator need not be qualified as irradiator operators; however, they must have received the training described in WAC 246-236-051 (6) and (7). Static irradiations may be performed without a person present at the facility.

#### NEW SECTION

**WAC 246-236-067 Entering and leaving the radiation room.** (1) Upon first entering the radiation room of a panoramic or beam-type irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The

operator shall check the functioning of the survey meter with a radiation check source prior to entry.

(2) Before exiting from and locking the door to the radiation room of a panoramic or beam-type irradiator prior to a planned irradiation, the irradiator operator shall:

(a) Visually inspect the entire radiation room to verify that no one else is in it; and

(b) Activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

(3) During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter unless the over-the-pool monitor required under WAC 246-236-029(2) is operating with backup power.

#### NEW SECTION

**WAC 246-236-069 Irradiation of explosive or flammable materials.** (1) Irradiation of explosive material is prohibited unless the licensee has received prior written authorization from the department. Authorization will not be granted unless the licensee can demonstrate that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems, or cause radiation overexposures of personnel.

(2) Irradiation of more than small quantities of flammable material (flash point below sixty degrees Celsius) is prohibited in panoramic or beam-type irradiators unless the licensee has received prior written authorization from the department. Authorization will not be granted unless the licensee can demonstrate that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

### RECORDS

#### NEW SECTION

**WAC 246-236-081 Records and retention periods.** The licensee shall maintain the following records at the irradiator for the periods specified:

(1) A copy of the license, license conditions, documents incorporated into a license by reference, and amendments thereto until superseded by new documents or until the department terminates the license for documents not superseded.

(2) Records of each individual's training, tests, and safety reviews provided to meet the requirements of WAC 246-236-051 (1) through (4), (6), and (7) until three years after the individual terminates work.

(3) Records of the annual evaluations of the safety performance of irradiator operators as required under WAC 246-236-051(5) for three years after the evaluation.

(4) A copy of the current operating and emergency procedures required under WAC 246-236-053 until superseded or the department terminates the license. Records of the radiation safety officer's review and approval of changes in pro-

cedures as required under WAC 246-236-053 (3)(c) retained for three years from the date of the change.

(5) Evaluations of personnel dosimeters as required under WAC 246-236-055 until the department terminates the license.

(6) Records of radiation surveys as required under WAC 246-236-057 for three years from the date of the survey.

(7) Records of radiation survey meter calibrations as required under WAC 246-236-057 and pool water conductivity meter calibrations required under WAC 246-236-063(2) until three years from the date of calibration.

(8) Records of the results of leak tests as required under WAC 246-236-059(1) and the results of contamination checks as required under WAC 246-236-059(2) for three years from the date of each test.

(9) Records of inspection and maintenance checks as required under WAC 246-236-061 for three years.

(10) Records of major malfunctions, significant defects, operating difficulties or irregularities, and major operating problems that involve required radiation safety equipment for three years after repairs are completed.

(11) Records of the receipt, transfer and disposal, of all licensed sealed sources as required under WAC 246-220-020, 246-221-230, and 246-232-080.

(12) Records on the design checks as required under WAC 246-236-039 and the construction control checks as required under WAC 246-236-041 until the license is terminated. The records must be signed and dated. The title or qualification of the person signing must be included.

(13) Records related to decommissioning of the irradiator as required under WAC 246-235-075(6).

#### NEW SECTION

**WAC 246-236-083 Reports.** (1) In addition to the reporting requirements in chapters 246-220 through 246-254 WAC, the licensee shall report the following events if not reported under chapters 246-220 through 246-254 WAC:

- (a) Source stuck in an unshielded position.
- (b) Any fire or explosion in a radiation room.
- (c) Damage to the source racks.
- (d) Failure of the cable or drive mechanism used to move the source racks.
- (e) Inoperability of the access control system.
- (f) Detection of radiation source by the product exit monitor.
- (g) Detection of radioactive contamination attributable to licensed radioactive material.
- (h) Structural damage to the pool liner or walls.
- (i) Abnormal water loss or leakage from the source storage pool.
- (j) Pool water conductivity exceeding one hundred microsiemens per centimeter.

(2) The report must include a telephone report within twenty-four hours as described in WAC 246-221-250, and a written report within thirty days as described in WAC 246-221-250.

**WSR 18-08-069**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (By the Code Reviser's Office)  
 [Filed April 3, 2018, 9:14 a.m.]

WAC 246-851-550, proposed by the department of health in WSR 17-19-045, appearing in issue 17-19 of the Washington State Register, which was distributed on October 4, 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 18-08-072**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Long-Term Support Administration)  
 [Filed April 3, 2018, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-074.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-71-0548 When is an individual provider subject to an overpayment?

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 DSHSRPAURulesCoordinator@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: The purpose for adding this new overpayment section for individual providers to chapter 388-71 WAC is to define the circumstances in which an individual provider is subject to an overpayment, clarify the department's authority to collect an overpayment, clarify an individual provider's right to an administrative hearing when they receive an overpayment notice, and provide information about how an individual provider requests an administrative hearing related to an overpayment.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 43.20B.675, 74.09.220, 74.09.290, 74.09.520.

Statute Being Implemented: RCW 43.20B.675, 41.05A.-170.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2533.

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. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

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

April 2, 2018  
 Katherine I. Vasquez  
 Rules Coordinator

NEW SECTION

**WAC 388-71-0548 When is an individual provider subject to an overpayment?** (1) Unless payment is otherwise required by state or federal law, it is an overpayment as defined in RCW 43.20B.010 and 41.05A.170 if an individual provider (IP) is paid by the department and:

- (a) Did not actually perform the work;
- (b) Payment is for dates of service after the death of the client;
- (c) Payment is for services provided when the client was admitted to a hospital, nursing home, or other institutional setting;
- (d) Payment is for dates of service when the client was outside of the United States;
- (e) Did not have a valid IP services contract at the time the services were provided and had been notified by the department to stop the provision of services;
- (f) Had not completed required training or obtained required certification at the time the services were provided and had been notified by the department to stop the provision of services;
- (g) Had a disqualifying crime or negative action at the time the services were provided and had been notified by the department to stop the provision of services;
- (h) Provided services after being notified by the department to stop the provision of services;
- (i) Provided services that are not included in the client's plan of care;
- (j) Provided services that exceeded the amount of the client's benefit in the client's plan of care where those services were not necessitated by an emergent and immediate need of the client and the IP is not a family member or household member of the client; or
- (k) Received duplicate payment(s).

(2) If the department determines an IP was overpaid, even if it was due to department error, the department recov-

ers any moneys that the IP received as a result of overpayments, as authorized under chapter 41.05A RCW or 43.20B RCW.

(a) The department will send the IP notice of the overpayment.

(b) The IP has a right to request an administrative hearing when notice of an overpayment is received from the department.

(c) To request an administrative hearing, an IP must send a written request to the office of financial recovery within twenty-eight days of the IP's receipt of notice of the overpayment that:

(i) States the basis for contesting the overpayment notice;

(ii) Includes a copy of the department's notice with the request; and

(iii) Is sent by certified mail return receipt requested (CMRRR) or another trackable delivery service.

(d) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW).

**WSR 18-08-074**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 3, 2018, 12:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-097.

Title of Rule and Other Identifying Information: Amendments to the electrical rules, WAC 296-46B-555 Special occupancies—Marinas, boatyards, and commercial and non-commercial docking facilities.

Hearing Location(s): On May 9, 2018, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501. For directions to the L&I office <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations>.

Date of Intended Adoption: May 22, 2018.

Submit Written Comments to: Alicia Curry, L&I, P.O. Box 44400, Olympia, WA 98504-4400, email [Alicia.Curry@lni.wa.gov](mailto:Alicia.Curry@lni.wa.gov), fax 360-902-5292, by 5:00 p.m., on May 10, 2018.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email [Alicia.Curry@lni.wa.gov](mailto:Alicia.Curry@lni.wa.gov), by 5:00 p.m., on April 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes to the electrical rules to amend the ground-fault protection requirements in marinas, specified by the 2017 National Electrical Code (NEC) 555.3. The proposed rule amends language to extend the 100 mA ground-fault level allowance for feeders and specifies a time frame for when 2020 NEC requirements will take effect. The department received a petition for rule making in October 2017, to extend the 100 mA ground-fault level allowance for feeders in the existing rule beyond July 1, 2018. The petition

and the supporting materials challenged the appropriateness and feasibility of the 2017 NEC standard and the fact that needed experts were not involved in past NEC code development processes. The proposed rule allows the petitioner and other interested parties an opportunity to further engage in discussions at the national level as part of the 2020 code development process.

Reasons Supporting Proposal: The 100 mA ground-fault level allowance for feeders in the existing rule is set to expire on July 1, 2018, at which time the 2017 NEC 555.3 requirement for protection of all conductors at 30 mA will take effect. The department received a petition to adopt the ground-fault protection levels for marinas in the existing rule beyond July 1, 2018, as stated above.

Statutory Authority for Adoption: RCW 19.28.010 and 19.28.031.

Statute Being Implemented: RCW 19.28.010 and 19.28.031.

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

Name of Proponent: Petition received from Northwest Marine Trade Association, other organizations that supported the petition include the Recreational Boating Association of Washington, the Tacoma Waterfront Association, Association of Marine Industries, the Port of Poulsbo, and Roche Harbor Marina, private.

Name of Agency Personnel Responsible for Drafting: Stephen Thornton, Program Manager, Tumwater, Washington, 360-902-6234; Implementation and Enforcement: David Puente, Jr., Assistant Director, Tumwater, Washington, 360-902-6348.

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 is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act, RCW 34.05.328 (5)(b)(iii), rules adopting or incorporating by reference without material change national consensus codes.

In addition, a cost-benefit analysis estimates impacts that only represent new costs of complying with the proposed rules for the affected parties, excluding realized or potential costs associated with or originated from the current practices, or "baseline" standards under existing laws, rules or national consensus standards.

The proposed rule only maintains the existing rule requirements until September 1, 2019, when the requirements of NEC requirements would apply.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted

or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: According to the Regulatory Fairness Act under RCW 19.85.030, an agency shall prepare a small business economic impact statement (SBEIS): (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

The proposed changes to electrical rules, WAC 296-46B-555 Ground-fault protection in marinas, maintains the existing rule requirements until September 1, 2019, when the requirements of NEC requirements would apply, hence it imposes no costs on businesses involved beyond the baseline. As such, the department is exempt from conducting an SBEIS for this rule making.

April 3, 2018  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-555 Special occupancies—Marinas, boatyards, and commercial and noncommercial docking facilities.** (1) Until (~~July 1, 2018~~) September 1, 2019, the ground-fault protection level specified in 2017 NEC 555.3 is amended to allow a maximum of: 100 mA for overcurrent devices supplying feeder conductors not supplying primary windings of transformers; and 30 mA for overcurrent devices supplying branch circuit conductors (~~and~~) outlets, and feeder conductors supplying primary windings of transformers. On September 1, 2019, ground-fault protection for marinas, boatyards, and commercial and noncommercial docking facilities will be as published in the 2020 NEC.

(2) For the purposes of NEC 555.5, transformer terminations must be located a minimum of 12 inches above the deck of a dock (datum plane requirements do not apply for this section).

(3) For the purposes of NEC 555.7, adjacent means within sight.

(4) For the purposes of NEC 555.9, all electrical connections must be installed a minimum of 12 inches above the deck of a pier unless the connections are approved for wet locations (datum plane requirements do not apply for this section).

(5) For the purposes of NEC 555.10, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

(6) For the purposes of NEC 555.11, gasketed enclosures are only required for wet locations.

(7) For the purposes of NEC 555.13, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a

permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC 555.13 (B)(4)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats.

(d) For the purposes of NEC 555.13 (B)(5), the wiring methods of Chapter 3 NEC will be permitted.

(8) For the purposes of NEC 555.19, receptacles must be mounted not less than 12 inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

**WSR 18-08-077**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 3, 2018, 4:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-126.

Title of Rule and Other Identifying Information: WAC 458-14-127 Reconvened boards—Authority, is the rule that explains the circumstances under which county boards of equalization may reconvene under their own authority or by the authority from the department of revenue after their regularly convened session has ended.

Hearing Location(s): On May 10, 2018, at 10:00 a.m., at Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 17, 2018.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by May 10, 2018.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-14-127 to provide additional guidance on the circumstances under which county boards of equalization may reconvene under their own authority or by the authority from the department of revenue after their regularly convened session has ended. The amended rule provides multiple examples to assist taxpayers, county assessors, and county boards of equalization in determining whether certain conditions have been met to reconvene a board. This rule is also being amended to incorporate legislation resulting from the passage of SSB 5133 in 2017, and SSB 5275 in 2015.

Reasons Supporting Proposal: The last update to WAC 458-14-127 occurred in 2006 and since that time, there have been legislative changes that need to be incorporated into this rule. Additionally, the department's day-to-day experience in the practical application of this rule, including the lack of clarity regarding evidence used to demonstrate one hundred percent overvaluation, necessitated changes to the rule. Providing clear guidance to taxpayers, assessors, and county

boards of equalization regarding the standards used in determining whether a board can reconvene, will benefit all parties during the appeal process.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.060, 84.08.070, and 84.48.200.

Statute Being Implemented: RCW 84.08.010, 84.08.020, 84.08.060, 84.08.070, 84.08.130, 84.48.010, and 84.48.200.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by 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. RCW 84.08.010 authorizes the department of revenue to have general supervision and control over county boards of equalization. As part of this authority, the department of revenue may adopt rules and regulations for the effective administration of board duties described under chapters 84.08 and 84.48 RCW. The proposed amendments to WAC 458-14-127 do not impose more-than-minor costs on businesses as they do not impose any new taxes or fees, or any filing, recordkeeping, or compliance requirements not already permitted by statute.

April 3, 2018  
Erin T. Lopez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

**WAC 458-14-127 Reconvened boards—Authority.**

~~((1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax year immediately following the board's regularly convened session and at least one of the following conditions is met:~~

~~(a) A taxpayer requests the board reconvene and submits to the board an affidavit stating that notice of change of value for the assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition, and can show proof that the value was actually changed;~~

~~(b) An assessor submits an affidavit to the board stating that the assessor was unaware of facts which were discoverable at the time of appraisal and that such lack of facts caused the valuation of property to be materially affected. Submitting such an affidavit to the board is for the purpose of correcting latent defects in the assessment process that become apparent only after the normal appeal process has expired,~~

~~and is wholly within the assessor's discretion. In the affidavit, the assessor must state the facts which affected the value and also state both the incorrect value and the true and fair market value of the property and must mail a copy of the affidavit to the taxpayer. If the board decides to reconvene to consider the valuation, it must notify both the taxpayer and assessor of its decision in writing.~~

~~(c) In an arm's length transaction, a bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July and on or before December 31 of the assessment year and the sale price was less than ninety percent of the assessed value.~~

~~(2) Upon request of either the taxpayer or the assessor, boards may reconvene on their own authority to hear appeals with respect to property or value that was omitted from the assessment rolls. No request shall be accepted if it is made concerning an assessment year that is more than three years prior to the year the omitted property or value was discovered. The request itself must be received by the board no later than thirty calendar days, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038, after the mailing of the notification of the discovery of the omitted property or value. For example, if omitted property is discovered in September 2005, and the property was omitted since 2000, the board may only reconvene to hear an appeal for assessment year 2002, and subsequent years. If the taxpayer is notified by mail of the discovery of the omitted property or value on October 14, 2005, for example, any request with respect to the omitted property or value must be made no later than thirty calendar days after October 14, 2005, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038.~~

~~(3) Upon request of either the taxpayer or the assessor, a board may reconvene on its own authority to hear an appeal under the following circumstances:~~

~~(a) A taxpayer, who owns property in a county that revalues real property on an annual basis, had a timely appeal pending with the board when the same property was valued by the assessor in at least one intervening assessment year, between the filing of the appeal and the issuance of the board's written decision;~~

~~(b) The assessed value of the property under appeal did not change during the intervening assessment year or years;~~

~~(c) No appeal was filed by the taxpayer regarding the same property during the intervening assessment year or years when the assessed value did not change; and~~

~~(d) The request to reconvene is filed with the board no later than thirty calendar days after mailing of the board's decision.~~

~~(4) Requests for reconvening boards concerning prior year's assessments or for an extension of the annual regularly convened session to enable the board to complete its annual equalization duties must be submitted to the clerk of the board who must submit the request to the department for determination.~~

~~(5) The department may require any board to reconvene at any time for the purpose of performing or completing any duty or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any~~

other purpose allowed by law. This statutory authority is reserved for those instances when an error has occurred and where the regular remedial procedures do not apply. These instances include significant valuation errors that become apparent only after the normal appeal process has expired.

(6) The department must reconvene a board upon request of a taxpayer when the taxpayer makes a prima facie showing of actual fraud on the part of taxing officials, or makes a prima facie showing that the taxpayer's property is overvalued by at least double the true and fair value. The department must reconvene a board upon request of an assessor when the assessor makes a prima facie showing of actual or constructive fraud on the part of a taxpayer.

(7) All reconvening requests must:

(a) Specify the assessment year(s) that is the subject of the request; and

(b) State the specific grounds upon which the request is based; and

(c) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian, of the property or is a lessee responsible for the payment of the property taxes.

(8) No board shall reconvene later than three years after the adjournment of its regularly convened session, except in the case of omitted property or value, as noted in subsection (2) of this section. The three years is determined by the date of adjournment of the board's regularly convened session, which is four weeks after July 15th, or four weeks after the first business day after July 15th, if July 15th falls on a Saturday, Sunday, or holiday. For example, for a timely request to reconvene regarding the 2006 assessment roll, the allowable time period in which to receive the request would be from August 14, 2006 through August 13, 2009.) (1) **Introduction.** This rule explains the circumstances under which boards of equalization (boards) may reconvene under their own authority or by the authority from the department of revenue (department) after their regularly convened session has ended.

(2) **Other rules to reference.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-12-050 Omitted property and omitted value.

(b) WAC 458-12-360 Notice of change in value of real property.

(c) WAC 458-14-025 Assessment roll adjustments not requiring board action.

(d) WAC 458-14-026 Assessment roll corrections agreed to by taxpayer.

(e) WAC 458-14-046 Regularly convened session—Board duties—Presumption.

(f) WAC 458-14-056 Petitions—Time limits—Waiver of filing dead-line for good cause.

(g) WAC 458-14-170 Appeals to the state board of tax appeals.

(3) **Definitions.** The definitions found in WAC 458-14-005 apply to this rule.

(4) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The board or depart-

ment will evaluate each case on its particular facts and circumstances.

**(5) When can boards of equalization reconvene under their own authority?**

(a) A board can reconvene under its own authority if one of the following occurs:

(i) The taxpayer did not timely receive their change of value notice. A taxpayer submits a request to the board to reconvene and provides:

(A) An affidavit stating that they did not receive their change of value notice for the assessment year at least fifteen calendar days prior to the deadline for filing their petition; and

(B) Documents or affidavits that show the assessed value, which is the value of real or personal property determined by the assessor, changed from the prior assessment year.

(ii) The assessor discovers a latent defect. An assessor submits a request to the board to reconvene and provides an affidavit stating that he or she was unaware of facts which were discoverable at the time of appraisal and the lack of these facts caused the valuation of property to be materially affected.

(A) In the affidavit, the assessor must state the facts that affected the value and also indicate both the incorrect value and the true and fair market value of the property.

(B) The assessor must mail or electronically transmit a copy of the affidavit to the taxpayer.

(C) Submitting this affidavit to the board is for the purpose of correcting latent defects in the assessment process that become apparent only after the normal appeal process has expired, and is wholly within the assessor's discretion.

(iii) A new property owner submits a request to reconvene to consider the sale of property at less than ninety percent of the assessed value and provides:

An affidavit stating that they acquired an interest in the real property in an arm's length transaction, as defined in WAC 458-14-005, after the first day of July and on or before December 31st of the assessment year and the sale price was less than ninety percent of the assessed value. The recording date with the county auditor can be after December 31st of the assessment year. The affidavit must also include the purchase date and sales price of the real property.

(iv) The assessor discovers omitted property or value. The taxpayer or assessor submits a request to the board to reconvene to hear appeals with respect to property or value that was omitted from the assessment rolls and provides a copy of the assessor's notification of omitted property or value.

(A) A request to reconvene the board will not be accepted if it is made concerning an assessment year that is more than three years prior to the year the omitted property or value was discovered.

(B) The request must be filed with the board no later than thirty calendar days, or up to sixty calendar days if a longer time period is adopted by the county legislative authority under RCW 84.40.038, after sending notification of the discovery of the omitted property or value.

(C) Example 1. In April 2017, an assessor discovers property that had been omitted from the assessment roll since



2012. The assessor adds the omitted property to the 2014, 2015, 2016, and 2017 assessment rolls. The assessor then sends notification to the taxpayer regarding the discovery of the omitted property on May 14, 2017. If the taxpayer wants to appeal the addition of the omitted property to the assessment rolls, then the taxpayer must submit a request to reconvene the board, along with a copy of the assessor's notification of the omitted property. Any request by the taxpayer to reconvene the board with respect to the omitted property must be made no later than thirty calendar days after May 14, 2017, or up to sixty calendar days if a longer time period to appeal was adopted by the county legislative authority under RCW 84.40.038.

The board cannot "reconvene" for the 2017 assessment year because the assessor's discovery of the omitted property in April 2017 occurred prior to the assessor certifying the assessment roll to the board before its regularly convened session began. Therefore, if the taxpayer chooses to appeal their value for the 2017 assessment year, they must submit a timely filed appeal as described in WAC 458-14-056.

(v) A taxpayer or assessor submits a request to the board to reconvene regarding an intervening assessment year following a board decision. A taxpayer or assessor submits a request to reconvene the board to review an intervening assessment year or years after receiving a written decision by the board which revalued the property, and provides a copy of the written decision and documentation demonstrating the assessed value did not change from the prior assessment year. The request must demonstrate that:

(A) The same property was valued by the assessor in at least one intervening assessment year, between the filing of the appeal and the issuance of the board's written decision;

(B) The assessed value of the property under appeal did not change during the intervening assessment year or years;

(C) No appeal was filed regarding the same property during the intervening assessment year or years when the assessed value did not change; and

(D) The request to reconvene the board for the intervening assessment year or years is filed with the board no later than thirty calendar days after the board's decision is issued.

(E) Example 2. A taxpayer has an appeal pending before the board appealing their 2016 assessed value of \$75,000. Before the appeal is heard, the assessor certifies the 2017 assessment roll on June 30, 2017. The taxpayer's 2017 assessed value for their property did not change from the 2016 assessed value, and the taxpayer did not file an appeal with the board for the 2017 assessment year before the appeal deadline. The board hearing for the 2016 assessed value was held in October 2017 and the board issued an order overruling the assessor's 2016 assessed value. The taxpayer or assessor can then file a request to reconvene the board for the 2017 assessment year within thirty calendar days of the issuance of the board's 2016 assessment year board order.

(b) A request by a taxpayer or assessor to reconvene the board for the reasons described in (a)(i) through (iii) of this subsection must be filed by April 30 of the year immediately following the assessment year in question.

(c) In making its decision on whether a condition is met to reconvene under its own authority, the board considers the request and documents provided with the request, and any

supplements provided by the requestor prior to the board's decision. When a board decides to grant or deny a reconvene under its own authority for any of the reasons described in this subsection, it must notify both the taxpayer and assessor of its decision in writing.

**(6) When can the department order a board to reconvene?**

(a) The department on its own initiative or in response to a request may require any board to reconvene at any time for the purpose of:

(i) Increasing or decreasing the valuation of any taxable property;

(ii) Adding any property to the assessment roll;

(iii) Performing any order or requirement made by the department; or

(iv) Performing or completing any duty, such as equalization, or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any other purpose allowed by law. RCW 84.08.060.

(b) In making a determination on whether to reconvene in response to a request, the department considers the request and documents provided with the request, and any supplemental documents provided by the taxpayer or assessor prior to the department's decision.

(c) The department will require a board to reconvene if there is a prima facie showing from the requestor that at least one of the following conditions have been met:

(i) Upon request by an assessor when the assessor provides evidence of actual fraud on the part of the taxpayer;

(ii) Upon request by a taxpayer when the taxpayer provides evidence of actual fraud on the part of the assessor; or

(iii) Upon request by a taxpayer or assessor when the requestor provides evidence that the property is overvalued by at least double (one hundred percent), of the true and fair market value. Evidence of at least one hundred percent overvaluation of the true and fair market value of a taxpayer's property must be demonstrated by:

(A) Market value determinations as contained in orders from county boards of equalization or the state board of tax appeals where the order reduced the value by at least one hundred percent;

(B) Stipulated market value agreements between the taxpayer and assessor where the stipulated agreement reduced the value by at least one hundred percent; or

(C) Market-based evidence such as arm's length transactions with a market value appraisal of the subject property, or written documentation regarding zoning changes or mitigation costs for the subject property. A market value appraisal of real property is determined by the use of one or more of the following acceptable approaches to value: Sales comparison approach, cost approach, and/or income approach.

(iv) For purposes of determining whether the conditions of (c)(iii) of this subsection have been met, the following are examples of information not considered evidence of one hundred percent overvaluation of the true and fair market value of the taxpayer's property:

(A) A comparison of assessed values from a prior or subsequent assessment year to another assessment year of the taxpayer's property;

(B) A comparison of assessed values of the taxpayer's property and a neighboring property;

(C) The listing price of a similar property for sale;

(D) Estimates of value from online real estate web sites; and

(E) Board orders or stipulated market value agreements reducing the value by less than one hundred percent.

(v) Example 3. Taxpayer submits a reconvening request because he believes his home is overvalued by at least one hundred percent of the true and fair market value for the 2015 and 2016 assessment years. To demonstrate overvaluation, he provides a comparison of his 2015 and 2016 assessed values to his current 2017 assessed value. Under (c)(iv)(A) of this subsection, the department must deny Taxpayer's reconvening request because the comparison of assessed values of a property from a prior or subsequent assessment year is not considered evidence of a property's true and fair market value. Instead, Taxpayer must submit evidence of the true and fair market value of the property, such as market value appraisals as of the assessment dates at issue (January 1, 2015, and January 1, 2016), before the department can order the board to reconvene.

(vi) Example 4. A property owned by Taxpayer had a 2015 assessed value of \$31,000,000 and a 2016 assessed value of \$22,000,000. Taxpayer timely appealed the 2016 assessed value to the board and the board reduced the assessed value from \$22,000,000 to \$15,000,000. This board order demonstrates the assessor overvalued the property for the 2016 assessment year by forty-seven percent as described below:

<u>2016 Original assessed value:</u>	<u>\$22,000,000</u>
<u>2016 Assessed value on board order:</u>	<u>\$15,000,000</u>
<u>Difference in assessed value:</u>	<u>\$7,000,000</u>
<u>Overvaluation of property for the 2016 assessment year:</u>	<u>47 percent (\$7,000,000/\$15,000,000 = 0.47 (100) = 47%)</u>

Taxpayer then submits a request to reconvene for the 2015 assessment year stating that the property was overvalued by at least one hundred percent. To demonstrate proof of one hundred percent overvaluation for the 2015 assessment year, Taxpayer provides a comparison of the board order reducing the 2016 assessed value to \$15,000,000 (from \$22,000,000) with the 2015 assessed value of \$31,000,000, arguing that the difference between a prior or subsequent year's assessed value can be used to demonstrate a one hundred seven percent overvaluation. However, the department must deny Taxpayer's request for two reasons. First, the assessed value of a property from a prior or subsequent assessment year is not considered evidence of a property's true and fair market value. Second, the board order for the 2016 assessment year only demonstrates the assessor overvalued the property by forty-seven percent, not one hundred percent.

To demonstrate one hundred percent overvaluation for the 2015 assessment year, Taxpayer must submit evidence of the market value of the property as of January 1, 2015, (the 2015 assessment date) either with the request or prior to the department's decision.

(vii) Example 5. Taxpayer appeals her 2016 assessed value to the board and the board reduces the value from \$350,000 to \$150,000. The board order demonstrates the assessor overvalued the property for the 2016 assessment year by one hundred thirty-three percent as described below:

<u>2016 Original assessed value:</u>	<u>\$350,000</u>
<u>2016 Assessed value on board order:</u>	<u>\$150,000</u>
<u>Difference in assessed value:</u>	<u>\$200,000</u>
<u>Overvaluation of property for the 2016 assessment year:</u>	<u>133 percent (\$200,000/\$150,000 = 1.33 (100) = 133%)</u>

Taxpayer then submits a reconvening request to appeal the 2015 assessment year valuation of \$335,000 because she believes the assessor overvalued her property by at least one hundred percent.

Under (c)(iii)(A) of this subsection, the department must grant Taxpayer's request to reconvene the board for the 2015 assessment year based on the 2016 assessment year board order because the order demonstrates that the assessor overvalued her property by at least double (one hundred percent) for the 2016 assessment year.

(viii) Example 6. Taxpayer submits a reconvening request because he believes the assessor's valuation of \$225,000 for his property is overvalued by at least one hundred percent of the true and fair market value for the 2016 assessment year. To demonstrate overvaluation, he provides a market appraisal of the property with a valuation date of March 3, 2016, indicating the property's true and fair market value is \$110,000.

The valuation date of the market appraisal, March 3, 2016, is approximately two months after the assessment date, January 1, 2016, in question. Additionally, a comparison of the 2016 market appraisal value of \$110,000 and the 2016 assessed value of \$225,000 shows an overvaluation of one hundred five percent as described below:

<u>2016 Original assessed value:</u>	<u>\$225,000</u>
<u>Value according to market appraisal dated March 3, 2016:</u>	<u>\$110,000</u>
<u>Difference between assessed value and market appraisal value:</u>	<u>\$115,000</u>
<u>Overvaluation of property for the 2016 assessment year:</u>	<u>105 percent (\$115,000/\$110,000 = 1.05 (100) = 105%)</u>

Therefore, under (c)(iii)(C) of this subsection, the department must approve the request and reconvene the board to hear the taxpayer's appeal for the 2016 assessment year.

**(7) How does a taxpayer or assessor request an approval to reconvene?**

(a) All reconvening requests from a taxpayer or assessor must be submitted to the board in the county the property is located and contain the following information:

(i) The assessment year(s) that is the subject of the request;

(ii) The specific circumstances under subsection (5) or (6) of this rule upon which the request is based; and

(iii) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian of the property, or is a lessee responsible for the payment of the property taxes.

(b) If a request to reconvene is due to any of the circumstances listed in subsection (6) of this rule, the board must forward all reconvening requests and relevant documentation supporting the request to the department.

**(8) Can the three-year limitation on reconvening a board be exceeded?**

(a) No board can reconvene later than three years after the adjournment date of its regularly convened session, except in the case of omitted property or value, as noted in subsection (5)(a)(iv) of this rule.

(b) Example 7. An assessor discovers omitted property in December 2017 that was omitted since 2012. The board adjourned its regularly convened session for the 2017 assessment year in August 2017 and adjourned its regularly convened session for the 2014 assessment year in August 2014. Under these circumstances, the board may only reconvene to hear an appeal for assessment years 2014, 2015, 2016, and 2017. Although it has been more than three years since the adjournment of the board's 2014 regularly convened session (August 2014), it has not been more than three years prior to the year of discovery (2017) of the omitted property. RCW 84.40.085.

**(9) Calculating the three-year limitation.** Under subsections (5) and (6) of this rule, boards may reconvene under their own authority or by the authority from the department, within three years after the adjournment date of their regularly convened session. Therefore, the three-year limitation is determined by the "date of adjournment" of the board's regularly convened session.

(a) Example 8. The assessor certifies the 2016 assessment roll to the board on June 30, 2016, and the board begins its regularly convened session on July 15, 2016, and meets for twenty-eight days. Based on these facts, the board's "date of adjournment" will be August 11, 2016. Therefore, the allowable time period to submit a request to reconvene for the 2016 assessment year will be from August 12, 2016, through August 11, 2019.

(b) Example 9. The assessor certifies the 2018 assessment roll to the board on August 10, 2018, and the board begins its regularly convened session on August 24, 2018, and meets for twenty-one days. Based on these facts, the board's "date of adjournment" will be September 13, 2018. Therefore, the allowable time period to submit a request to reconvene for the 2018 assessment year will be from September 14, 2018, through September 13, 2021.

**(10) Denial of a reconvening request.**

(a) An assessor or property owner feeling aggrieved by the denial of a reconvening request issued by the board may file an appeal with the state board of tax appeals in accordance with WAC 458-14-170.

(b) An assessor or property owner feeling aggrieved by the denial of a reconvening request issued by the department may appeal by filing with the state board of tax appeals, a notice of appeal within thirty days after the department has mailed its decision.

**WSR 18-08-078**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 4, 2018, 7:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-087.

Title of Rule and Other Identifying Information: New WAC 308-104-0140 Marking of all nonenhanced drivers' licenses or identicards.

Hearing Location(s): On May 8, 2018, Tuesday, at 2:30 - 5 p.m., at Lacey City Hall, [420] College Street S.E., Lacey, WA 98503; on May 9, 2018, Wednesday, at 10 a.m. - 3 p.m., at Kent Memorial Park, 525 Fourth Avenue North, Kent, WA 98032; on May 10, 2018, Thursday, at 9 a.m. - 12 p.m., at Spokane City Hall, 808 West Spokane Falls Boulevard, Spokane, WA 99201; and on May 11, 2018, Friday, at 9 a.m. - 12 p.m., at Southridge Sports and Event Complex, 2901 Southridge Boulevard #A, Kennewick [Kennewick], WA 99338.

Date of Intended Adoption: May 28, 2018.

Submit Written Comments to: Stephanie Sams, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email DOLRealID@dol.wa.gov, fax 360-664-0116, by May 14, 2018.

Assistance for Persons with Disabilities: Contact Stephanie Sams, phone 360-902-0131, fax 360-664-0116, email DOLRealID@dol.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is related to the marking of nonenhanced document issuances required by ESB 5008 enacted during the 2017 legislative session. It is in accordance with federal law that requires states meet federal REAL ID standards (6 C.F.R. Sec. 37.71).

Reasons Supporting Proposal: This rule is required due to legislation enacted during the 2017 legislative session. The amendment creates a new section in chapter 308-104 WAC, and allows Washington state to be compliant with federal and state law (6 C.F.R. Sec. 37.71).

Statutory Authority for Adoption: RCW 46.20.192.

Statute Being Implemented: RCW 46.20.192.

Rule is necessary because of federal law, 6 C.F.R. Sec. 37.71.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Sams, Highway[s-]Licenses Building, Olympia, Washington, 360-902-0131; Implementation and Enforcement: Greg Mukai, Highway[s-]Licenses Building, Olympia, Washington, 360-902-3851.

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 is explicitly and specifically dictated by statute and federal law.

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: 6 C.F.R. Sec. 37.71.

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

April 4, 2018  
Damon Monroe  
Rules Coordinator

#### NEW SECTION

**WAC 308-104-0140 Marking of all nonenhanced drivers' licenses or identicards.** Beginning July 1, 2018, except for enhanced drivers' licenses and identicards issued under RCW 46.20.202, the department shall mark all issuances made pursuant to chapter 46.20 RCW with the phrase "FEDERAL LIMITS APPLY."

**WSR 18-08-082**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed April 4, 2018, 8:41 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 16-561 WAC, Washington red raspberry commission.

Hearing Location(s): On May 9, 2018, at 11:00 a.m., at 204 Hawley Street, Lynden, WA 98264.

Date of Intended Adoption: June 27, 2018.

Submit Written Comments to: Teresa Norman, Commodity Commission Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email WSDARulesComments@agr.wa.gov, fax 360-902-2092, by May 9, 2018.

Assistance for Persons with Disabilities: Contact Teresa Norman, phone 360-902-2043, fax 360-902-2092, TTY 800-833-6388, email tnorman@agr.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 16-561 WAC is the marketing order for the Washington red raspberry commission. These proposed amendments add public records disclosure procedures, as required by RCW 42.56-040. In addition, the proposal allows the board to set the assessment rate up to a maximum of \$0.02 per affected unit (pound) and clarifies when assessments are due and payable to the commission.

Reasons Supporting Proposal: Under RCW 42.56.040, each state agency has a duty to publish its procedures regarding public disclosure requests. In addition, the board requests the authority to increase the assessment to \$0.02 per pound in order to respond to extraordinary challenges requiring investments which are beyond the Washington red raspberry commission's normal capacity to address.

Statutory Authority for Adoption: RCW 15.65.047 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Significant proposed rules will not be adopted unless those proposed rules are also approved in a referendum of affected red raspberry producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington red raspberry commission, governmental.

Name of Agency Personnel Responsible for Drafting: Teresa Norman, Olympia, 360-902-2043; Implementation and Enforcement: Henry Bierlink, Lynden, 360-354-8767.

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. Rule-making proceedings conducted under chapter 15.65 RCW are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties. This rule-making process will include a referendum vote of affected parties. In addition, the department of agriculture and the Washington red raspberry commission are not named agencies under RCW 34.05.328 (5)(a)(i).

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

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

April 3, 2018  
Patrick Capper  
Deputy Director

AMENDATORY SECTION (Amending WSR 14-03-007, filed 1/6/14, effective 2/6/14)

**WAC 16-561-006 Marketing order purposes.** This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; increasing production efficiency; ensuring a fair regulatory environment; or increasing per capita consumption of red raspberries grown in Washington state. The Washington state red raspberry commodity board is designated by the director to conduct programs in accordance with chapter 15.65 RCW.

(1) To carry out the purposes of the marketing order, the board may provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion or other programs for maintaining present markets or creating new or larger markets for raspberries. Programs shall be directed toward increasing the sale of raspberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims on behalf of raspberries nor disparage the quality, value, sale, or use of any other agricultural commodity. The board may also engage in cooperative efforts in the domestic or foreign marketing of red raspberries;

(b) Develop and engage in research for developing better and more efficient production, processing, irrigation, transportation, handling, or marketing of red raspberries and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried out by Washington State University, but if in the judgment of the board, Washington State University does not have adequate facilities for a particular project or if some other research agency has better facilities, the project may be carried out by other research agencies selected by the board;

(c) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services to affected producers for the verification of weights, tests, and sampling of quality and quantity of raspberries purchased by handlers from affected producers;

(ii) Information and services enabling producers to meet their resource conservation objectives;

(iii) Red raspberry-related education and training.

(d) Subject to the provisions of ~~((the act))~~ chapter 15.65 RCW, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of red raspberries produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of red raspberries; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(3) The Washington state red raspberry commission will not adopt rules relating to grades and standards.

AMENDATORY SECTION (Amending WSR 14-03-007, filed 1/6/14, effective 2/6/14)

**WAC 16-561-010 Definitions.** Definitions for terms used in this chapter must be interpreted as consistent with the definitions in chapter 15.65 RCW, Washington state agricultural commodity boards.

~~((1))~~ "Director" means the director of agriculture of the state of Washington or the director's duly appointed representative.

~~(2)~~ "Department" means the department of agriculture of the state of Washington.

~~(3)~~ "Act" means the Washington State Agricultural Enabling Act or chapter 15.65 RCW.

~~(4)~~ "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government.

~~(5)~~ "Affected producer" means any person who produces or stores in the state of Washington raspberries in commercial quantities for fresh market, for processing, or for sale to processors. "To produce" means to act as a producer.

~~(6)~~ "Commercial quantity" means any raspberries produced or stored in quantities of three tons (6,000 pounds) or more, in any calendar year.

~~(7)~~ "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing raspberries not produced by him or her. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

~~(8)~~ "Red raspberry commodity board," hereinafter referred to as "board" or "commission" means the commodity board formed under the provisions of WAC 16-561-020.

~~(9)~~ "Raspberries" means and includes all kinds, varieties, and hybrids of "*rubus idaeus*" of red color.

~~(10)~~ "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.

~~(11)~~ "Producer handler" means any person who acts both as a producer and as a handler with respect to raspberries. A producer handler shall be deemed to be a producer with respect to the raspberries which he or she produces and a handler with respect to the raspberries which he or she handles, including those produced by himself or herself.

~~(12)~~ "Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.

~~(13)~~ "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

~~(14)~~ "Affected unit" means one pound net of raspberries. "Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.

"Affected producer" means any person who produces or stores in the state of Washington raspberries in commercial quantities for fresh market, for processing, or for sale to processors. "To produce" means to act as a producer.

"Affected unit" means one pound net of raspberries.

"Commercial quantity" means any raspberries produced or stored in quantities of three tons (6,000 pounds) or more, in any calendar year.

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

"Director" means the director of agriculture of the state of Washington or the director's duly appointed representative.

"Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing raspberries not produced by him or her. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

"Harvest season" means that period from May 1st to September 15th of each year.

"Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment and normal incidental expenses at meetings or gatherings.

"Marketing season" or "fiscal year" means the twelve-month period beginning with January 1st of any year and

ending with the last day of December following, both dates being inclusive.

"Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government.

"Producer-handler" means any person who acts both as a producer and as a handler with respect to raspberries. A producer-handler shall be deemed to be a producer with respect to the raspberries which he or she produces and a handler with respect to the raspberries which he or she handles, including those produced by himself or herself.

"Promotional hosting" as used in these rules means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations, promoting sales of red raspberries, developing industry unity, and furthering the objectives of the commission.

"Raspberries" means and includes all kinds, varieties, and hybrids of "*rubus idaeus*" of red color.

"Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

"Washington red raspberry commission," hereinafter referred to as "board," "commission," or "WRRRC" means the commodity board formed under the provisions of WAC 16-561-020.

AMENDATORY SECTION (Amending WSR 14-03-007, filed 1/6/14, effective 2/6/14)

**WAC 16-561-020 Red raspberry commodity board.**

(1) **Administration.** The provisions of this order and the applicable provisions of ~~((the act))~~ chapter 15.65 RCW shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of seven voting members. Six members shall be affected producers appointed or elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the director. The position representing the director shall be a voting member.

(b) Director-appointed producer positions on the board shall be designated as position 1, position 5, and position 6.

(c) Elected producer positions on the board shall be designated as position 2, position 3, and position 4.

(d) The position representing the director who is neither an affected producer nor a handler shall be designated as position 7.

(e) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be that portion of the state of Washington located west of the summit of the Cascade Mountains and shall be divided into two representative districts as follows:

(i) District I shall have three board members, being positions 1, 2, and 3, and shall include the counties of Whatcom, Skagit, Snohomish, and King.

(ii) District II shall have one board member, being position 4, and shall include all western Washington counties not included in District I.

(iii) Positions 5 and 6 are designated as at-large position and may be filled from any western Washington county. The positions are filled in accordance with RCW 15.65.250.

(f) The voting board may also appoint up to two additional nonvoting members to serve in an advisory capacity from among the crop advisors, handlers or others with expertise in the red raspberry industry. The voting members of the board will make these appointments at the first meeting of the calendar year. Advisory board member appointments are for a one-year period. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(3) **Board membership qualifications.** The producer members of the board must be practical producers of raspberries and each shall be a resident of this state, and over the age of eighteen years. Each producer board member must be and have been actually engaged in producing raspberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his or her income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of appointment or election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.

(4) **Term of office.**

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year. Terms shall expire on November 30th.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through six and the member representing the director, position seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - One year;

Positions three, four, five, and nine - Two years;

Positions six, seven, eight, ten, and eleven - Three years.

(d) To accomplish the transition to the newly defined districts and areas and to a commodity board structure where the director appoints a majority of the voting board members, the initial producer appointments are as follows:

(i) The current incumbent representing position 6 will be appointed to the new position 1 with an expiration date of November 30, 2015;

(ii) The current incumbent representing position 8 will be appointed to the new position 2 with an expiration date of November 30, 2016;

(iii) The current incumbent representing position 3 will be appointed to the new position 3 with an expiration date of November 30, 2014;

(iv) The current incumbent representing position 5 will be appointed to the new position 4 with an expiration date of November 30, 2014;

(v) The current incumbent representing position 9 will be appointed to the new position 5 with an expiration date of November 30, 2015;

(vi) The current incumbent representing position 10 will be appointed to the new position 6 with an expiration date of November 30, 2016.

Any remaining board members not appointed to a new position will serve out the remainder of their existing term.

(e) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms. Any previous board member may be reelected to a qualified position after such term limits if at least one full three-year period has passed since the last date of the second consecutive term in office.

**(5) Nomination of elected or director-appointed board members.** Each year the director shall call a nomination meeting for elected or director-appointed producer board members. The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of a nomination meeting shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers within the affected area according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by not less than five affected producers.

**(6) Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of October. Each affected producer shall be entitled to one vote.

(b) Elected members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area.

(c) If a nominee for an elected position does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(d) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(e) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of the election. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on the

list of affected producers within the affected area maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications.

(f) Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

**(7) Vacancies.**

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the board unless the person fails to meet the qualifications of board members under chapter 15.65 RCW and this order.

**(8) Quorum.** A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

**(9) Board compensation.** No member of the board shall receive any salary or other compensation, but each voting and advisory board member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.-050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

**(10) Procedures for board.**

(a) The board shall hold regular meetings, at least four times annually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change of the regular meeting schedule shall be published in the *Washington State Register* at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by regular news service.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice of special meetings will be in compliance with chapter 42.30 RCW.

**AMENDATORY SECTION** (Amending WSR 14-03-007, filed 1/6/14, effective 2/6/14)

**WAC 16-561-035 Powers and duties of the board.**

The board shall have the following powers and duties to:

(1) Administer, enforce, and control the provisions of this order as the designee of the director.

(2) Elect a chairman and such other officers as the board deems advisable.

(3) Employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of ~~((the act))~~ chapter 15.65 RCW.

(4) Pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(5) Reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(6) Establish a "raspberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board shall be deposited as often as advisable.

(7) Keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.

(8) Require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(9) Prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least fifteen days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(10) Establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(11) Adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(12) Carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of ~~((the order and the act))~~ chapters 16-561 WAC and 15.65 RCW, along with the necessary authority and procedure for obtaining such information.

(13) Bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon

him by ~~((the act or the order))~~ chapter 15.65 RCW or 16-561 WAC.

(14) Confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.

(15) Authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.

(16) Work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(17) Enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.26 RCW.

(18) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(19) Enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of red raspberries.

(20) Retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(21) Engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(22) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of red raspberries, including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(23) Maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the units of each producer's production pursuant to RCW 15.65.295. This list may be compiled from information used to collect producer assessments for a three-year period.

(24) Maintain a list of the names and addresses of persons who handle red raspberries within the affected area and data on the amount of the red raspberries handled by each person pursuant to RCW 15.65.295 for a minimum three-year period.

(25) Establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(26) Acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to red raspberries.



(27) Submit for review and approval by the director of any new or amended marketing, including for the purposes required under RCW 15.65.287.

(28) Carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

AMENDATORY SECTION (Amending WSR 14-03-007, filed 1/6/14, effective 2/6/14)

**WAC 16-561-040 Assessments and collections. (1) Assessments.**

(a) The annual assessment on all varieties of raspberries for the crop year just concluded shall be ~~((one-half cent per affected unit (pound)))~~ set by the board prior to October 31st. The board has the authority to set the rate within a range of zero to two cents per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(iii) Require in the case of assessments against affected units stored in frozen condition:

(A) Cold storage facilities storing the commodity to file information and reports with the commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(B) That the commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

~~((e))~~ (C) Subsequent to the first sale, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped, stored, or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of this order during or with respect to any season or year, may be refunded on a pro rata basis at the close of the season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of ~~((this act))~~ chapter 15.65 RCW and the purposes of this marketing order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year, or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in a specified amount as may be determined by the board pursuant to the provisions of ~~((the act and the order))~~ chapters 15.65 RCW and 16-561 WAC, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of the assessment or other sum on or before the date due, the board may, and is

hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of it. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending WSR 86-13-012, filed 6/6/86)

**WAC 16-561-041 Time—Place—Method for payment and collection of assessments.** Effective with the growing season of 1977, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-561-040:

(1) All first handlers of raspberries for resale or for processing shall withhold the amount of the assessment from their remittance to growers and transmit same to the commission. Where the first handler does not remit proceeds to the producer, the first handler shall include in his bill for services the assessment due and upon payment by the producer shall remit same to the commission. All such assessments accumulated will be due and payable to the commission ~~((on or before October 15 of each year))~~ in four installments payable December 1st of the current calendar year, followed by February 1st, April 1st, and concluding June 1st of the following calendar year. First handlers shall submit to the commission on or before October ~~((15))~~ 1st of each year, a report listing the name, address, pounds handled or purchased, and amount deducted or collected for each producer on forms provided by the commission.

(2) All growers selling raspberries other than to first handlers for resale or processing, whether selling direct or through brokers, and including all sales at retail, shall ~~((pay the assessment directly to the commission, on or before September 30 of each year))~~ submit to the commission on or before October 1st of each year, a report listing the pounds produced in the current harvest season on forms provided by the commission, and shall pay the assessment directly to the commission in four installments payable December 1st of the current year, followed by February 1st, April 1st, and concluding June 1st of the following calendar year.

(3) All growers having raspberries in cold storage that are not sold on September 15<sup>th</sup> of each year, shall compute the assessment due on such berries and pay same to the commission by September 30<sup>th</sup> of each year.

(4) Any assessments paid after the above deadlines shall be accompanied by a penalty fee of ~~((10%))~~ ten percent as provided in RCW 15.65.440 ~~((of the act))~~.

AMENDATORY SECTION (Amending WSR 93-20-088, filed 10/5/93, effective 11/5/93)

**WAC 16-561-120 ~~((Implementation))~~ Promotional hosting.** The implementation of the rules governing promotional hosting expenditures for the Washington red raspberry commission shall be as follows:

(1) Budget approval. Commission expenditures for agricultural development or trade promotion and promotional hosting shall be pursuant to specific budget items as approved by the commission at regular meetings held to review such matters.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development or trade promotion and promotional hosting in accordance with the provisions of these rules:

- (a) Commissioners;
- (b) Administrator;
- (c) Marketing director;
- (d) Contractors, as specifically authorized by the commission.

Individual commissioners shall make promotional hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by vouchers to which receipts are attached. Voucher forms may be supplied by the commission, and shall require the following information:

- (a) Name and position of each person hosted, provided that in case of a group of twenty-five or more persons, then only the name of the group hosted shall be required;
- (b) General purpose of the hosting;
- (c) Date of hosting;
- (d) Location of the hosting;
- (e) To whom payment was or will be made;
- (f) Signature of person seeking payment or reimbursement.

(4) The chairman and vice chairman-treasurer of the commission and the administrator are authorized to approve direct payment or reimbursements submitted in accordance with these rules.

(5) The following persons may be hosted when it is reasonably believed such hosting will cultivate trade relations, promote sales of red raspberries, or develop industry unity, provided that such hosting shall not violate federal or state conflict of interest laws:

- (a) Individuals from private business;
- (b) Foreign government officials;
- (c) Federal and state officials, provided lodging, meals and transportation will not be provided when such officials may obtain reimbursement for these expenses from their government employer;
- (d) The general public, at meetings and gatherings open to the general public;
- (e) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (d) of this subsection are being hosted will cultivate trade relations, promote sales of red raspberries, or further the objectives of the commission;
- (f) Spouses of the persons listed in (a), (b), (c), and (e) of this subsection when attendance of such spouse will serve to cultivate trade relations, promote the sale of red raspberries or develop industry unity.

#### NEW SECTION

**WAC 16-561-125 Description of commission, address and telephone number of the Washington red raspberry commission.** Headquartered at 204 Hawley Street, Lynden, Washington 98264, the Washington red raspberry commission serves Washington red raspberry producers by supporting the red raspberry industry in the areas of research and marketing. The telephone number is 360-354-8767.

#### NEW SECTION

**WAC 16-561-130 Public records officer.** (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

#### NEW SECTION

**WAC 16-561-135 Requests for public records.** (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to:

Washington Red Raspberry Commission  
204 Hawley Street  
Lynden, WA 98264

The request may also be submitted by fax to 360-354-0948 or by email to [info@red-raspberry.org](mailto:info@red-raspberry.org). The written request should include:

- (a) The name, address and telephone number or other contact information of the person requesting the records;
  - (b) The calendar date on which the request is made; and
  - (c) Sufficient information to readily identify records being requested.
- (2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:
- (a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;
  - (b) Inspection of any public record will be conducted in the presence of the public records officer or designee;
  - (c) Public records may not be marked or altered in any manner during the inspection;
  - (d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment

shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

#### NEW SECTION

**WAC 16-561-140 Response to public records requests.** (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

#### NEW SECTION

**WAC 16-561-145 Fees—Inspection and copying.** (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington red raspberry commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

#### NEW SECTION

**WAC 16-561-150 Exemptions.** The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.65 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.65 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(8)).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2)).

#### NEW SECTION

**WAC 16-561-155 Review of denial of public records requests.** (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

#### NEW SECTION

**WAC 16-561-160 Records index.** The commission shall establish a records index, which shall be made available for public review.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-561-100 Purpose.

WAC 16-561-110 Definitions.

**WSR 18-08-083****PROPOSED RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed April 4, 2018, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-134.

Title of Rule and Other Identifying Information: Chapter 192-510 WAC, Assessing and collecting premiums:

- WAC 192-510-010 Election, withdrawal, and cancellation of coverage.
- WAC 192-510-020 Election of coverage for federally recognized tribes.
- WAC 192-510-030 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?
- WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grant?
- WAC 192-510-050 How will the department assess the size of new employers?
- WAC 192-510-060 When are employer premium payments due?
- WAC 192-510-070 What is "localization" and how does it affect conditional waivers?
- WAC 192-510-080 What are the requirements to be eligible for a conditional premium waiver?

Chapter 192-520 WAC, Collective bargaining agreements:

- WAC 192-520-010 Parties to collective bargaining agreements.

Chapter 192-530 WAC, Voluntary plans:

- WAC 192-530-010 What are the employer application requirements for voluntary plans?
- WAC 192-530-020 Voluntary plans—Employer plan requirements.
- WAC 192-530-030 Voluntary plans—Employee eligibility criteria.
- WAC 192-530-040 Voluntary plans—Notice requirements under RCW 50A.04.075.
- WAC 192-530-050 Avoiding a duplication of benefits under state and voluntary plans.
- WAC 192-530-060 What happens at the end of a voluntary plan?

Hearing Location(s): On May 23, 2018, at 9:00 a.m., at 640 Woodland Square Loop S.E., Lacey, WA 98503. Meeting will be in the Park Place conference room.

Date of Intended Adoption: May 23, 2018.

Submit Written Comments to: Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [cstreuli@esd.wa.gov](mailto:cstreuli@esd.wa.gov), online portal [https://www.peakdemocracy.com/portals/289/forum\\_home?phase=open](https://www.peakdemocracy.com/portals/289/forum_home?phase=open), by May 23, 2018.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-902-9354, TTY 711, email [TEckstein@esd.wa.gov](mailto:TEckstein@esd.wa.gov), by May 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will further define paid family and medical leave requirements for premium assessment and collection, election of coverage, voluntary plans, conditional premium waivers and businesses with existing collective bargaining agreements.

Reasons Supporting Proposal: The rules will assist in meeting the requirements to implement the collection of premiums and accept voluntary plans from Washington employers by January 1, 2019, as mandated by Title 50A RCW, Family and medical leave.

Statutory Authority for Adoption: RCW 50A.04.215.

Statute Being Implemented: RCW 50A.04.010, 50A.04.-105, 50A.04.110, 50A.04.115, 50A.04.120, 50A.04.125, 50A.04.235, 50A.04.600, 50A.04.605, 50A.04.610, 50A.04.-615, 50A.04.620, 50A.04.650, and 50A.04.665.

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

Name of Proponent: Employment security department, paid family and medical leave division, governmental.

Name of Agency Personnel Responsible for Drafting: Christina Streuli, Lacey, Washington, 360-791-6710; Implementation and Enforcement: Matt Buelow, Lacey, Washington, 360-742-7311.

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 Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-791-6710, TTY Teresa Eckstein, state EO officer, 360-902-9354, 711, [TEckstein@esd.wa.gov](mailto:TEckstein@esd.wa.gov), email [cstreuli@esd.wa.gov](mailto:cstreuli@esd.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 34.05.328 (5)(c)(ii) and (iii)(C).

Explanation of exemptions: RCW 34.05.328 (5)(c)(ii) creates an exemption for interpretive rules. This exemption applies to portions of the proposal. RCW 34.05.328 (5)(c)(iii) (C) outlines conditions which must be met for a rule to require analysis. Portions of the proposal do not meet these requirements.

#### Small Business Economic Impact Statement

Rules implementing Title 50A RCW, the family and medical leave program, chapters 192-510, 192-520, and 192-530 WAC.

**1. Provide a brief description of the requirements of the proposed rules:**

In 2017, the Washington state legislature passed SSB 5975 relating to paid family and medical leave. SSB 5975 was codified as Title 50A RCW.

Title 50A RCW creates a statewide paid family and medical leave insurance program that provides for at least partial wage replacement when a qualified employee takes leave for an approved reason related to family or medical leave.

The legislature requires the state to develop rules implementing the program.

These rules are being developed by the employment security department and will be filed in multiple phases. This filing comprises rules developed in phase one, which covers regulations related to voluntary plans, collective bargaining agreements, and premium assessment.

The rules in phase one provide requirements to which employers with an approved voluntary plan must adhere in order to maintain the integrity of the overall program. The rules contain regulations around communication of necessary information between the state and voluntary plan employers, clearer direction and clarification around certain aspects of the law pertaining to voluntary plans, benefit duplication prevention, and voluntary plan termination determinations.

The rules also lay out eligibility requirements around collective bargaining agreements in effect prior to October 19, 2017, and the responsibilities of employers with respect to certain collective bargaining units who might be exempt under the law.

There is also clarification around premium assessment, with emphasis on when and how an employer is assessed.

**2. Costs to businesses to comply with the proposed rules:**

The majority of phase one rules do not require a calculation of cost for compliance.<sup>1</sup> The following rules do require this analysis:

<sup>1</sup> See chapter 5 of the significance analysis for a complete list of rules that do and do not require cost analysis in the small business economic impact study or the significance analysis.

*WAC 192-530-010 What are the employer application requirements for voluntary plans?*<sup>2</sup>

<b>Total Estimated Cost to Employee Benefits</b>	\$11,598,460.66
<b>Total Estimated Opportunity Costs</b>	\$1,412,650.93
<b>Total Estimated Cost</b>	\$13,011,111.59

<sup>2</sup> See chapter 5 of the significance analysis for full details on the costs imposed on businesses for complying with WAC 192-530-010.

*WAC 192-530-030 Voluntary plans—Employee eligibility criteria.*<sup>3</sup>

<b>Total Estimated Cost to Verification</b>	\$730,067.71
<b>Total Estimated Cost to Reporting</b>	\$1,588,573.96
<b>Total Estimated Cost</b>	\$2,318,641.67

<sup>3</sup> See chapter 5 of the significance analysis for full details on the costs imposed on businesses for complying with WAC 192-530-030.

**3. Impact on sales or revenue:**

Any impact on sales or revenue is assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rule making pertaining to its implementation.

**4. Cost of compliance for small businesses vs. ten percent of largest businesses:**

*WAC 192-530-010: What are the employer application requirements for voluntary plans?* Analysis has revealed no disproportionate impact on small businesses for the establishment of a quarterly schedule for voluntary plan effective dates.<sup>4</sup>

<sup>4</sup> See chapter 5 of the significance analysis for full details on the costs imposed on businesses for complying with WAC 192-530-010.

*WAC 192-530-030: Voluntary plans—Employee eligibility criteria.* Analysis has revealed that there may be a disproportionate impact on small businesses for the establishment of a requirement to notify the department of an employee's eligibility for a voluntary plan who was previously covered by the state plan.

Analysis has revealed that there may be a disproportionate impact on small businesses for the establishment of a requirement requiring small business owners and/or staff to obtain employee data to ensure compliance with the law for a voluntary plan.

**5. Steps taken to reduce costs on small businesses:**

RCW 19.85.030(2) lists several options for agencies to consider when attempting to reduce the impact of proposed rules on small businesses. These options were considered by agency staff and ultimately deemed unfeasible based on the nature of the rules in question.

Since all elements of WAC 192-530-010 and 192-530-030 are dependent on the employer or self-employed individual opting in to a nonrequired component of the law, no specific steps were taken to reduce costs on small businesses. These rules have been deemed necessary by the department to ensure compliance with statutory requirements.

However, the statute, itself does allow opportunities for businesses that employ one hundred fifty or fewer employees to receive grants from the state to assist with monetary losses attributable to certain personnel decisions made when an employee takes leave under Title 50A RCW.

**6. How did the agency involve small businesses?**

As part of its rule-making process, the employment security department created an advisory committee consisting of advocates for both employer and employee interests. The team of advocates for employer interests represents several businesses in the state, including small businesses. These advocates were integral in the development of both the law and the rules governing it.

In addition, several public meetings were held prior to filing the notice of proposed rules. Two informal "listening sessions" were held where any member of the public, including small business owners and stakeholders, could voice their opinions on what should be covered by rule in each phase. The department also hosted two "pre-102 meetings" where

representatives of the department presented drafts of rules and opened the floor for public comment.

All stakeholders, including small business representatives, were also allowed to post comments in response to agency draft rules online through a civic engagement portal.

**7. List of industries affected:**

Title 50A RCW generally applies to all employers in Washington state, apart from the federal government.

2-digit NAICS	Industry sectors	Total Establishments	Total Employment
<b>Total</b>	<b>Total</b>	<b>243,084</b>	<b>3,225,703</b>
11	Agriculture, forestry, fishing and hunting	7,415	89,295
21	Mining	172	2,350
22	Utilities	591	18,747
23	Construction	25,033	180,526
31, 32, 33	Manufacturing	7,698	293,807
42	Wholesale trade	14,199	130,050
44, 45	Retail trade	20,550	368,567
48, 49	Transportation and warehousing	5,633	124,044
51	Information	4,441	128,611
52	Finance and insurance	8,885	93,768
53	Real estate and rental and leasing	8,344	51,941
54	Professional and technical services	25,655	199,303
55	Management of companies and enterprises	716	43,711
56	Administrative and waste services	12,502	161,480
61	Educational services	3,843	283,651
62	Healthcare and social assistance	55,341	460,623
71	Arts, entertainment and recreation	3,104	70,512
72	Accommodation and food services	17,094	267,382
81	Other services, except public administration	19,739	96,565
92	Public administration	2,129	160,770

Source: Employment Security Department

**8. Number of jobs lost/created:**

Any jobs lost or created are assumed to be a result of the passage of SSB 5975 by the state legislature rather than the result of agency rule making pertaining to its implementation.

A copy of the statement may be obtained by contacting Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-791-6710, TTY Teresa Eckstein, state EO officer, 360-902-9354, 711, TEckstein@esd.wa.gov, email cstreuli@esd.wa.gov.

April 4, 2018  
Dale Peinecke  
Commissioner

**Chapter 192-510 WAC**

**ASSESSING AND COLLECTING PREMIUMS**

NEW SECTION

**WAC 192-510-010 Election, withdrawal, and cancellation of coverage.** (1) Self-employed persons as defined in RCW 50A.04.105(1) and federally recognized tribes as defined in RCW 50A.04.110 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the calendar quarter immediately following the notice of election.

(4) A period of coverage is defined as:

(a) Three calendar years following the first day of elective coverage or any gap in coverage;

(b) Each subsequent calendar year.

(5) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(6) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(7) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

NEW SECTION

**WAC 192-510-020 Election of coverage for federally recognized tribes.** (1) Federally recognized tribes electing coverage are employers as defined in RCW 50A.04.010 and are subject to all rights and responsibilities under Title 50A RCW.

(2) Employees of federally recognized tribes that elect coverage are employees as defined in RCW 50A.04.010 and are subject to all the rights and responsibilities under Title 50A RCW.

NEW SECTION

**WAC 192-510-030 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?** (1) The department will use the self-employed person's reported income and divide it by the state's minimum wage to presume the number of hours worked.

**Example:** For this example, the state's minimum wage is \$12.00 per hour. The self-employed person electing coverage reports \$10,000 of income in a quarter. The department will divide \$10,000 by \$12.00 and presume the self-employed person worked 833 hours in that quarter.

(2) The self-employed person may overcome the presumption of hours by providing sufficient documentation to the department including, but not limited to, personal logs or contracts.

(3) The department may require copies of tax returns, bank records, or any other documentation deemed necessary

by the department to verify or determine the self-employed person's hours and wages.

#### NEW SECTION

**WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?** (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will only count the number of in-state employees as defined in RCW 50A.04.010(4) when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have fifty or more employees for the preceding calendar year, and the employer is then determined to have fewer than fifty employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than fifty employees for the preceding calendar year, and the employer is then determined to have fifty or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

**Example:** On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.

#### NEW SECTION

**WAC 192-510-050 How will the department assess the size of new employers?** An employer who has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect until the following September 30th pursuant to RCW 50A.04.115 (8)(c).

#### NEW SECTION

**WAC 192-510-060 When are employer premium payments due?** (1) Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following

the end of the calendar quarter for which premiums are being paid.

(2) Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

(3) Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest under RCW 50A.04.140.

#### NEW SECTION

**WAC 192-510-070 What is "localization" and how does it affect conditional waivers?** (1) An employee's work is subject to all reporting requirements and premiums when the work is localized in Washington. An employee's work is considered localized in Washington when:

(a) All of the employee's work is performed entirely within Washington; or

(b) Most of the employee's services are performed within Washington, but some of the work which is temporary or transitory in nature, or consists of isolated transactions is performed outside of Washington.

(2) Services that are not localized in Washington will be subject to reporting requirements and premiums when the services are not localized in any state, but some of the services are performed in Washington, and:

(a) The base of operations of the employee is in Washington, or if there is no base of operations, then the place from which such services is directed or controlled is in Washington; or

(b) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in Washington.

**Example:** A storm hits Washington. An employer in Oregon dispatches an employee who typically lives and works in Oregon to help with repair work. The employee works temporarily in Washington for the employer for one week, and then returns to work in Oregon for the employer. The employment is localized within Oregon and is not subject to premium assessment.

#### NEW SECTION

**WAC 192-510-080 What are the requirements to be eligible for a conditional premium waiver?** (1) An employer and employee may be eligible for a conditional waiver of premium payments by satisfying the requirements of RCW 50A.04.120.

(2) A conditional premium waiver is not required for work that is not subject to premiums under WAC 192-510-070 or fails to meet the definition of employment in RCW 50A.04.010 (7)(a).

(3) Any conditional premium waiver request must be submitted to the department online or in another format approved by the department.

(4) As a condition to granting the conditional premium waiver, the employer must file quarterly reports to verify that employees still qualify for the conditional premium waiver.

(5) Once an employee works eight hundred twenty hours in a qualifying period localized in Washington for an employer, the conditional premium waiver expires.

(6) The department may require the employer to submit additional documentation as necessary.

(7) If the employee exceeds eight hundred twenty hours or more in a qualifying period, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the qualifying period in which the employee exceeded eight hundred twenty hours had the waiver not been granted. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.

**Example:** A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer could request a conditional premium waiver for this employee.

### Chapter 192-520 WAC

#### COLLECTIVE BARGAINING AGREEMENTS

##### NEW SECTION

**WAC 192-520-010 Parties to collective bargaining agreements.** (1) The rights and responsibilities under Title 50A RCW do not apply to parties covered by collective bargaining agreements in effect before October 19, 2017, unless and until the agreements expire, are reopened, or are renegotiated.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) An employer must file quarterly reports once a collective bargaining agreement expires, is reopened, or is renegotiated.

(4) To be eligible for benefits, an employee must have worked at least eight hundred twenty hours during the qualifying period. If the employee's qualifying period includes any quarter prior to a collective bargaining agreement being reopened, renegotiated, or expiring, the department will request the employee's qualifying period wages and hours from the employer. The employer must provide the wages and hours to the department within ten calendar days.

(5) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50A RCW. Employers are also subject to the rights and responsibilities of Title 50A RCW for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(6) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50A RCW as they pertain to the bargaining units whose collective bargaining agreement has expired, been reopened, or renegotiated, on or after October 19, 2017.

### Chapter 192-530 WAC

#### VOLUNTARY PLANS

##### NEW SECTION

**WAC 192-530-010 What are the employer application requirements for voluntary plans?** (1) A voluntary plan application must be submitted to the department online or in another format approved by the department. Incomplete applications will not be reviewed. Voluntary plan application fees are due at the time the application is submitted to the department. The fee is nonrefundable. If the voluntary plan is denied, a new application fee is required with each additional application.

(2) Voluntary plans will take effect on the first day of the quarter immediately following the approval of the plan.

##### NEW SECTION

**WAC 192-530-020 Voluntary plans—Employer plan requirements.** (1) An employer's voluntary plan must:

(a) Allow the employee to take the same duration of leave from work as the state plan;

(b) Pay at least equivalent total monetary benefits as the state plan;

(c) Not withhold an amount from an employee's wages that is higher than what would be withheld under the state plan for the same period of time; and

(d) Offer leave for at least the same reasons as the state plan.

(2) An employer with an approved voluntary plan may, at its discretion, use an accelerated payment schedule. The total monetary benefit must be equal to or greater than what the employee would have received under the state plan.

(a) If the employer chooses to use an accelerated payment schedule, the total monetary benefit must be paid to the employee over a length of time that is no less than one-half of what would have been provided under the state plan.

(b) Whether an employer elects to use an accelerated payment schedule has no impact on the length of job-protected leave to which the employee is entitled.

(c) If an employer chooses to utilize an accelerated payment schedule and the employee agrees to return to work earlier than required, the employer cannot require the employee to repay benefits as a result of returning to work earlier.

(3) Employees covered by a voluntary plan are entitled to at least the same length of job-protected leave to which they would be entitled under the state plan. An employer and an employee may enter into an agreement wherein the employee returns to work at an earlier date.

**Example:** An employee elects to take 12 weeks of leave for the birth of a child. The weekly benefit amount is \$750. The employer decides to pay the employee \$1,500 weekly over 6 weeks. In addition, the employer and the employee agree that the employee will return to work after 6 weeks. In this example, the employee would still have been permitted to take the full 12 weeks of leave if the employee had decided to do so.



(4) A two hundred fifty dollar fee will be required for every new application or nonstatutorily required amendment filed by an employer seeking approval for a voluntary plan.

(5) If an employer elects to have a voluntary plan for either family leave or medical leave, but not both, the employer is responsible for withholding the employee share of the premium for the portion that is covered by the state plan. The department will post the rates for family and medical leave for the following calendar year to its web site by November 30th each year. The employer is responsible for paying the premiums due to the state plan in accordance with WAC 192-510-060.

#### NEW SECTION

**WAC 192-530-030 Voluntary plans—Employee eligibility criteria.** (1) To qualify for an employer's approved voluntary plan, an employee must have been:

(a) In employment for at least eight hundred twenty hours during the qualifying period and in employment with that employer for at least three hundred forty hours; or

(b) Covered by an approved voluntary plan through their previous employer.

(2) Employees working for an employer with a voluntary plan who have not yet met eligibility requirements for that plan are eligible for benefits under the state plan so long as all other requirements are met.

(3) When an employee files a claim for benefits, an employer will access the employee's weekly benefit amount and typical workweek hours information online, or in another format approved by the department, and ensure the employee qualifies for at least an equivalent benefit amount from its voluntary plan.

(4) Upon hiring an employee previously covered under a state plan, the employer with an existing voluntary plan must report to the department online, or in another format approved by the department, the new employee's status for the voluntary plan after the employee becomes eligible for that plan.

#### NEW SECTION

**WAC 192-530-040 Voluntary plans—Notice requirements under RCW 50A.04.075.** (1) The department will provide a notice that meets the requirements of RCW 50A.04.075 to employers with approved voluntary plans if requested.

(2) Employers may create their own notices that meet the requirements of RCW 50A.04.075. Each employer must provide a copy of its voluntary plan notice to the department for approval. The notice must be submitted online or in another format approved by the department and must contain at least the same information as the state notice.

#### NEW SECTION

**WAC 192-530-050 Avoiding a duplication of benefits under state and voluntary plans.** (1) Employees cannot collect benefits from both the state plan and a voluntary plan for the same period. To ensure compliance, employers with an approved voluntary plan must report:

(a) All information required of employers by the state plan;

(b) Weekly benefit and leave duration information for any employee who takes leave under that plan for reasons that would have qualified for leave under the state plan; and

(c) Report premiums, if any, withheld from employee wages.

(2) Upon request, the department will provide weekly benefit, typical workweek hours, and leave duration information to any employer with an approved voluntary plan who requests it for an employee who wishes to take leave under that plan.

#### NEW SECTION

**WAC 192-530-060 What happens at the end of a voluntary plan?** (1) If the employer chooses to withdraw from a voluntary plan, the employer must notify the department at least thirty calendar days before the withdrawal. Notification of withdrawal shall be submitted to the department online or in another format approved by the department.

(2) If the department has terminated an employer's participation in a voluntary plan, the department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including premiums paid by the employer, premiums paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys. The amount will be due immediately. Any balance owed will not start collecting interest until thirty calendar days after the date of the invoice.

### **WSR 18-08-085**

#### **PROPOSED RULES**

#### **GAMBLING COMMISSION**

[Filed April 4, 2018, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-12-085.

Title of Rule and Other Identifying Information: Amending WAC 230-15-115 Standards for cards and new WAC 230-06-053 Approval to provide reshuffled cards and 230-16-158 Reshuffled cards.

Hearing Location(s): On May 10, 2018, at 10:00 a.m., at the Washington State Gambling Commission, Nisqually Conference Room, 4565 7th Avenue S.E., Lacey, WA 98503. Hearing will take place at a special commission meeting. The meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) about seven days before the meeting, select "May Commission meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: May 10, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), fax 360-486-3624, by May 1, 2018.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, by May 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A rule change was requested through a rule petition and staff requested additional rule changes to ensure the integrity of the reshuffled card manufacturing process. Staff reviewed reshuffled card regulations from sixteen United States or Canadian jurisdictions and worked with stakeholders since May 2017. Based on discussions with industry, the following changes will be made: (1) Approval of reshuffled cards to be used only in mini-baccarat; (2) new approval process for reshuffled card manufacturers only; and (3) new process for the manufacturing of reshuffled cards, including approval of shuffling device used to reshuffle cards; inspection and verification methods; and quality control standards.

Reasons Supporting Proposal: Industry supports this rule change to allow for reshuffled cards to be used in the card game mini-baccarat. Additionally, staff and stakeholders have agreed upon the proposed rule language and it will provide state card rooms with an option to use reshuffled cards for mini-baccarat and includes safeguards that will ensure the integrity of the reshuffled card manufacturing process.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512.

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 Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The reshuffled card integrity rules will not affect small businesses.

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 rule was requested by the industry and it does not impose any additional costs on businesses in the industry because the rule does not impose any additional regulatory requirements on card rooms. Instead, the rule change allowing reshuffled cards was requested to allow card rooms the ability to reduce costs and/or increase possible revenue in their card rooms by using reshuffled cards.

April 4, 2018  
Brian J. Considine  
Legal and Legislative Manager

#### NEW SECTION

**WAC 230-06-053 Approval to provide reshuffled cards.** (1) Licensed manufacturers must obtain approval by the director or director's designee prior to selling reshuffled cards in Washington.

(2) Manufacturers must ensure quality control of the reshuffled cards to protect players or licensees. To obtain approval, manufacturers must submit in writing to us the following for our review:

- (a) An overview of the product;
- (b) Site security provided at the facility;
- (c) Procedures utilized to ensure the reshuffled process;
- (d) Procedures utilized to ensure randomness;
- (e) Procedures to detect irregularities;
- (f) A deposit to cover the cost of our review, which may include an on-site review to verify the above; and
- (g) Identify the automated shuffling device used to reshuffle cards.

(3) Manufacturers must comply with all rules regarding reshuffled cards.

(4) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

**WAC 230-15-115 Standards for cards.** (1) Card game licensees must:

- (a) Supply cards of conventional size and design to maximize the integrity of the card games; and
- (b) Safeguard all cards; and
- (c) Not allow cards that have been modified or marked in any manner.

(2) For Class F, house-banked, and nonhouse-banked card game licensees that play poker or other games approved by the director or the director's designee and collect a fee to play, the cards must:

- (a) Be made by a licensed manufacturer; and
- (b) Be purchased from a licensed manufacturer or distributor.

(3) Cards with the house name or logo must be used for house-banked card games.

(4) Reshuffled cards, as approved by the director or the director's designee, can be used for mini-baccarat and approved proprietary variations of mini-baccarat in accordance with approved internal controls.

#### NEW SECTION

**WAC 230-16-158 Reshuffled cards.** Manufacturers of reshuffled cards must:

- (1) Obtain approval from the director or director's designee for the automated shuffling device used to reshuffle cards; and

(2) Implement a process for producing, shuffling, and packaging reshuffled cards which will, at a minimum, include:

(a) Visual inspection of the back of each card to assure that it is not flawed, scratched or marked in any way that might compromise the integrity or fairness of the game;

(b) Verification that each package of cards contains the correct number of suits and is constituted in accordance with the specific rules of the game the cards are intended for use;

(c) Inserting the cards in a package with a tamper-proof package seal(s) that bears the conspicuous indication if the package has been opened. The exterior of the package will indicate:

(i) The total number of decks contained within the package; and

(ii) The game(s) the cards are intended for use; and

(iii) The color of the reshuffled cards.

(d) Generation of a receipt to be inserted in the sealed package or a label on the sealed package, which shall include the following information:

(i) The total number of cards and decks contained within the package. If using an exterior label, this information will suffice for (c)(i) of this subsection;

(ii) The date and time the reshuffled cards were shuffled, packaged, and verified;

(iii) Identification of the manufacturer's employee who shuffled, packaged, and verified the cards; and

(iv) The manufacturer, model and serial number of the production line or device used to shuffle the cards.

### WSR 18-08-086

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed April 4, 2018, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-077.

Title of Rule and Other Identifying Information: New chapter 246-827A WAC, Forensic phlebotomist, the department of health (department) is proposing establishing a new chapter of rules to implement provisions of E2SHB 1614 of 2017. The bill creates a new forensic phlebotomist credential and requires the department to adopt rules to establish minimum credentialing requirements.

Hearing Location(s): On May 10, 2018, at 1:00 p.m., at the Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: May 17, 2018.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by May 10, 2018.

Assistance for Persons with Disabilities: Contact Davis Hylkema, phone 360-236-4663, fax 360-236-2901, TTY 360-833-6388 or 711, email [davis.hylkema@doh.wa.gov](mailto:davis.hylkema@doh.wa.gov), by May 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a new chapter of rules to establish minimum cre-

credentialing standards for those interested in obtaining the new department-issued forensic phlebotomist credential. These new proposed rules will apply to forensic phlebotomists and will not apply to medical assistants, whose administrative rules are under chapter 246-827 WAC. The proposed rules establish training requirements, credentialing standards, fees, and other general credentialing standards for the new forensic phlebotomist credential created by E2SHB 1614. Only authorized law enforcement officers or correction facility personnel may obtain a forensic phlebotomist credential.

Reasons Supporting Proposal: Rules are necessary to implement the provisions relating to forensic phlebotomy under E2SHB 1614. The proposed rules implement the intent of this statute by providing regulatory information and references for people who are credentialed as forensic phlebotomists or people who are considering obtaining the forensic phlebotomist credential.

Statutory Authority for Adoption: RCW 18.360.030, 18.360.070, and 43.70.040.

Statute Being Implemented: Chapter 18.360 RCW as amended by E2SHB 1614 (sections 14-17, chapter 336, Laws of 2017).

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, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766.

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 Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 360-833-6388 or 711, email [brett.cain@doh.wa.gov](mailto:brett.cain@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 rules do not impact businesses.

April 3, 2018

John Wiesman, DrPH, MPH

Secretary

### Chapter 246-827A WAC

#### FORENSIC PHLEBOTOMISTS

#### NEW SECTION

**WAC 246-827A-0005 Purpose.** This chapter establishes training, credentialing, and renewal requirements for the forensic phlebotomist certification, and regulates the practice of forensic phlebotomy by a person who holds a forensic phlebotomist certification. A forensic blood draw performed by a person credentialed as a medical assistant-certified or a medical assistant-phlebotomist is governed by chapter 246-827 WAC. These rules do not establish or alter the standards for admissibility of evidence in criminal proceedings.

NEW SECTION

**WAC 246-827A-0010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Correctional facility" as defined in RCW 70.48.020, means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(2) "Department" means the Washington state department of health.

(3) "Detention facility" as defined in RCW 70.48.020, means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(4) "Direct visual supervision" means the supervising health care practitioner is physically present and within visual range of the trainee.

(5) "Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who is certified under chapter 18.360 RCW and meets any additional training and proficiency standards of his or her employer to collect a venous blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

(6) "Law enforcement officer" or "police officer" as defined in RCW 10.93.020, means a general authority, limited authority, specially commissioned, or federal peace officer.

(7) "Peace officer certification" means a certification issued by the criminal justice training commission under chapter 43.101 RCW.

(8) "Person" means the individual from whom the blood sample is drawn.

(9) "Secretary" means the secretary of the department of health or the secretary's designee.

(10) "Venipuncture" means accessing a person's vein to collect a blood sample.

NEW SECTION

**WAC 246-827A-0020 General standards.** (1) The forensic phlebotomist must have knowledge and understanding of the laws and rules regulating the forensic phlebotomist, including chapter 18.130 RCW, Regulation of health professions—Uniform Disciplinary Act.

(2) The forensic phlebotomist must function within his or her scope of practice.

(3) The forensic phlebotomist must demonstrate competency before performing new or unfamiliar duties which are in his or her scope of practice.

(4) The forensic phlebotomist must comply with all applicable state and federal laws regarding privacy of criminal records.

(5) The forensic phlebotomist must comply with any initial and ongoing training and proficiency standards of his or her employer as required in RCW 18.360.010.

NEW SECTION

**WAC 246-827A-0030 Training.** An applicant for a forensic phlebotomist certification must successfully complete a forensic phlebotomist training program.

(1) Forensic phlebotomist training programs must align with the standards described in RCW 18.360.030.

(2) For the purposes of this section, "clinical setting" means an environment that allows venipunctures and venipuncture training that are conducted in a safe and sterile manner.

(3) An approved program must be:

(a) A forensic phlebotomy program through a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or

(b) A forensic phlebotomy training program administered by a health care practitioner, as defined under RCW 18.360.010, whose scope of practice includes venipuncture, and who is responsible for determining the content of the training and for ascertaining the proficiency of the trainee. The phlebotomy training program must include the following:

(i) Training to include evaluation and assessment of knowledge and skills to determine entry level competency in the following areas:

(A) Performing a venipuncture;

(B) Employing agency standards for ethics, confidentiality, and use of force as they relate to performing a forensic blood draw;

(C) Recognizing:

(I) Symptoms of a medical emergency and appropriate first aid; and

(II) Persons who are not medically able to undergo a venipuncture.

(D) Materials to be used;

(E) Anatomic considerations for performing venipuncture;

(F) Procedural standards and techniques for venipuncture;

(G) Common medical terminology and practices related to forensic blood draws;

(H) Physical layout of the blood draw scene; and

(I) Safety requirements including infection prevention and control, dealing with a person who has an infectious disease, and the handling and disposal of biohazardous materials.

(ii) Direct visual supervision by a health care practitioner, a certified forensic phlebotomist, or a delegated and certified medical assistant-phlebotomist to the trainee to ensure competency in the following:

(A) Practice technique in a simulated situation;

(B) Observation of performing procedures on patients until the trainee demonstrates proficiency to be certified at the minimum entry level of competency. The trainee must

have adequate physical ability, including sufficient manual dexterity to perform the requisite health care services.

(iii) Documentation of all forensic blood draw training signed by the supervising health care practitioner and the trainee, and placed in the trainee's personnel file.

(c) Training programs that meet the requirements described in this subsection are approved by the secretary.

NEW SECTION

**WAC 246-827A-0040 Application requirements.** An applicant for a forensic phlebotomist credential must submit the following to the department:

- (1) Completed application on forms provided by the department;
- (2) Proof of successful completion of the required education or approved training program described under WAC 246-827A-0030;
- (3) Proof of completing seven clock hours of HIV/AIDS education as required by chapter 246-12 WAC, Part 8;
- (4) Proof of current employment as a law enforcement or police officer, or current employment at a detention or correction facility;
- (5) Any fee required in WAC 246-827A-900;
- (6) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department; and
- (7) Any additional documentation or information requested by the department.

NEW SECTION

**WAC 246-827A-0050 Credential invalidation.** (1) The forensic phlebotomist credential is no longer valid when:

- (a) The forensic phlebotomist's peace officer, limited authority, specially commissioned, or federal peace officer certification is revoked or expires; or
  - (b) An employee of a detention or correctional facility is no longer employed by a detention or correctional facility.
- (2) The forensic phlebotomist must notify the department within thirty days of the forensic phlebotomist's:
- (a) Peace officer, limited authority, specially commissioned, or federal peace officer certification being revoked or expired; or
  - (b) Last day of employment by a detention or correctional facility.

NEW SECTION

**WAC 246-827A-0060 Expired credential reissuance.**

- (1) A person holding an expired forensic phlebotomist credential may not practice until the credential is returned to active status.
- (2) If the forensic phlebotomist credential has expired for less than three years, he or she must meet the requirements of chapter 246-12 WAC, Part 2.
- (3) If the forensic phlebotomist credential has been expired for three years or more, and he or she is currently practicing as a forensic phlebotomist in another state or U.S. jurisdiction, he or she must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2; and

(b) Provide verification of a current unrestricted active forensic phlebotomist credential in another state or U.S. jurisdiction that is substantially equivalent to the qualifications for his or her credential in the state of Washington.

(4) If the forensic phlebotomist credential has been expired for three years or more and the person does not meet the requirements of subsection (3) of this section, he or she must comply with chapter 246-12 WAC, Part 2, and demonstrate competence by completing a forensic phlebotomist program described under WAC 246-827A-0030 within six months prior to applying for reactivation.

NEW SECTION

**WAC 246-827A-0070 Conditions for performing forensic phlebotomy.** As required in RCW 46.61.506:

- (1) The performance of the venipuncture must not interfere with the provision of essential medical care; the blood sample must be collected using sterile equipment; and the skin area of puncture must be thoroughly cleaned and disinfected;
- (2) The person whose blood is collected must be seated, reclined, or lying down; and
- (3) If taken at the scene, the blood sample must be performed in an ambulance or aid service vehicle licensed by the department of health under chapter 18.73 RCW.

NEW SECTION

**WAC 246-827A-0080 Mandatory reporting.** Mandatory reporting laws under chapter 246-16 WAC apply to a person who holds a forensic phlebotomist credential.

NEW SECTION

**WAC 246-827A-0090 Military training.** An applicant with relevant military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION

**WAC 246-827A-900 Fees.** (1) Credentials must be renewed every two years on the credential holder's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for a forensic phlebotomist certification:

Title of Fee	Fee
Initial credential	\$145.00
Renewal	\$145.00
Late renewal penalty	\$75.00
Expired credential reissuance	\$55.00
Verification of credential	\$25.00
Duplicate credential	\$10.00

**WSR 18-08-090**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 4, 2018, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-057.

Title of Rule and Other Identifying Information: WAC 314-02-107 What are the requirements for a spirits retail license?

Hearing Location(s): On May 16, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: May 30, 2018.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to address the placement and storage of mini spirit bottles for sale in a spirit retailer's premises.

Reasons Supporting Proposal: The placement and storage of mini spirit bottles is a public safety issue.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.630.

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. A preliminary cost-benefit analysis is not required.

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.

April 4, 2018  
Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-02-107 What are the requirements for a spirits retail license?** (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

(i) Inventory management;

(ii) Employee training and supervision; and

(iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2)(a) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(b) A grocery store or a specialty shop licensee that adds a spirits retail liquor license must display bottled spirits fifty milliliters or less in size offered to customers for off-premises consumption in a secure manner so a licensee or employee of the licensee must unlock or otherwise access the spirits for a customer before the customer purchases the spirits.

(i) The display of bottled spirits fifty milliliters or less in size applies whether a bottle is displayed or sold individually or in a package with other bottled spirits fifty milliliters or less in size.

(ii) Former state or contract stores, or other spirit retail stores with more than fifty percent of their sales in alcohol do not need to secure bottled spirits fifty milliliters or less.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

**WSR 18-08-093**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 4, 2018, 11:14 a.m.]

Supplemental Notice to WSR 18-04-114.

Preproposal statement of inquiry was filed as WSR 17-15-121 on July 19, 2017.

Title of Rule and Other Identifying Information: Proposed new section in chapter 314-55 WAC, WAC 314-55-055 Marijuana retail license forfeiture.

Hearing Location(s): On May 16, 2018, at 10:00 a.m., at the Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after May 30, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by May 16, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA Coordinator, Human Resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by May 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed new section in chapter 314-55 WAC details the process and criteria that WSLCB [WSLCB] will use to carry out retail license forfeitures as required under RCW 69.50.325. This rule making is part of a larger rule-making effort to implement changes to rules needed due to changes made by the 2017 legislature. Other rule changes needed due to 2017 changes in statute will be handled under a separate CR-102 filing. This supplemental CR-102 makes adjustments to the original proposed rules and are [is] summarized as follows:

- A retail licensee must be open and operational within twelve months of license issuance or November 1, 2018, whichever is longer.
- Fully operational means the business must be open a minimum of five hours per day between 8:00 a.m. and 12:00 midnight, three days per week, post business hours outside the premises, and report monthly sales and pay applicable taxes for at least twelve consecutive weeks.

Exceptions for forfeiture are included for businesses that are unable to open due [to] city, town, or county actions, including ordinances, zoning, permitting, or bans/moratoria, or for other reasons outside the licensee's control on a case-by-case basis determined by the board. If the condition providing an exemption to forfeiture is removed, a retail licensee has twelve months from the date of its removal to become fully open and operational. Other provisions relating to documentation and hearing rights remain unchanged from the original proposal.

Reasons Supporting Proposal: The legislature passed ESSB 5131 during the 2017 legislative session that directed WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions:

- No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and
- WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

Rule making is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process WSLCB will use for retail license forfeitures.

Statutory Authority for Adoption: RCW 69.50.325, 69.50.342, and 69.50.345.

Statute Being Implemented: RCW 69.50.325.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1622; Implementation: Rebecca Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and Enforcement: Chief Justin Nordhorn, 30000 [3000] Pacific Avenue S.E., Olympia, WA 98504, 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. A cost-benefit analysis was not required under RCW 34.05.325 [34.05.328] because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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

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

April 4, 2018  
Jane Rushford  
Chair

## NEW SECTION

**WAC 314-55-055 Marijuana retailer license forfeiture.** (1)(a) A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after twelve months of issuance of the license or November 1, 2018, whichever is later. No marijuana retailer's license is subject to forfeiture within the first nine months of issuance.

(b) Fully operational means the business meets the following criteria for at least twelve consecutive weeks within a twelve-month period after issuance of the license before or after the effective date of this section:

(i) Is open to the public for a minimum of five hours a day between the hours of 8:00 a.m. and 12:00 midnight, three days a week;

(ii) Posts business hours outside of the premise in the public view; and

(iii) Reports monthly sales from the sale of marijuana products and pays applicable taxes.

(2)(a) A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

(i) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(ii) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(b) The board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

(c) Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate. If the underlying condition exempting a marijuana retail license from forfeiture under subsection (2)(a) or (b) of this section is removed, then the twelve-month time frame to become fully operational and open to the public requirement under subsection (1) of this section will begin from the time the condition exempting the retail license from forfeiture is removed.

(3) A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.