

WSR 19-14-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed July 2, 2019, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-001.

Title of Rule and Other Identifying Information: The department is proposing to add new sections, repeal existing sections, and amend sections in chapter 388-78A WAC, Assisted living facility licensing rules, to update physical plant requirements.

Hearing Location(s): On August 27, 2019, 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 August 28, 2019.

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., August 27, 2019.

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 August 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules needed updating to meet the national building code standards for licensed health care facilities of this type. With a moratorium on rule development, DSHS has not been able to keep the rules up-to-date in concert with the changes in building codes, energy efficiency standards, and the structural enhancements associated with this facility type across the nation. The regulatory amendments encompass the technological advances in building design, and the health care industry. This has a positive impact on the developers, architects, facility owners, and residents in new and currently licensed facilities to meet licensing requirements and building code requirements with updated safety standards.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: Chapters 18.20, 74.39A RCW.

Statute Being Implemented: None.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, 360-752-2591; and Enforcement: Dina Longen-Grimes, P.O. Box 45600, Olympia, WA 98504-5600, 360-752-2591.

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 Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2591, email Jeanette.Childress@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Per the small business economic impact statement/cost-benefit analysis, costs are offset by eliminating some of the building requirements, updating building requirements so [to] not have to install dual systems to meet building codes and licensing rules, and with increased electronic monitoring to potentially reduce facility liability, improve energy efficiency, and reduce insurance costs.

A copy of the detailed cost calculations may be obtained by contacting Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2591, email Jeanette.Childress@dshs.wa.gov.

June 26, 2019

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-78A-2361 Project and operations functional program. (1) The facility must develop and document their functional programming, under WAC 388-78A-2852, during the project development and planning process. This document must inform the design process and be provided to the department of health construction review services consistent with WAC 388-78A-2852 for use in review of the construction project documents and preoccupancy survey. This document must identify and describe, as applicable:

(a) Services offered, whether intermittent nursing services or contract care services under chapter 388-110 WAC;

(b) Number of residents served under contract care services, as applicable;

(c) The care needs of the population served, to include but not limited to dementia, cognitive and developmental disability, mental health, bariatric needs, safety risks, security, resident rights, and dignity of memory care residents;

(d) Circulation patterns;

(e) Special locking or other security measures;

(f) Room use, required resources, and systems to include intermittent nursing services that will take place in the resident unit;

(g) Consideration of and mitigation for risks associated with:

(i) Operational infection control;

(ii) Resident mobility and falls;

(iii) Elopement and security;

(iv) Medication services; and

(v) Staff injury.

(2) The facility may maintain an operational functional program to document considerations and decisions related to resident needs and the maintenance or modifications to the physical environment as necessary to demonstrate compliance with performance based expectations of this chapter. This document may be used to evaluate conditions of the

built environment for appropriateness to the population served and must document circumstances where facility policy and procedure are implemented in lieu of, or in support of, changes to the built environment.

NEW SECTION

WAC 388-78A-2371 Investigations. The assisted living facility must:

- (1) Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance, that threatens any individual's welfare and safety;
- (2) Identify, investigate, and report incidents involving residents according to department established assisted living facility guidelines;
- (3) Protect residents during the course of the investigation; and
- (4) Comply with "whistle blower" rules as defined in chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2380 ((Restricted egress)) Freedom of movement. An assisted living facility must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

- (1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.
- (2) Each resident assessed as being cognitively and physically able to safely leave the assisted living facility is able to do so independently without restriction consistent with the resident's negotiated service agreement.
- (3) ~~((Each resident, assessed as being cognitively able to safely leave the assisted living facility and who has physical challenges that make exiting difficult, is able to leave the assisted living facility when the resident desires and in a manner consistent with the resident's negotiated service agreement.~~
- (4) ~~Each resident who is assessed as being unsafe to leave the assisted living facility unescorted is able to leave the assisted living facility consistent with his or her negotiated service agreement.~~
- (5) ~~Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.~~
- (6) Installation of special egress control devices in all proposed construction issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must conform to standards adopted by the state building code council.
- (7) ~~Installation of special egress control devices in all construction issued a project number by construction review services before September 1, 2004 for construction related to this section, must conform to the following:~~

~~(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.~~

~~(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:~~

- ~~(i) The egress control device itself;~~
- ~~(ii) The smoke detection system; or~~
- ~~(iii) The means of egress illumination.~~

~~(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.~~

~~(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.~~

~~(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.~~

~~(f) The unlatching must not require more than one operation.~~

~~(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:~~

~~"Keep pushing. The door will open in fifteen seconds. Alarm will sound."~~

~~The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.~~

~~(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.~~

~~(8)) The assisted living facility must have a system in place to inform and permit visitors, staff persons and appropriate residents how they ~~((can)) may~~ exit without sounding the alarm.~~

~~((9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:~~

- ~~(a) Is accessible to residents without staff assistance;~~
- ~~(b) Is surrounded by walls or fences at least seventy-two inches high;~~
- ~~(c) Has areas protected from direct sunshine and rain throughout the day;~~
- ~~(d) Has walking surfaces that are firm, stable, slip resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers; and~~
- ~~(e) Has suitable outdoor furniture))~~

~~(4) The installation of access and egress controls that does not restrict the movement of residents who are cognitively and physically able to safely leave the facility independently;~~

~~(5) In new construction, access and egress controlled doors that are installed as permitted by the building code adopted by the Washington state building code council;~~

~~(6) Existing access and egress controlled doors that meet and are maintained to the requirements of the building code at the time of construction; and~~

(7) Buildings from which egress is restricted have:

(a) A system in place to inform and permit visitors, staff persons, and appropriate residents freedom of movement; and

(b) A secured outdoor space per WAC 388-78A-2381.

NEW SECTION

WAC 388-78A-2381 General design requirements for memory care. (1) When planning for new construction, renovations or change of service to include memory care services, the facility must document design considerations appropriate to residents with dementia, mental health issues, or cognitive and developmental disabilities within its functional program consistent with WAC 388-78A-2380.

(2) The facility must provide common areas, including at least one resident accessible common area outdoors. Such common areas should accommodate and offer the opportunity of social interaction, stimulate activity, contain areas with activity supplies and props to encourage engagement, and have safe outdoor paths to encourage exercise and movement.

(a) These areas must have a residential atmosphere and must accommodate and offer opportunities for individual or group activity including:

(i) Giving residents opportunities for privacy, socialization, and common spaces that account for wandering behaviors;

(ii) Ensuring any public address system in the area of specialized dementia care services is used only for emergencies;

(iii) Encouraging residents' individualized spaces to be furnished and decorated with personal items based on resident needs and preferences; and

(iv) Ensuring residents have access to their own rooms at all times without staff assistance.

(b) Unless an alternative viewing area is provided as described in (e) of this subsection, the facility must provide an outdoor area for residents that:

(i) Is located on the floor on which the resident resides;

(ii) Is designed with a minimum of twenty-five square feet of space per resident served;

(iii) Has areas protected from direct sunshine and rain throughout the day;

(iv) Has walking surfaces that are firm, slip-resistant and free from abrupt changes, and suitable for individuals using wheelchairs and walkers;

(v) Has outdoor furniture;

(vi) Has plants that are not poisonous or toxic to humans; and

(vii) Has areas appropriate for outdoor activities of interest to residents, such as walking paths, raised garden, flowerbeds, or bird feeders.

(c) A facility may provide access to an outdoor area and a dedicated viewing area on each floor that:

(i) Is not obstructed by indoor furniture, storage areas, cleaning equipment, trash receptacles, snack food/drink tables, and other such encumbrances that would minimize access to the viewing area;

(ii) Must not serve as a hallway, or an additionally required community space such as a dining area, activity room, mobile healthcare services (such as home health, podiatrist, dental services), other purposes;

(iii) Must be a community space, not within the residents' room; and

(iv) Has windows that have an unobstructed and viewable height accessible by wheelchair.

(d) The required outdoor area must be accessible to residents with minimal staff assistance in a manner consistent with the residents' individual negotiated service agreement, except where pursuant to a facility policy, and consistent with WAC 388-78A-2600, the facility administrator or other appropriate staff reasonably believe that the health or safety may be at risk, including, but not limited to, instances of:

(i) Inclement weather;

(ii) Dangerous construction or maintenance activities; or

(iii) Other temporary environmental factors that create an unsafe environment.

(e) In lieu of providing outdoor space on each floor in which a resident resides required under (b)(i) of this subsection, a facility must put in place and maintain a written policy and procedure that documents how the facility provides residents with access to an outdoor area on a floor other than the floor on which the resident resides. Upon request the facility shall present that plan to the department for review. Such a plan must include:

(i) The location of the outdoor space;

(ii) A description of any assistance necessary for the resident to reach the outdoor space at any time, and documented in the negotiated service agreement plan per WAC 388-78A-2140(2);

(iii) The facility's plan for providing any necessary staff assistance described in (e)(ii) of this subsection;

(iv) A plan to maintain safety and security to prevent wandering or exit seeking while the resident is using the outdoor space; and

(f) Facilities licensed prior to date of implementation of this rule that have an outdoor area on each floor, may not eliminate the required outdoor space.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2680 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-78A-2690, the assisted living facility must not use the following in the facility or on the premises:

(a) Audio monitoring equipment; or

(b) Video monitoring equipment if it includes an audio component.

(2) The assisted living facility may video monitor and video record activities in the facility or on the premises, without an audio component, only in the following areas:

(a) Entrances ~~((and))~~, exits, and elevators as long as the cameras are:

(i) Focused only on the entrance or exit doorways; and

(ii) Not focused on areas where residents gather.

(b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;

(c) Outdoor areas accessible to both residents and the public, such as, but not limited to, parking lots, provided that the purpose of such monitoring is to prevent theft, property damage, or other crime on the premises.

(d) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas, emergency exits, or exits from a secured outdoor space for memory care; ~~((and~~

~~((d)))~~ (e) Resident fitness centers and pool areas; and

(f) Designated smoking areas, subject to the following conditions:

(i) Residents have been assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera is clearly visible;

(iv) The video monitor is not viewable by general public; and

(v) The facility notifies all residents in writing of the use of video monitoring equipment.

(3) The assisted living facility may only video record community activities in the facility or on the premises with the audio component when the following are met:

(a) A resident requests an activity be recorded;

(b) A sign is posted at the entry to the activity area in which the event occurs and at the time of the event, to notify residents of the video, audio recording, or both; and

(c) The facility notifies all residents in writing for each use of video and audio monitoring equipment, providing that the residents' likeness will not be used in promotional materials without their written consent.

(4) The presence of cameras must not alter the obligation of the assisted living facility to provide appropriate in-person assistance and monitoring due to individual physical or cognitive limitations.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2690 Electronic monitoring equipment—Resident requested use. (1) ~~((The assisted living facility must not use))~~ Audio or video monitoring equipment ~~((to monitor any resident unless:~~

(a) ~~The resident has requested the monitoring; and~~

~~(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring))~~ may not be installed in the assisted living facility to monitor any resident apartment or sleeping area unless the resident or the residents' representative has requested and consents to the monitoring.

(2) Electronic monitoring equipment must be installed in a manner that is safe for residents.

(3) A facility must not refuse to admit an individual, or discharge a resident, because of a request to conduct authorized electronic monitoring.

(4) A resident may limit his or her consent for use of electronic monitoring devices to specific times or situation, pointing the camera in a particular direction, or prohibiting the use of certain devices.

(5) The release of audio or video monitoring recordings by the facility is prohibited. Each person or organization with access to the electronic monitoring must be identified in the resident's negotiated service agreement.

~~((2))~~ (6) If the resident requests the assisted living facility to conduct audio or video monitoring of his or her apartment or sleeping area, before any electronic monitoring occurs, the assisted living facility must ensure:

(a) That the electronic monitoring does not violate chapter 9.73 RCW;

~~((The resident has identified a threat to the resident's health, safety or personal property;~~

~~((e)))~~ The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

~~((d)))~~ (c) The resident and the assisted living facility have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

~~((3))~~ (7) The assisted living facility must:

(a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing, signed and dated by the resident.

~~((4))~~ (8) The assisted living facility must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring;

(b) Roommate objects or withdraws the consent to the electronic monitoring; or

(c) The resident becomes unable to give consent, unless consent has been provided by a resident's representative as described in this section.

~~((5))~~ (9) For the purpose of consenting to video electronic monitoring without an audio component, the term "resident" includes the resident's ~~((surrogate decision maker))~~ representative.

~~((6))~~ (10) For the purposes of consenting to any audio electronic monitoring, the term "resident" includes:

(a) The individual residing in the assisted living facility; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to electronic monitoring of the resident.

~~((7))~~ (11) If a resident's decision maker consents to audio electronic monitoring as specified in ~~((6))~~ (10) above, the assisted living facility must maintain a copy of the court order authorizing such consent in the resident's record.

(12) If the assisted living facility determines that a resident, resident's family, or other third party is electronically monitoring a resident's room or apartment without complying with the requirements of this section, the assisted living facility must disconnect or remove such equipment until the appropriate consent is obtained and notice given as required by this section.

(13) Nothing in this section prohibits or limits an assisted living facility from implementing electronic monitoring pursuant to a resident's negotiated service plan, including but not limited to motion sensor alerts, floor pressure sensors, or global positioning devices, where the monitoring does not

entail the transmittal or recording of a human-viewable image, sound or resident name.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2700 ((Safety measures and)) Emergency and disaster preparedness. (1) ~~((The assisted living facility must take necessary action to promote the safety of each resident whenever the resident is on the assisted living facility premises or under the supervision of staff persons, consistent with the resident's negotiated service agreement.~~

~~(2))~~ The assisted living facility must:

(a) Maintain the premises free of hazards;

(b) Maintain any vehicles used for transporting residents in a safe condition;

~~(c) ((Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The assisted living facility must:~~

~~(i) Determine the circumstances of the event;~~

~~(ii) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and~~

~~(iii) Protect other residents during the course of the investigation.~~

~~(d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;~~

~~(e))~~ Provide, and tell staff persons of ~~((~~) a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;

~~((f))~~ (d) Provide emergency lighting or flashlights in all areas accessible to residents of the assisted living facility. ~~((For all assisted living facilities first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the assisted living facility must provide emergency lighting in all areas of the assisted living facility;~~

~~(g))~~ (e) Make sure first-aid supplies are:

(i) Readily available and not locked;

(ii) Clearly marked;

(iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

~~((h))~~ (f) Make sure first-aid supplies are appropriate for:

(i) The size of the assisted living facility;

(ii) The services provided;

(iii) The residents served; and

(iv) The response time of emergency medical services.

~~((i))~~ (g) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to:

(i) On-duty staff persons' responsibilities;

(ii) Provisions for summoning emergency assistance;

(iii) Coordination with first responders regarding plans for evacuating residents from area or building;

(iv) Alternative resident accommodations;

(v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and

(vi) Emergency communication plan.

NEW SECTION

WAC 388-78A-2703 Safety of the built environment.

The assisted living facility must provide a safe environment and promote the safety of each resident whenever the resident is on the premises or under the supervision of staff persons consistent with the resident's negotiated service agreement, and must maintain the premises and equipment used in resident care so as to be free of hazards, including:

(1) Providing handrails in halls, corridors, lobbies, and other circulation spaces accessible to residents appropriate to the population served and consistent with the facility functional program.

(2) Maintaining nonskid surfaces on all stairways and ramps used by residents.

(3) Keeping exterior grounds, assisted living facility structures, and component parts safe, sanitary, and in good repair.

(4) Providing door hardware to ensure:

(a) Residents cannot lock themselves in, or out of, rooms or areas accessible to them; and

(b) Residents cannot become locked in storage rooms, closets, or other rooms or areas not intended for resident access.

(5) Providing and informing staff persons of a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2800 Changes in licensed bed capacity. (1) To change the licensed bed capacity in an assisted living facility, the assisted living facility must:

~~((H))~~ (a) Submit a completed request for approval to the department at least one day before the intended change;

~~((Z))~~ (b) Submit the prorated fee for additional beds to DSHS within thirty calendar days, if applicable; ~~((and~~

~~(Z))~~ (c) Update the resident register pursuant to WAC 388-78A-2440 upon making the intended change;

(d) Post an amended license obtained from the department, indicating the new licensed bed capacity; and

(e) Meet the additional requirements under WAC 388-78A-2810.

(2) Facilities may maintain prepaid licensed beds as "stand-by" beds for the conversion of a nonresident to a resident or admission of a resident. A "stand-by" bed is defined as a bed that is not occupied by a resident and was not designated on the department room list by the facility as a paid licensed bed.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2810 Criteria for increasing licensed bed capacity. Before the licensed bed capacity in an assisted

living facility may be increased, the assisted living facility must:

(1) Obtain construction review services' review and approval of the additional rooms or beds, and related auxiliary spaces, if the rooms were not previously reviewed and approved for the physical plant requirements at time of construction; and

(2) Ensure ~~((the increased))~~ that each additional licensed bed ((capacity does not exceed the maximum facility capacity as determined by the department)) or "stand-by" bed meets the assisted living licensing requirements under this chapter and chapter 388-110 WAC, when applicable.

(3) Before approving any increase in licensed bed capacity, the department will determine the facility's maximum facility capacity to ensure that any increase is consistent with this chapter and chapter 388-110 WAC, when applicable.

NEW SECTION

WAC 388-78A-2821 Design, construction review, and approval plans. (1) Drawings and specifications for new construction must be prepared by, or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW may be used for the various branches of work where appropriate. The services of a registered engineer may be used in lieu of the services of an architect if the scope of work is primarily engineering in nature.

(2) The assisted living facility will meet the following requirements:

(a) **Preconstruction.** Request and attend a presubmission conference for projects with a construction value of two hundred and fifty thousand dollars or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than fifty percent complete, or as coordinated with plan reviewer.

(b) **Construction document review.** Submit construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. Compliance with these standards and regulations does not relieve the facility of the need to comply with applicable state and local building and zoning codes. The construction documents must include:

(i) A written functional program consistent with WAC 388-78A-2361 containing, but not limited to, the following:

(A) Information concerning services to be provided and the methods to be used;

(B) An interim life safety measures plan to ensure the health and safety of occupants during construction;

(C) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(D) An analysis of likely adverse impacts on current assisted living facility residents during construction and the facilities plans to eliminate or mitigate such adverse impacts including ensuring continuity of services;

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room,

area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided;

(iii) Floor plan of the existing building showing the alterations and additions, and indicating location of any service or support areas;

(iv) Required paths of exit serving the alterations or additions; and

(v) Verification that the capacities and loads of infrastructure systems will accommodate the planned load.

(c) **Resubmittals.** The assisted living facility will respond in writing when the department requests additional or corrected construction documents;

(d) **Construction.** Comply with the following requirements during the construction phase:

(i) The assisted living facility will not begin construction until all of the following items are complete:

(A) Construction review services has approved construction documents or granted authorization to begin construction;

(B) The local jurisdictions have issued a building permit; and

(C) The construction review services will issue an "authorization to begin construction" when the construction documents have been conditionally approved.

(ii) Submit to the department for review any addenda or modifications to the construction documents.

(iii) Assure construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the facility from compliance with applicable state and local building and zoning codes. Where differences in interpretations occur, the facility will follow the most stringent requirement.

(vi) The assisted living facility will allow any necessary inspections for the verification of compliance with the construction documents, addenda, and modifications.

(e) **Project closeout.** The facility will not use any new or remodeled areas for resident use of licensed space until:

(i) The department has approved construction documents;

(ii) The local jurisdictions have completed all required inspections and approvals, when applicable or given approval to occupy; and

(iii) The facility notifies the department in writing when construction is completed and includes:

(A) Copy of the local jurisdiction's approval for occupancy;

(B) Copy of reduced floor plans; and

(C) A room schedule.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2830 Conversion of licensed nursing homes. (1) If a person intends to convert a licensed nursing home building into a licensed assisted living facility, the building must meet all assisted living facility licensing requirements specified in this chapter and chapter 18.20 RCW unless the licensee has a contract with the department

to provide enhanced adult residential care services in the assisted living facility per RCW 18.20.220.

(2) If the licensee provides contracted enhanced adult residential care services in the building converted from a licensed nursing home into a licensed assisted living facility, the assisted living facility licensing requirements for the physical structure are considered to be met if the most recent nursing home inspection report for the nursing home building demonstrates compliance, and compliance is maintained, with safety standards and fire regulations:

(a) As required by RCW 18.51.140; and

(b) Specified in the applicable building code, as required by RCW 18.51.145, including any waivers that may have been granted, except that the licensee must ensure the building meets the licensed assisted living facility standards, or their functional equivalency, for:

(i) Resident to bathing fixture ratio required per WAC 388-78A-3030;

(ii) Resident to toilet ratio required per WAC 388-78A-3030;

(iii) ~~((Corridor))~~ A call system required per WAC 388-78A-2930;

(iv) Resident room door closures; and

(v) Resident room windows required per WAC 388-78A-3010.

(3) If the licensee does not continue to provide contracted enhanced adult residential care services in the assisted living facility converted from a licensed nursing home, the licensee must meet all assisted living facility licensing requirements specified in this chapter and chapter 18.20 RCW.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2850 Required reviews of building plans. (1) A person or assisted living facility must notify construction review services of all planned construction regarding an assisted living facility prior to beginning work on any of the following:

(a) A new building or portion thereof to be used as an assisted living facility;

(b) An addition of, or modification or alteration to an existing assisted living facility, including, but not limited to, the assisted living facility's:

(i) Physical structure;

(ii) Electrical fixtures or systems;

(iii) Mechanical equipment or systems;

(iv) Fire alarm fixtures or systems;

(v) Fire sprinkler fixtures or systems;

(vi) ~~((Carpeting;~~

~~((vii)))~~ Wall coverings 1/28 inch thick or thicker; or

~~((viii)))~~ (vii) Kitchen or laundry equipment.

(c) A change in the department-approved use of an existing assisted living facility or portion of an assisted living facility; and

(d) An existing building or portion thereof to be converted for use as an assisted living facility.

(2) A person or assisted living facility does not need to notify construction review services of the following:

(a) Repair or maintenance of equipment, furnishings or fixtures;

(b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings or fixtures;

(c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction documents approved by construction review services within eight years preceding the current repair or replacement;

(d) Painting; or

(e) Cosmetic changes and changes to approved use that do not affect areas providing, or utilities serving resident activities, services, or care and are performed in accordance with the current edition of the building code; or

(f) Construction in buildings not accessible to residents and not directly supporting resident services.

(3) The assisted living facility must submit plans to construction review services as directed by construction review services and consistent with WAC ~~((388-78A-2820))~~ 388-78A-2361 for approval prior to beginning any construction. ~~((The plans must provide an analysis of likely adverse impacts on current assisted living facility residents and plans to eliminate or mitigate such adverse impacts.))~~

NEW SECTION

WAC 388-78A-2851 Applicability requirements for physical plant. (1) The purpose of physical environment requirements is to provide for a safe and effective resident care environment in the buildings or portions of buildings licensed as assisted living facilities and used to provide assisted living services. This section applies to new construction which includes:

(a) New buildings to be licensed;

(b) Conversion of an existing building or portion of an existing building;

(c) Additions;

(d) Alterations; and

(e) Excludes buildings used exclusively for administration functions.

(2) Standards for design and construction:

(a) The physical environment requirements of this chapter that are in effect at the time the application and fee is submitted to construction review services, and the project number is assigned by construction review services, apply for the duration of the construction project;

(b) Newly licensed assisted living facilities and new construction in existing assisted living facilities must meet the requirements of all current state and local building and zoning codes and applicable sections of this chapter; and

(c) Where permitted by the state building code, in resident rooms, spaces, and areas, including sleeping, treatment, diagnosis, and therapeutic uses, the design and installation of an NFPA 72 private operating mode fire alarm shall be permitted.

(3) Existing licensed assisted living facilities must continue to meet the applicable codes in force at the time of construction, the fire code adopted by the Washington state building code council and the following sections:

(a) WAC 388-78A-2700 Emergency and disaster preparedness;

(b) WAC 388-78A-2880 Changing use of rooms;

(c) WAC 388-78A-2703 Safety of the built environment;

(d) WAC 388-78A-2950 Water supply;

(e) WAC 388-78A-2960 Sewage and liquid waste disposal; and

(f) WAC 388-78A-2970 Garbage and refuse disposal.

(4) Where applicable, existing facilities may choose to meet either the requirements of chapter 388-78A WAC in effect at the time a project number is assigned by construction review services consistent with subsection (2)(a) of this section or the following standards:

(a) WAC 388-78A-2381 General design requirements for memory care;

(b) WAC 388-78A-2880(3) Freedom of movement;

(c) WAC 388-78A-2990(5) Heating and cooling—Temperature; and

(d) WAC 388-78A-2920 Area for nursing supplies and equipment.

(5) The department may require a facility to meet requirements if building components or systems are deemed by the department to jeopardize the health or safety of residents.

(6) The assisted living facility must ensure that construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the assisted living facility of the need to comply with applicable state and local building and zoning codes.

NEW SECTION

WAC 388-78A-2852 Exemptions or alternative methods. (1) The department may exempt an assisted living facility from meeting a specific requirement related to the physical environment or may approve an alternative method for meeting the requirement, if the department determines the exemptions or alternative method will:

(a) Not jeopardize the health or safety of residents;

(b) Not adversely affect the residents' quality of life;

(c) Not change the fundamental nature of the assisted living facility operation into something other than an assisted living facility;

(d) Demonstrate that the proposed alterations will serve to correct deficiencies or upgrade the facility in order to better serve residents; and

(e) Demonstrate to the director of residential care services' satisfaction, that substitution of procedures, materials, or equipment for requirements specified in this chapter would better serve residents.

(2) To request an exemption, or to request an approval of an alternative method, an assisted living facility must submit a written request to the department that includes:

(a) A description of the requested exemption or alternative method; and

(b) The specific rule for which the exemption is sought.

(3) The assisted living facility may not appeal the department's denial of a request for an exemption or alternative method.

(4) The assisted living facility must retain in the assisted living facility a copy of each approved exemption or alternative method.

NEW SECTION

WAC 388-78A-2853 New licenses and use of construction. The department will not issue an assisted living facility license unless:

(1) Construction review services:

(a) Notifies the department that construction has been completed; and

(b) Provides the department:

(i) A copy of the certificate of occupancy granted by the local building official;

(ii) A copy of the functional program; and

(iii) A reduced copy of the approved floor plan indicating room numbers or names and the approved use; and

(c) The state fire marshal has inspected and approved for fire life safety RCW 18.20.130.

(2) Facilities will not use areas of new construction, as described in WAC 388-78A-2821, until one of the following events has occurred:

(a) Construction review services has approved the construction, and the scope of work does not require inspection by DSHS for a licensing inspection, or office of the state fire marshal (OSFM). Examples of such projects include:

(i) Minor additions (sunroom, dining room, offices);

(ii) New buildings without resident care space or critical systems;

(iii) Minor moving of walls in resident care spaces;

(iv) Major renovations in non-resident spaces; and

(v) Phased construction projects not falling under subsection (3)(b)(ii) and (iii) of this section; or

(b) Construction review services has recommended approval, and a DSHS inspection has approved the finished work, and the scope of work is for:

(i) Major alterations of resident spaces;

(ii) Alterations of significant scope;

(iii) Conversion of support spaces to resident rooms;

(iv) Addition of licensed beds not previously reviewed and approved by construction review services;

(v) New resident care buildings (under existing license);

(vi) New resident support spaces such as kitchens and secured outdoor areas; and

(vii) License type/contract care conversions; or

(c) Construction review services has recommended approval, OSFM has inspected, and DSHS issues a license and the scope of the work is for:

(i) Buildings and areas supporting an initial facility license;

(ii) Buildings and spaces seeking licensure after an expired license; or

(iii) Facility relocation.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2860 Relocation of residents during construction. (1) Prior to moving residents out of the assisted living facility during construction, the assisted living facility must:

(a) Notify the residents and the residents' representatives at least thirty days prior to the anticipated move date, of the required move, and their options consistent with chapter 70.129 RCW;

(b) Notify the department at least thirty days prior to the anticipated move date of the assisted living facility's plans for relocating residents, including:

- (i) The location to which the residents will be relocated;
- (ii) The assisted living facility's plans for providing care and services during the relocation;
- (iii) The assisted living facility's plans for returning residents to the building; and
- (iv) The projected time frame for completing the construction.

(c) Obtain the department's approval for the relocation plans prior to relocating residents.

(2) If the assisted living facility moves ~~((out))~~ all of the residents from the assisted living facility without first obtaining the department's approval of the relocation plans, the assisted living facility is ~~((closed for business))~~ ordered to stop placement, and the department may revoke the ~~((licensee's))~~ assisted living facility license.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2870 Vacant buildings. Whenever an assisted living facility moves out all residents and ceases operation for reasons other than construction, ~~((as specified in))~~ under WAC 388-78A-2860, the licensee must relinquish ~~((the assisted living facility license))~~ or the department may revoke the assisted living facility license.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2880 Changing use of rooms. Prior to using a room for a purpose other than what was approved by construction review services, the assisted living facility must:

(1) Notify construction review services:

- (a) In writing;
- (b) Thirty days or more before the intended change in use;
- (c) Describe the current and proposed use of the room; and
- (d) Provide all additional documentation as requested by construction review services~~(-)~~;

(2) Obtain the written approval of construction review services for the new use of the room; and

(3) Ensure the facility functional program and room list are updated to reflect the change.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2900 Retention of approved construction documents. The assisted living facility must retain paper or electronic copies of the following on the assisted living facility premises:

(1) Specification data on materials used in construction, for the life of the product;

(2) Stamped "approved" set of construction documents;

(3) The certificate of occupancy or final inspection granted by the local building official;

(4) The functional program required under WAC 388-78A-2361; and

(5) Any approved exemption or alternative methods of compliance issued by the department.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2920 Area for nursing supplies and equipment. (1) ~~((If the assisted living facility provides intermittent nursing services))~~ In each building, the assisted living facility must provide ~~((on the assisted living facility premises))~~ for the safe and sanitary storage and handling of nursing equipment and supplies appropriate to the needs of their residents, as well as for the soiled nursing equipment by providing:

~~((a) Storage and handling of clean and sterile nursing equipment and supplies; and~~

~~(b) Cleaning and disinfecting of soiled nursing equipment.~~

(2) ~~For all assisted living facilities first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, in which intermittent nursing services are provided, or upon initiating intermittent nursing services within an existing assisted living facility, the assisted living facility must provide the following two separate rooms in each assisted living facility building, accessible only by staff persons:))~~

(a) A "clean" utility ~~((room))~~ area for the purposes of storing and preparing ~~((clean and sterile))~~ nursing supplies, or durable and disposable medical equipment equipped with:

(i) A work counter or table; and

(ii) A handwashing sink, with soap and paper towels or other approved hand-drying device; ~~((and~~

~~(iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-2260.))~~

(b) A "soiled" utility room for the purposes of storing soiled linen, cleaning ~~((and disinfecting soiled))~~ nursing care equipment, and disposing of refuse and infectious waste, equipped with:

(i) A work counter or table;

(ii) A two-compartment sink for handwashing and equipment cleaning and sanitizing;

~~((A clinical service sink or equivalent for rinsing and disposing of waste material;~~

~~((+)))~~ Soap and paper towels or other approved hand-drying device; and

~~((*)~~) (iv) Locked storage for cleaning supplies, if stored in the area.

(c) An area for locked medication storage consistent with WAC 388-78A-2260, equipped with:

(i) A work surface; and

(ii) An adjacent hand-washing sink, with soap and paper towels or other approved hand-drying device.

(2) "Clean" and "soiled" utility areas must be accessible by staff persons, or residents with appropriate staff assistance if those "clean" or "soiled" areas contain resident laundry facilities.

(3) Single designs meeting the functional intent and built to address issues of infection control, work process, and mechanical ventilation may be approved.

(4) Each assisted living facility:

(a) May combine areas used for storing, handling, and cleaning soiled laundry and linens, areas used for cleaning nursing care equipment, areas for disposing of refuse and infectious waste, and/or areas for storing housekeeping and cleaning supplies, into a single area on the premises only when the assisted living facility equips the area with:

(i) A two-compartment sink for handwashing and sanitizing;

(ii) A work counter or table;

(iii) A mechanical ventilation to the outside of the assisted living facility; and

(iv) Locked storage for cleaning supplies, if stored in the area.

(b) Must ensure that any work or function performed in or around a combined utility area as described in subsection (4)(a) of this section is performed without significant risk of contamination to:

(i) Storing or handling clean nursing supplies or equipment;

(ii) Storing or handling clean laundry;

(iii) Providing resident care;

(iv) Food storage, preparation, or service; or

(v) Other operations or services of functions in the assisted living facility sensitive to infection control practices.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2930 Communication system. (1) The assisted living facility must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance from all resident-accessible areas including:

(i) ~~((From resident units))~~ Bathrooms and toilet rooms;

(ii) ~~((From common areas accessible to residents))~~ Resident living rooms and resident sleeping rooms; and

(iii) ~~((From))~~ Corridors, as well as common and outdoor areas accessible to residents~~((; and~~

(iv) ~~For assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, all bathrooms, all toilet rooms, resident living rooms and sleeping rooms))~~.

(b) Provide the resident with personal wireless communication devices, such as pendants or wristbands, when a

communication device is not installed in the resident's sleeping room, and when wireless communications are used:

(i) The system must be designed and installed consistent with industry standards and perform reliably throughout the facility; and

(ii) The facility must have a policy and procedure describing the mitigating measures in the event of system disruption, including for maintenance and loss of power; and

(c) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The assisted living facility must provide one or more nonpay telephones:

(a) In each building located for ready access ~~((by))~~ for staff persons; and

(b) On the premises with reasonable access and privacy by residents.

~~((In assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section,))~~ The assisted living facility must equip each resident room with ~~((two))~~ access to telephone ~~((lines))~~ service.

(4) If an assisted living facility ~~((that is issued a project number by construction services on or after September 1, 2004))~~ chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

(a) Whether or not announcements are broadcast into the resident's room; and

(b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

(5) The facility must provide wireless internet access.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2950 Water supply. The assisted living facility must:

(1) Provide water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(2) Protect and maintain the assisted living facility water systems ~~((free of cross-connections as specified in the edition of Cross-Connection Control Manual, published by the Pacific Northwest Section of the))~~ against cross-connection in accordance with American Water Works Association~~((; in effect on the date a construction review fee is paid to the department of health, construction review services;))~~ (AWWA) Recommended Practice for Backflow Prevention and Cross-Connection Control.

(3) Meet the requirements of the plumbing code adopted by the Washington state building code council;

(4) Install vacuum breakers or backflow prevention devices on hose bibs and supply nozzles used to connect hoses or tubing to housekeeping sinks, and where used, bedpan-flushing attachments;

(5) Provide hot and cold water under adequate pressure readily available throughout the assisted living facility;

~~((4))~~ (6) Provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between 105°F and 120°F at all times; and
~~((5))~~ (7) Label or color code nonpotable water supplies as "unsafe for domestic use."

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2960 Sewage and liquid waste disposal. The assisted living facility must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system according to chapter ~~((246-274))~~ 246-272A WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters ~~((246-272))~~ 246-272B and 173-240 WAC, and local ordinances.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2980 Lighting. (1) The assisted living facility must provide emergency lighting in residents units, dining and activity rooms, laundry rooms, and other spaces where residents may be at the time of a power outage.

(2) The assisted living facility must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

~~((2))~~ (3) The assisted living facility must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices.

~~((3))~~ (4) New assisted living facility construction must, at a minimum, meet the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee is paid to the department of health, construction review services, for new assisted living facility construction.

~~((4))~~ (5) Existing assisted living facility construction must maintain, at a minimum, the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee was paid to the department of health, construction review services, for the assisted living facility or that portion of the assisted living facility that underwent construction review.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2990 Heating-cooling—Temperature. The assisted living facility must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F ~~((per the building code))~~. The assisted living facility must:

(a) Maintain the assisted living facility at a minimum temperature of 60°F during sleeping hours; and

(b) Maintain the assisted living facility at a minimum of 68°F during waking hours, except in rooms:

(i) Designated for activities requiring physical exertion; ~~((or))~~

(ii) Where residents can individually control the temperature in their own living units, independent from other areas~~((:))~~; or

(iii) Where residents cannot individually control the temperature in their own living units, maintain all living units at a temperature range of 70°F to 75°F;

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of maintaining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F ~~((for one hundred seventy-five hours per year or))~~ two percent of the ~~((time, as specified in the latest edition of "Recommended Outdoor Design Temperatures—Washington State," published by the Puget Sound chapter of the American Society of Heating, Refrigeration, and Air Conditioning Engineers))~~ year per the ASHRAE standards;

(3) Equip each assisted living facility ~~((issued a project number by construction review services on or after September 1, 2004 for construction related to this section,))~~ with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; ~~((and))~~

(5) Equip each resident sleeping room ~~((and resident living room in assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section,))~~ with individual temperature controls located between ~~((thirty))~~ eighteen and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60°F to maximum 85°F, these individual temperature controls may be modified to prevent resident access only when:

(a) Appropriate, as documented in resident assessment(s) and their negotiated service plan; and

(b) The temperature range is maintained at a range of 70°F to 75°F.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3000 Ventilation. The assisted living facility must~~((:))~~ meet the ventilation requirements of the mechanical code as adopted and amended by the Washington state building council; and

(1) Ventilate rooms to:

(a) Prevent excessive odors or moisture; and

(b) Remove smoke.

(2) ~~((Designate and ventilate))~~ If provided, locate outdoor smoking areas~~((, if smoking is permitted in the assisted living facility, to prevent air contamination throughout the assisted living facility))~~ in accordance with Washington state law;

(3) Provide intact sixteen mesh screens on operable windows and openings used for ventilation; and

(4) ~~((Prohibit))~~ Ensure window screens that may restrict or hinder escape or rescue through emergency exit openings, do not present an obstacle to facility emergency plans as coordinated with local fire and rescue services.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3010 Resident ((~~room—Room furnishings storage~~)) units. ~~((1))~~ The assisted living facility must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the assisted living facility was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the assisted living facility, after June 30, 1989:

(A) Applied for initial licensure; or

(B) Applied to increase the number of resident sleeping rooms; or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the assisted living facility was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

~~(i) In all assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, and when requested by a resident in an assisted living facility licensed on or before September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;~~

~~(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;~~

~~(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.~~

(2) The assisted living facility must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame;

(ii) Is in good condition; and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(c) One or more comfortable pillows for each resident;

(d) Bedding for each bed, in good repair; and

(e) Lighting at the resident's bedside when requested by the resident.

(3) The assisted living facility must not allow a resident sleeping room to be used as a passageway or corridor.

(4) The assisted living facility may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(5) The assisted living facility must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean an assisted living facility is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.)

The assisted living facility resident units must have the following:

(1) General characteristics:

(a) Units must have lever door hardware and option for lockable entry doors;

(i) Locking entry doors must unlock with single lever handle motion;

(b) Residents may not enter their rooms through another resident unit or resident bedroom;

(c) The functional program shall identify the number of units or number of licensed beds designed for staff assisted movement, bathing and toileting;

(2) **Number of residents:** Each resident unit shall be limited to not more than two residents.

(3) **Unit configuration types:**

(a) A studio unit or single room;

(b) A companion unit sized appropriately to provide two separate sleeping rooms or spaces of a common entry vestibule;

(c) A one bedroom unit with separate living and sleeping rooms; or

(d) A two bedroom unit with separate living and sleeping rooms;

(4) **Bathrooms:** Access to bathing/toileting facilities within the resident unit must not be through a resident sleeping room or otherwise compromise resident dignity or privacy.

(5) **Sleeping rooms size:**

(a) One person rooms shall have not less than eighty square feet of usable floor space;

(b) Two person rooms shall not have less than seventy square feet of usable floor space per individual;

(c) When a resident sleeping room is located within a private apartment:

(i) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom;

(ii) The total square footage in the private apartment equals or exceeds two hundred-twenty square feet excluding the bathroom;

(iii) There are no more than two residents living in the apartment; or

(iv) Both residents mutually agree to share the resident sleeping room; and

(v) If all other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet; and

(d) All sleeping rooms must be of sufficient size to allow three feet between the bed and the adjacent walls or furnishings and five feet between other beds.

(6) **Calculating floor space:**

(a) Usable floor space in a resident's sleeping room is calculated by measuring from interior wall to interior wall surface;

(i) Including areas of door swings and entryways into the sleeping room.

(ii) Excluding areas under ceilings less than seven feet high, closet space and built-in storage, areas under counters, sinks, or appliances, bathroom and toilet rooms.

(7) **Room Arrangement:**

(a) Each sleeping room must have unrestricted direct access to a hallway, living room, outside, or other common-use area;

(b) A resident sleeping room may not be used as a passageway, hall, intervening room, or corridor.

(8) **Miscellaneous:** Each sleeping room must have:

(a) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(b) Electrical receptacles consistent with the requirements of the electrical code;

(c) A light control switch located by the entrance for a light fixture in the room;

(d) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(e) A lockable drawer, cupboard or other secure space measuring a least one-half cubic foot with a minimum dimension of four inches;

(f) Separate storage facilities for each resident in or immediately adjacent to that residents sleeping room to adequately store a reasonable quantity of clothing and personal possessions; and

(g) Separate storage containers for materials used in the administration of intermittent nursing services appropriate to the needs of the resident and documented in the functional program.

NEW SECTION

WAC 388-78A-3011 Resident unit furnishings. (1)

The assisted living facility must ensure each resident sleeping room contains:

(a) A bed for each resident, except when:

(i) Two residents mutually agree to share a bed; or

(ii) A resident requests or provides alternate furniture for sleeping.

(b) The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(c) If using a bed, a mattress for each bed which:

(i) Fits the bed frame;

(ii) Is in good condition; and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(d) One or more pillows for each resident;

(e) Bedding for each bed, in good repair; and

(f) Lighting at the resident's bedside when requested by the resident.

(2) The assisted living facility may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(3) The assisted living facility must ensure each resident has either a sleeping room or resident living room that contains a sturdy chair. This requirement does not mean an assisted living facility is responsible for supplying specially

designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The assisted living facility must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The assisted living facility must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) ~~((Adequate ventilation to the outside of the assisted living facility. For assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, must))~~ Provide mechanical ventilation to the outside; and

(f) Separation from other rooms or areas by four walls and a door.

(3) The assisted living facility must provide each toilet room with a:

(a) Toilet with a clean, nonabsorbent seat free of cracks;

(b) Handwashing sink in or adjacent to the toilet room ~~((For assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the assisted living facility));~~ and

(c) ~~((Suitable))~~ A mirror with adequate lighting for general illumination.

(4) ~~((For assisted living facilities approved for construction or initially licensed after August 1, 1994,))~~ The assisted living facility must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, for residents who do not have access to a private toilet room in their apartment, the assisted living facility must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents. For example: One toilet and one handwashing sink for one to eight residents, two for nine to sixteen residents, three for seventeen to twenty-four residents, and so on ~~((, who do not have access to a private toilet room. When two or more toilets are contained in a single bathroom, they are counted as one toilet)).~~

(6) When providing common-use toilet rooms and bathrooms for residents who do not have access to a private bathroom in their apartment, the assisted living facility must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents. For example: One bathing

fixture for one to twelve residents, two for twelve to twenty-four residents, three for twenty-five to thirty-six residents, and so on ~~((, who do not have access to a private toilet room)).~~

(7) When providing common-use toilet rooms and bathrooms, the assisted living facility must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women, unless the bathroom is identified as a single resident use only;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The assisted living facility is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room ~~((, except that single use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment));~~

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) ~~((In assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section,))~~ The assisted living facility must ensure twenty-five percent of all ((the)) resident use, and at least one common use bathing fixtures ((in the assisted living facility)) are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier; and

(b) A minimum size of thirty-six inches by forty-eight inches ~~((, and~~

~~((e) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower)).~~

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3040 Laundry. (1) The assisted living facility must provide laundry and linen services on the premises, or by commercial laundry.

(2) The assisted living facility must handle, clean, and store linen according to acceptable methods of infection control. The assisted living facility must:

(a) Provide separate areas for handling clean laundry and soiled laundry;

(b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;

(c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; ~~((and))~~

(d) Ensure all staff persons wear gloves and use other appropriate infection control practices when handling soiled laundry; and

(e) Have a utility sink and a table or counter for folding clean laundry.

(3) The assisted living facility must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, ~~((or))~~ that automatically ~~((dispense))~~ dispenses a chemical sanitizer as specified by the manufacturer, ~~((when- ever the assisted living facility washes:~~

(a) Assisted living facility laundry;

~~(b) Assisted living facility laundry combined with residents' laundry into a single load; or~~

~~(c) More than one resident's laundry combined into a single load))~~ or that employs alternate sanitization methods recommended by the manufacturer.

(4) The assisted living facility or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at temperatures below 140°F and without the use of a chemical sanitizer.

(5) The assisted living facility must ventilate laundry rooms and areas to the outside of the assisted living facility, including areas or rooms where soiled laundry is held for processing by off site commercial laundry services.

(6) The assisted living facility must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) ~~((For all assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section,))~~ The assisted living facility must provide a laundry area or develop and implement policy and procedure to ensure residents have access to an area where residents' may do their personal laundry that is:

(a) Equipped with:

(i) A utility sink;

(ii) A table or counter for folding clean laundry;

(iii) At least one washing machine and one clothes dryer; and

(iv) Mechanical ventilation to the outside of the assisted living facility.

(b) ~~((Is))~~ Arranged to reduce the chances of soiled laundry contaminating clean laundry.

~~((8) The assisted living facility may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-3110.~~

~~(9) The assisted living facility may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-3120.)~~

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3050 ((Day rooms)) Common areas.

(1) The assisted living facility must provide one or more

~~((day room))~~ common areas in which residents may participate in social and recreational activities. ~~((Day room))~~ Common areas include, but are not limited to:

(a) Solariums;

(b) Enclosed sun porches;

(c) Recreation rooms;

(d) Dining rooms; and

(e) Living rooms.

(2) The assisted living facility must provide a total minimum floor space for ~~((day room))~~ common areas of ~~((:~~

~~(a) One hundred fifty square feet, or ten square feet per resident, whichever is larger, in assisted living facilities licensed on or before December 31, 1988; or~~

~~(b) One hundred fifty square feet, or twenty square feet per resident, whichever is larger, in assisted living facilities licensed after December 31, 1988))~~ one hundred-fifty square feet, or twenty square feet per resident, whichever is larger.

(3) The assisted living facility must provide ~~((day room))~~ common areas with ~~((comfortable))~~ furniture and furnishings that meet the residents' needs.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3090 Maintenance and housekeeping.

(1) The assisted living facility must:

(a) Provide a safe, sanitary and well-maintained environment for residents;

(b) Keep exterior grounds, assisted living facility structure, and component parts safe, sanitary and in good repair;

(c) Keep facilities, equipment and furnishings clean and in good repair; and

(d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition ~~((; and~~

~~(e) Equip a housekeeping supply area on the premises with:~~

~~(i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;~~

~~(ii) Storage for wet mops, ventilated to the outside of the assisted living facility; and~~

~~(iii) Locked storage for cleaning supplies))~~ consistent with the negotiated service agreement.

(2) ~~((For assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section,))~~ The assisted living facility must provide housekeeping supply room(s):

(a) Located on each floor of the assisted living facility, except only one housekeeping supply room is required for assisted living facilities licensed for sixteen or fewer beds when there is a means other than using a stairway, for transporting mop buckets between floors;

(b) In proximity to laundry and kitchen areas; and

(c) Equipped with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;

(ii) Storage for wet mops;

(iii) Locked storage for cleaning supplies; and

(iv) Mechanical ventilation to the outside of the assisted living facility.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-78A-2820	Building requirements and exemptions.
WAC 388-78A-2890	Time frame for approval.
WAC 388-78A-2910	Applicable building codes.
WAC 388-78A-3020	Calculating floor space.
WAC 388-78A-3070	Stairs—Ramps.
WAC 388-78A-3080	Guardrails—Handrails.
WAC 388-78A-3110	Areas for cleaning and storing soiled equipment, supplies and laundry.
WAC 388-78A-3120	Areas for handling and storing clean supplies and equipment.

WSR 19-15-024
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed July 9, 2019, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-108.

Title of Rule and Other Identifying Information: Chapter 51-04 WAC, Policies and procedures for consideration of statewide and local amendments to the State Building Code.

Hearing Location(s): On September 13, 2019, at 10:00, at the Center Place Regional Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216; and on September 27, 2019, at 10:00, at the Department of Enterprise Services, Presentation Room (1213), 1500 Jefferson Street, Olympia, WA 98504.

Date of Intended Adoption: October 11, 2019.

Submit Written Comments to: Doug Orth, 1500 Jefferson Street S.E., Olympia, WA 98504, email SBCC@des.wa.gov, by September 20, 2019.

Assistance for Persons with Disabilities: Contact Carrie Toebe, phone 360-407-9255, email carrie.toebe@des.wa.gov, by September 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are in response to RCW 19.27.035 requiring the state building code council (SBCC) to adopt a revised process for the review of proposed statewide amendments and review of proposed or enacted local amendments to the codes enumerated in RCW 19.27.031.

Summary of Proposed Changes:

WAC 51-04-010:

- Included the code(s) enumerated in RCW 19.27A.015.

WAC 51-04-015:

- Added a definition for "Local Official" and "Code Official."

WAC 51-04-018:

- Clarified what entities may petition for a code modification preliminary SBCC review.

WAC 51-04-020:

- Noted that petitions (amendment proposals) must meet the complete application requirements set by the council.
- Added language allowing the council to modify the list of codes consider[ed] as Group 1 and Group 2.
- Noted that the Wildland Urban Interface Code is in Group 1.
- Changed two months to sixty calendar days.
- Clarified where council actions will be posted.
- Clarified that one of the two council public meetings will be held in eastern Washington and the other in western Washington.
- Added "legislative direction" to the list of reasons the Group 1 codes may be amended during the Group 2 process.

WAC 51-04-025:

- Noted that amendment proposals must be complete, including a detailed economic analysis of impacts of the proposed amendment.
- Added "laws and" to the criteria for statewide and emergency statewide amendments. It now reads: (c) The amendment is necessary for consistency with state or federal laws and regulations.

WAC 51-04-040:

- Clarifies that for reconsideration the clock starts upon notification.

WAC 51-04-050:

- Clarifies that all written communication received by council members pertaining to council business should be forwarded to staff for inclusion in the public record.

WAC 51-04-060:

- Removed the partial listing of referenced codes.
- Corrected council contact information.

Reasons Supporting Proposal: RCW 19.27.035.

Statutory Authority for Adoption: RCW 19.27.035.

Statute Being Implemented: RCW 19.27.035.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; and Enforcement: SBCC, 360-407-9277, 360-407-9255.

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 Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email richard.brown@des.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 changes do not have a cost impact.

July 9, 2019
Doug Orth
Council Chair

AMENDATORY SECTION (Amending WSR 17-03-123, filed 1/18/17, effective 2/18/17)

WAC 51-04-010 Declaration of purpose. The Washington state building code council, hereinafter called the council, is required by chapter 266, Laws of 1988, to adopt and maintain the state building code, hereinafter referred to as the building code, as provided in chapters 19.27, 19.27A, and 70.92 RCW, and the state legislature.

(1) The primary objective of the council is to encourage consistency in the building code throughout the state of Washington and to maintain the building code consistent with the state's interest as provided in RCW 19.27.020. An objective of statewide adoption is to minimize state amendments to the model codes.

The building code shall be as defined in WAC 51-04-015(8).

(2) The council is also required by RCW 19.27.074 to approve or deny all city and county amendments to the building code that apply to single family or multifamily buildings as defined in RCW 19.27.015.

(3) The council may issue opinions relating to the codes at the request of a local official charged with the duty to enforce the enumerated codes as specified in RCW 19.27.031 and 19.27A.015.

(4) The purpose of this chapter is to establish policies and procedures for:

(a) Submittal and council review and consideration of proposed statewide amendments to the building code;

(b) Submittal and council review and consideration of proposed city and county amendments to the building code that apply to single family or multifamily buildings as defined in RCW 19.27.074;

(c) Reconsideration of council actions; and

(d) Issuing opinions to local officials.

AMENDATORY SECTION (Amending WSR 17-03-123, filed 1/18/17, effective 2/18/17)

WAC 51-04-015 Definitions. (1) "Council" means the Washington state building code council.

(2) "Emergency statewide amendment" means any proposed statewide amendment, the adoption of which is necessary immediately in order to protect life, safety or health of building occupants; preserve the structural integrity of buildings built to the state building code; to correct errors and omissions; or by the direction of the Washington state legislature or federal legislation. Emergency statewide amendments to the state building code must be adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

(3) "Local government amendment" means any amendment to the state building code, as adopted by cities or counties for implementation and enforcement in their respective jurisdictions.

(4) "Local government residential amendment" means any amendment to the state building code, as adopted by cities or counties for implementation and enforcement in their respective jurisdictions, that applies to single and multifamily buildings as defined by RCW 19.27.015.

(5) "Local official" and "code official" means the officer or other designated authority charged with the administration and enforcement of the codes adopted under chapters 19.27 and 19.27A RCW.

(6) "Model codes" means the codes developed by the model code organizations and adopted by and referenced in chapter 19.27 RCW.

~~((6))~~ (7) "Model code organization(s)" means the national code-promulgating organizations that develop the model codes (as defined herein), such as the International Code Council, International Association of Plumbing and Mechanical Officials, and National Fire Protection Association.

~~((7))~~ (8) "State building code" means the codes adopted by and referenced in chapter 19.27 RCW; the state energy code; and any other codes so designated by the Washington state legislature as adopted and amended by the council.

~~((8))~~ (9) "Statewide amendment" means any amendment to the ~~(building)~~ model codes, initiated through council action or by petition to the council from any agency, city or county, or interested individual or organization, that would have the effect of amending the building code for the entire state of Washington. Statewide amendments to the state building code must be adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

~~((9))~~ (10) "State building code update cycle" means that period during which the model code and standards referenced in chapter 19.27 RCW are updated and amended by the council in accordance with the Administrative Procedure Act, chapter 34.05 RCW hereinafter referred to as the "adoption period" and those additional periods when code changes are received for review as proposed amendments to the model codes, hereinafter referred to as "submission periods."

AMENDATORY SECTION (Amending WSR 94-05-058, filed 2/10/94, effective 3/13/94)

WAC 51-04-018 Petition for preliminary review. An agency, city or county, ~~((or other interested individual or organization))~~ wishing to submit ~~((statewide or))~~ local government residential amendments to the building code for council consideration, may file with the council a petition for preliminary review of the ~~((statewide or))~~ local government residential amendment, in order to solicit comments from council members and interested parties, prior to council action.

The council may refer a petition for preliminary review to one of the council standing committees for review and comment.

AMENDATORY SECTION (Amending WSR 17-03-123, filed 1/18/17, effective 2/18/17)

WAC 51-04-020 Policies for the consideration of proposed statewide amendments. (1) The council will accept and consider petitions for emergency statewide amendments to the building code at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW. The council will accept and consider all petitions for statewide amendments that meet the complete application requirements as set by the council in conjunction with the state building code update cycle, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020 as follows:

(a) For the purpose of review and adoption of new model code editions and statewide amendment submission, the state building code shall be divided into two groups as follows, unless otherwise directed by the council:

(i) Group 1: International Building Code (IBC); International Existing Building Code (IEBC); International Fire Code (IFC) Washington state energy code-commercial (WSEC-C) and Wildland Urban Interface Code (WUI).

(ii) Group 2: International Residential Code (IRC); International Mechanical Code (IMC); International Fuel Gas Code (IFGC); standards liquefied petroleum gas are National Fire Protection Association (NFPA) standards 58 and 54; Uniform Plumbing Code (UPC); Washington state energy code-residential (WSEC-R).

(b) The adoption period of new model codes commences when new editions of the model codes are available to the public. Within sixty days, the council shall publish a timeline to include a report of significant model code amendments and applicability of existing state amendments, followed by a submission period for new proposed statewide amendments.

(i) The council shall review Group 1 model codes and approve a report on significant changes and applicability of existing state amendments. The Group 1 report shall be posted on the council web site and a submission period of at least ~~((two months))~~ sixty calendar days shall be allowed for new proposed statewide amendments.

(ii) Upon completion ~~((and posting))~~ of the Group 1 ~~((report))~~, public meetings, council actions and posting of the actions on the state building code council's web site and provided new editions of Group 2 model codes are available to the public, the council shall review the Group 2 codes and approve a report on significant changes and applicability of existing state amendments. The Group 2 report shall be posted on the ~~((council))~~ state building code council's web site and a submission period of at least ~~((two months))~~ sixty calendar days shall be allowed for new proposed statewide amendments

(2) The council shall review proposed new statewide amendments, and approve those meeting the appropriate criteria to file as proposed rules in accordance with chapter 34.05 RCW. The proposed rules filing shall include a small business economic impact statement in accordance with chapter 19.85 RCW.

(3) The council shall conduct at least two public hearings for each group (one in western Washington and one in eastern Washington) following the filing of the proposed rules with the code reviser's office.

(4) Amendments to Group 1 codes during the Group 2 adoption shall be limited to legislative direction, code correlation, correction of errors, language clarification and updated section references.

~~((5))~~ The code ((adoption)) development period shall conclude with formal adoption of the state building code as amended by the council. As required by RCW 19.27.074, all decisions to adopt or amend the state building code shall be made prior to December 1st and shall not take effect before the end of the regular legislative session in the next year. Group 1 and 2 codes shall be filed with the code reviser at the same time. ((Amendments to Group 1 codes during the Group 2 adoption shall be limited to code correlation, errors, language clarification and updated section references.

~~((5))~~ (6) State amendments as approved by the council shall be submitted to the appropriate model code organization, at the direction of the council, except those adopted for consistency with state statutes or regulation and held for further review during the adoption period of those model codes by the council. The effective date of any statewide amendments shall be the same as the effective date of the new edition of the model codes, except for emergency amendments adopted in accordance with chapter 34.05 RCW and deemed appropriate by the council.

AMENDATORY SECTION (Amending WSR 17-03-123, filed 1/18/17, effective 2/18/17)

WAC 51-04-025 Procedure for submittal of proposed statewide amendments. (1) Statewide and emergency statewide amendments to the state building code shall conform to the purposes, objectives, and standards prescribed in RCW 19.27.020.

~~((All proposed))~~ Applications for proposed statewide amendments shall be complete, include a detailed economic analysis of impacts of the proposed statewide amendment and be submitted in writing to the council, on the form provided by the council. The amendment must address existing model code language; a change in the model codes since a previous edition; or an existing state or local amendment to the model code; or a portion of the state code other than the model code. The state building code council shall consider the action of the model code organizations in their consideration of these proposals.

Statewide and emergency statewide amendments to the state building code shall be based on one of the following criteria:

(a) The amendment is needed to address a critical life/safety need.

(b) The amendment clarifies the intent or application of the code.

(c) The amendment is necessary for consistency with state or federal laws and regulations.

(d) The amendment corrects errors and omissions.

(e) The amendment eliminates an obsolete, conflicting, duplicating or unnecessary regulation.

(2) Petitions for statewide amendments to the building code shall be submitted to the council during the submission period and the adoption period in accordance with WAC 51-04-020. Minimum requirements specified on the form for

submittals must be included. Incomplete submittals will be held for thirty days and the proponent will be notified with a request for more information. If after thirty days, the applicant has not provided requested information for a complete application, the proponent's proposal will be deemed incomplete and shall not move forward.

(3) Petitions for emergency statewide amendments to the building code may be submitted at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020.

The council may refer a proposed statewide amendment to one of the council standing committees for review and comment prior to council action in accordance with chapter 34.05 RCW.

(4) The council shall consider and take action on all proposed statewide amendments within the time frames required by chapter 19.27 RCW, RCW 34.05.330, and all other deadlines established by statute.

AMENDATORY SECTION (Amending WSR 17-03-123, filed 1/18/17, effective 2/18/17)

WAC 51-04-040 Reconsideration. (1) When the council approves, denies or modifies a statewide or local amendment to the building code, any party with written or oral testimony to the council related to the amendment on the record may file a petition for reconsideration. The petition must be received by the Washington State Building Code Council, 1500 Jefferson Avenue S.E., P.O. Box 41449, Olympia, Washington 98504-1449, within twenty calendar days of the date of notification of the council action on the amendment. The petition must give specific reasons for why the council should reconsider the amendment for approval or denial.

(2) Within sixty calendar days of receipt of a timely petition for reconsideration, the council shall in writing:

(a) Grant the petition for reconsideration and enter rule making to revise the amendment;

(b) Deny the petition for reconsideration, giving reasons for the denial; or

(c) Request additional information and extend the time period for not more than thirty calendar days to either grant or deny the petition for reconsideration.

(3) The council's denial of a proposed statewide or local government amendment, or the council denial of a petition for reconsideration under this section, is subject to judicial review under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 90-02-108, filed 1/3/90, effective 2/3/90)

WAC 51-04-050 Ex parte communications. All written communications related to council business received by council members (~~during council rule-making proceedings,~~) shall be forwarded to staff for inclusion in the public record.

AMENDATORY SECTION (Amending WSR 07-15-043, filed 7/13/07, effective 8/13/07)

WAC 51-04-060 Opinions. RCW 19.27.031 grants the council authority to render opinions relating to the building code at the request of a local code official.

For the purposes of this section, the term "code official" means the local or state official, or their designee, responsible for implementation and enforcement of the specific code provision on which the opinion is requested.

At the request of a code official, the council will issue opinions relating to the codes adopted under chapters 19.27, 19.27A, and 70.92 RCW, (~~including the state energy code, the state ventilation and indoor air quality code,~~) and council amendments to the model codes. At the request of a local code official, the council may issue opinions on the applicability of WAC 51-04-030 to a local government ordinance regulating construction.

Council related opinions may be developed and approved by a standing committee of the council.

Opinions approved by a standing committee may be reviewed and modified by the council.

AMENDATORY SECTION (Amending WSR 16-01-042, filed 12/9/15, effective 1/9/16)

WAC 51-04-070 Council mailing address. All requests for information, documentation, etc., should be submitted to:

Washington State Building Code Council
1500 Jefferson Avenue S.E.
P.O. Box 41449
Olympia, Washington 98504-1449
Phone: (~~360-407-9280~~) 360-407-9255
(~~Fax: 360-586-9088~~) www.sbcc.wa.gov

WSR 19-15-035
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 10, 2019, 3:50 p.m.]

Continuance of WSR 19-12-102.

Preproposal statement of inquiry was filed as WSR 18-07-092.

Title of Rule and Other Identifying Information: Chapter 296-128 WAC, Minimum wages, updates to exemptions for executive, administrative, professional, and outside salespersons.

Hearing Location(s): On August 15, 2019, at 10:00 a.m., at Clark College Columbia Technology Center, Events Rooms A&B (144 & 146), 18700 S.E. Mill Plain Boulevard, Vancouver, WA 98683.

Date of Intended Adoption: December 3, 2019.

Submit Written Comments to: Joshua Grice, Employment Standards Program Manager, P.O. Box 44510, Olympia, WA 98504-4510, email EAPRules@Lni.wa.gov, fax 360-902-5300, by September 6, 2019, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance, phone 800-547-8367, by August 8, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing a continuance of the proposal for the purpose of adding a seventh public hearing.

July 10, 2019
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 03-03-109, filed 1/21/03, effective 2/21/03)

WAC 296-128-500 Purpose. (1) This regulation is adopted in accordance with chapter 49.46 RCW to define the terms "bona fide executive, administrative, or professional capacity or in the capacity of outside ~~((salesman)) salesperson,~~" to define salary basis and to establish a procedure for computing overtime pay.

(2) An employee who meets the definitions of executive, administrative, or professional and who is paid on a salary basis (except as provided for in WAC ~~296-128-510 (2)(b), 296-128-520 (1)(c), 296-128-520 (2)(b), 296-128-530((5)) (1)(b), 296-128-530 (2)(b) and (3)(e), or WAC 296-128-535 (1)(c)~~) is considered exempt from the requirements of chapter 49.46 RCW. A job title, or payment of a salary, does not in and of itself exempt a worker from ((the minimum wage and overtime)) these requirements.

NEW SECTION

WAC 296-128-505 Definitions. (1) "Customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

(2) "Educational establishment" means an elementary or secondary school system, an institution of higher education, or other educational institution.

(3) "Exclusive of board, lodging, or other facilities" means "free and clear" or independent of any claimed credit for noncash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging, or other facilities may not count towards the minimum salary amount required for an exemption.

(4) "Primary duty" means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Because the burden of proving an exception to the definition of "employee" falls on the employer claiming the exception, the burden falls on the employer to demonstrate that the employees meet the primary duty requirement.

(a) Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other

types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Employees who spend more than fifty percent of their time performing exempt work will generally satisfy the primary duty requirement. Employees who do not spend more than fifty percent of their time performing exempt duties may meet the primary duty requirement if the other factors support such a conclusion. The burden falls on the employer to demonstrate that the employees meet the primary duty requirement.

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

WAC 296-128-510 Executive. (1) The term "individual employed in a bona fide executive ... capacity" in RCW 49.46.010 ~~((5)) (3)(c)~~ shall mean any employee:

~~((1)) (a)~~ Whose primary duty ~~((consists of the))~~ is management of the enterprise in which ~~((he))~~ the employee is employed or of a customarily recognized department or subdivision thereof; and

~~((2)) (b)~~ Who customarily and regularly directs the work of two or more other employees ~~((therein));~~ and

~~((3)) (c)~~ Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring ~~((or))~~, firing ~~((and as to the))~~, advancement ~~((and))~~, promotion, or any other change of status of other employees ~~((will be))~~ are given particular weight; and

~~((4) Who customarily and regularly exercises discretionary powers; and~~

~~(5) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this section: Provided, That this paragraph (5) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which he is employed; and~~

~~(6) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week exclusive of board, lodging, and other facilities: Provided, That an employee who is compensated on a salary rate of not less \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.)~~ (d) Who is compensated on a salary basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide executive ... capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Who owns at least a bona fide twenty percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management; and

(b) The requirements of WAC 296-128-545 do not apply to the executive employees described in this subsection.

(3) For the purposes of this section:

(a) A "customarily recognized department or subdivision" must have a permanent status and a continuing function.

(i) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place.

(ii) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized department or subdivision of the enterprise.

(iii) Continuity of the same subordinate personnel is not essential to the existence of a recognized department or subdivision with a continuing function.

(b) "Management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

(c) "Two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. Hours worked by an employee cannot be credited more than once for different executives.

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

WAC 296-128-520 Administrative. (1) The term "individual employed in a bona fide ... administrative ... capacity" in RCW 49.46.010 ~~((5))~~ (3)(c) shall mean any employee:

~~((H))~~ (a) Whose primary duty ~~((consists of))~~ is the performance of office or nonmanual ~~((field))~~ work directly related to the management ~~((policies))~~ or general business operations of ~~((his))~~ the employer or ~~((his))~~ the employer's customers; ~~((or~~

~~(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and~~

~~(3) Who customarily and regularly exercises))~~

~~(b) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance; and~~

~~((a) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in this regulation); or~~

~~(b) Who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; or~~

~~(c) Who executes under only general supervision special assignments and tasks; and~~

~~(4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1) through (3) of this section; and~~

~~(a) Who is compensated for his services on a salary or fee basis at a rate of not less than \$155 per week exclusive of board, lodging, or other facilities; or~~

~~(b) Who, in the case of academic administrative personnel is compensated for his services as required by paragraph (4)(a) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed: Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.)~~ (c) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide ... administrative ... capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof; and

(b) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which they are employed.

(3) For the purposes of this section:

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business oper-

ations of the employer or the employer's customers. "Directly related to management or general business operations" means work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) "Discretion and independent judgment" means the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. The exercise of discretion and independent judgment implies that the employee has the authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work.

(c) "Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

WAC 296-128-530 Professional. (1) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 ((5)) (3)(c) shall mean any employee:

((4)) (a) Whose primary duty consists of the performance of work:

((3)) (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction (and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(b) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the intention, imagination, or talent of the employee; or

(e)); or

(ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor; and

(b) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) With a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in ((the school system or)) an educational establishment ((or institution)) by which ((he)) the employee is employed; and

((2) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(4) Who does not devote more than 20 percent of his hours worked in the work week to activities which are not an essential part of and necessarily incident to the work described in paragraphs (1) through (3) of this section; and

(5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$170 per week exclusive of board, lodging, or facilities: Provided, That this paragraph (5) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law, medicine, or dentistry and who is actually engaged in the practice thereof: Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.) (b) Who is compensated on a salary or fee basis.

(3) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; or

(b) Who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession. Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(c) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(d) The requirements of WAC 296-128-545 do not apply to the law or medicine professionals described in this subsection.

(4) For the purposes of this section:

(a) "Customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The exemption is also available to employees who attained substantially the same advanced knowledge through a combination of work experience and intellectual instruction.

(b) "Field of science or learning" means the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status.

(c) "Recognized field of artistic or creative endeavor" includes such fields as music, writing, acting, and the graphic arts.

(d) "Work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

AMENDATORY SECTION (Amending WSR 98-02-027, filed 12/31/97, effective 2/1/98)

WAC 296-128-535 ((Are professional computer employees exempt from the Washington Minimum Wage Act?)) **Computer professionals.** ((1) Any employee who is a computer system analyst, computer programmer, software engineer, software developer or other similarly skilled worker will be considered a "professional employee" and will be exempt from the minimum wage and overtime provisions of the Washington Minimum Wage Act if:

(a) Their primary duty is of one of the following:

(i) Applying systems analysis techniques and procedures to determine hardware, software, or system functional specifications for any user of such services; or

(ii) Following user or system design specifications to design, develop, document, analyze, create, test or modify any computer system, application or program, including prototypes; or

(iii) Designing, documenting, testing, creating or modifying computer systems, applications or programs for machine operation systems; or

(iv) Any combination of the above primary duties whose performance requires the same skill level; and

(b) Their rate of pay is at least \$27.63 per hour.

(2) ~~This professional exemption only applies to highly skilled employees who:~~

(a) Possess a high degree of theoretical knowledge and understanding of computer system analysis, programming and software engineering; and

(b) Have the ability to practically apply that theoretical knowledge and understanding to highly specialized computer fields; and

(c) Generally attain the necessary level of expertise and skill to qualify for an exemption through a combination of education and experience in the field; and

(d) Consistently exercise discretion and judgment in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and

(e) Engage in work that is predominantly intellectual and inherently varied in character as opposed to work that is routinely mental, manual, mechanical, or physical.

(3) While many employees who qualify for this exemption hold a bachelor's or higher degree, **no degree is required for this exemption.**

(4) This professional exemption ~~does not apply to:~~

(a) Trainees or employees in entry level positions learning to become proficient in computer systems analysis, programming and software engineering; or

(b) Employees in computer systems analysis, programming and software engineering positions who have not attained a level of skill and expertise which allows them to generally work independently and without close supervision; or

(c) Employees engaged in the operation of computers; or

(d) Employees engaged in the manufacture, repair or maintenance of computer hardware and related equipment; or

(e) Employees covered by a collective bargaining agreement.) (1) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also mean any employee:

(a) Who is a computer system analyst, computer programmer, software engineer, or other similarly skilled worker; and

(b) Whose primary duty consists of one of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(ii) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(iii) The design, documentation, testing, creation or modification of computer programs related to machine operation systems; or

(iv) A combination of the aforementioned duties, the performance of which requires the same level of skills; and

(c) Who is compensated on a salary or fee basis, as provided in WAC 296-128-545, or on an hourly basis at a rate as follows:

(i) Beginning July 1, 2020, and through December 31, 2020:

(A) When the employee works for an employer with fifty or fewer employees, an amount not less than twenty-seven dollars and sixty-three cents per hour; and

(B) When the employee works for an employer with more than fifty employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour.

(ii) Beginning January 1, 2021, and through December 31, 2021:

(A) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour; and

(B) When the employee works for an employer with more than fifty employees, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour.

(iii) Beginning January 1, 2022, and each following year, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour regardless of the size of the employer.

(iv) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time.

(2) The exemption for employees in computer occupations does not include:

(a) Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or

(b) Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in WAC 296-128-535 (1)(a).

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

WAC 296-128-540 Outside salesman. (1) The term "individual employed in the capacity of outside salesman" in RCW 49.46.010 ((5)) (3)(c) shall mean any employee:

~~((1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business, as well as on the premises (where the employee regulates his own hours and the employer has no control over the total number of hours worked) in the following alternative activities:~~

~~(a) In~~ (a) Whose primary duty is:

(i) Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or

~~((b) In~~ (ii) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer(~~;~~ or

~~(c) In demonstrating products or equipment for sale; or~~

~~(d) In the sale of services and performance of the service sold when the compensation to the employee is computed on a commission basis; and~~

(2) Whose hours of work of a nature other than that described in (1)(a), (b), (c) and (d) of this section do not exceed 20 percent of the hours worked in the work week by nonexempt employees of the employer. Provided, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including inci-

idental deliveries and collections, shall not be regarded as nonexempt work); and

~~((3)) (b) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.~~

(2) Who is compensated by the employer on a guaranteed salary, commission or fee basis and who is advised of ~~(his)~~ the employee status as "outside ~~(salesman)~~ salesperson."

NEW SECTION

WAC 296-128-545 Salary thresholds. To qualify as an exempt employee under this section, an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities, as follows:

(1) Beginning July 1, 2020, and through December 31, 2020:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(2) Beginning January 1, 2021, and through December 31, 2021:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(3) Beginning January 1, 2022, and through December 31, 2022:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(4) Beginning January 1, 2023, and through December 31, 2024, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(5) Beginning January 1, 2025, and through December 31, 2025:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(6) Beginning January 1, 2026, and each following year, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(7) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time.

WSR 19-15-036
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 11, 2019, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-103.

Title of Rule and Other Identifying Information: The department is amending sections in chapter 388-14A WAC in order to streamline procedures regarding the use of a form called the notice to payee. The division of child support (DCS) uses the notice to payee to do the following: (1) Provide notice to a custodial parent when DCS serves a notice of support debt or notice of support owed to establish the amount of back support debt or proportionate share of expenses owed by a noncustodial parent; or (2) provide notice to a noncustodial parent when DCS serves a notice of support owed to establish the amount of back support debt or proportionate share of expenses owed by a custodial parent (CP).

The department is proposing to amend the following rules in this filing: WAC 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?, and 388-14A-3315 When DCS serves a notice of support debt or a notice of support owed, we notify the other party to the child support order.

Hearing Location(s): On August 27, 2019, 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 August 28, 2019.

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., August 27, 2019.

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 August 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To streamline procedures and increase efficiency regarding the use of the form called the notice to payee. DCS believes this change will benefit children and families in our caseload.

Reasons Supporting Proposal: Current rules regarding the notice to payee require DCS to wait to send a notice to payee until after DCS has successfully served a notice of support debt or notice of support owed on a noncustodial parent (NCP), or to wait to send a notice to payee until after DCS has successfully served a notice of support owed on a CP. Experience has shown that delaying the mailing of the notice to payee until after DCS receives proof of service occasionally leads to delayed or no notice, which creates due process concerns.

The proposed change will allow DCS to send the notice to payee at the same time DCS starts the process to serve the notice of support debt or notice of support owed, instead of waiting until after service.

Statutory Authority for Adoption: RCW 26.09.105, 26.18.170, 26.23.110, 34.05.220, 74.04.055, 74.08.090, 74.20.040, 74.20A.310.

Statute Being Implemented: RCW 26.23.110.

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.

July 9, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

WAC 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt and demand for

payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the child or children in the case.

(c) When there are multiple current support orders for the same obligor and child or children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care or child care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, or within sixty days of service of the notice outside of Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) RCW 26.21A.515 controls the calculation of the debt on a notice of support debt and demand for payment.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) ~~(Following service of)~~ At the same time that DCS sends the notice of support debt and demand for payment for service on the NCP, DCS notifies either the CP or the payee under the order, or both if appropriate, by mailing a form called the notice to payee, which is described in WAC 388-14A-3315.

(a) DCS does not wait to confirm service of the notice of support debt and demand for payment before mailing out the notice to payee;

(b) DCS mails to the last known address of the CP ~~(and/or)~~ or the payee under the order, as appropriate;

(c) The notice to payee contains:

~~((a))~~ (i) A copy of the notice of support debt and demand for payment; and

~~((b) A notice to payee under WAC 388-14A-3315 regarding))~~ (ii) A statement that:

(A) The ~~(payee's rights))~~ payee has the right to contest the notice of support debt~~(-The))~~; and

(B) A CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection ~~((8)(b))~~ (8)(c) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection ~~((6))~~ (7) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection ~~((7))~~ (8)(c) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

WAC 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order? (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount owed under a child support order that was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar

amount of the current and future support obligation, including:

(i) The NCP's proportionate share of daycare or child care expenses incurred on behalf of the ~~((child(ren)))~~ the child or children; and

(ii) Converting a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars, if necessary; and

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses ~~((and/or))~~ or medical support, or both, owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

- (a) The current and future support obligation;
- (b) Any support debt owed; or
- (c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The underlying support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) The underlying support order sets a support obligation stated in foreign currency and DCS seeks to convert that amount using the current rate of exchange to fix the amount of support stated in U.S. dollars;

(c) DCS is implementing the adjustment or escalation provision of a court order;

(d) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the ~~((child(ren)))~~ child or children, but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

(e) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110, DCS has developed two separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed.

(b) DCS developed a special form called the "notice of support owed - Medical support" which is used only for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington; or

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the child or children and to demand payment of the obligated parent's proportionate share when a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed" and "notice of support owed - Medical support."

(7) DCS serves a notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) WAC 388-14A-3315 provides that, when DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice ~~((that was served))~~.

(a) ~~((After service on))~~ If DCS is serving a notice of support owed on the NCP, DCS mails ~~((a))~~ the notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) ~~((After service on))~~ If DCS is serving a notice of support owed on the CP, DCS mails ~~((a))~~ the notice to payee to the NCP.

(9) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed.

(10) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

(11) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(12) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(13) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

(14) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

(15) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

(16) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

(17) For the purposes of this section and WAC 388-14A-3311 through 388-14A-3330, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3315 When DCS serves a notice of support debt or a notice of support owed, we notify the other party to the child support order. (1) When the division of child support (DCS) needs to notify the parties that DCS is enforcing a previously entered support order, DCS serves the appropriate notice under WAC 388-14A-3302. DCS may serve a notice of support owed on either the non-custodial parent (NCP) or the custodial parent (CP), as provided in WAC 388-14A-3310.

(2) ~~((After))~~ At the same time that DCS ~~((serves))~~ sends a notice of support debt or a notice of support owed for service on one party, DCS notifies the other party ~~((to the order))~~ by sending a form called the notice to payee, with a copy of the notice ~~((that was served, when DCS receives proof of service))~~.

(3) DCS serves a notice of support debt or a notice of support owed on the NCP when DCS is enforcing an order that sets the NCP's support obligation. ~~((After service of))~~ At the same time that DCS sends the notice for service on the NCP:

(a) DCS sends the notice to payee to the CP, if the CP is the payee under the order; and

(b) DCS sends the notice to payee to the CP and to the payee under the order, if the CP is not also the payee under the order.

(4) When DCS serves a notice of support owed on the CP ~~((when))~~ because DCS is enforcing an order that sets the CP's medical support obligation ~~((After service of the notice on the CP))~~, DCS sends the notice to payee to the NCP.

(5) DCS sends the notice to payee by first class mail to the last known address DCS has on file, and encloses a copy of the notice that was ~~((served))~~ sent for service on the obligated parent.

(a) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on the notice of support owed or the notice of support debt within twenty days of the date of a notice to payee that was mailed to a Washington address.

(b) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(6) The effective date of a hearing request is the date DCS receives the request.

WSR 19-15-037

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 18-04—Filed July 11, 2019, 12:03 p.m.]

Continuance of WSR 19-12-113.

Preproposal statement of inquiry was filed as WSR 18-24-127.

Title of Rule and Other Identifying Information: Ecology proposes to amend chapter 173-186 WAC, Oil spill contingency plan—Railroad. This chapter requires railroads carrying oil as cargo to plan for oil spills to include how to make notifications and have the appropriate equipment and trained personnel to respond to spills that may occur.

We are filing this notice for an additional webinar we are holding on Monday, July 15, 2019, at 6:00 p.m. We had technical difficulties at the webinar held on July 10, 2019.

We are also extending the comment period. Comments are now due Friday, July 26, 2019.

Hearing Location(s): On July 15, 2019, at 6:00 p.m., at a webinar. Ecology is holding a second webinar due to technical difficulties with the originally scheduled webinar.

To join the meeting online from your computer, tablet or smartphone: <https://global.gotomeeting.com/join/768465573>.

You can also dial in using a phone: United States 312-757-3121, Access Code 768-465-573.

There will be a presentation on the rule update and a question and answer session, followed by the hearing.

Date of Intended Adoption: November 6, 2019.

Submit Written Comments to: Nhi Irwin, Department of Ecology, Spill Prevention, Preparedness, and Response Program, 300 Desmond Drive S.E. (parcel delivery), Lacey, WA 98503, or P.O. Box 47600 (United States postal), Olympia, WA 98502, submit comments by mail, online, or at the hearing(s), online <http://es.ecology.commentinput.com/?id=NYeZQ>, by July 26, 2019.

Assistance for Persons with Disabilities: Contact ecology's ADA coordinator, phone 360-407-6831, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email ecyADAcordinator@ecy.wa.gov, by July 5, 2019.

Statutory Authority for Adoption: RCW 90.56.210 Contingency plans.

Statute Being Implemented: RCW 90.56.210 Contingency plans.

Name of Proponent: Department of ecology, governmental.

July 11, 2019
Polly Zehm
Deputy Director

WSR 19-15-039

PROPOSED RULES

BIG BEND

COMMUNITY COLLEGE

[Filed July 11, 2019, 2:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-087 [19-11-086].

Title of Rule and Other Identifying Information: WAC 132R-04-063 Disciplinary action.

Hearing Location(s): On September 4, 2019, at 3:30 p.m., at the ATEC Building, Simplot A, 7662 Chanute Street N.E., Moses Lake, WA.

Date of Intended Adoption: September 5, 2019.

Submit Written Comments to: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu, fax 509-766-6355, by August 28, 2019.

Assistance for Persons with Disabilities: Contact Loralyn Allen, phone 509-793-2027, fax 509-766-6355, TTY 509-793-2325, email lora@bigbend.edu, by August 28, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to process.

Reasons Supporting Proposal: Updating process.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Agency Personnel Responsible for Drafting: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2001; Implementation and Enforcement: André Guzman, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2077.

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

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

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

July 11, 2019
Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-063 Disciplinary actions. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed alone or in conjunction upon students found to have committed the violations in WAC 132R-04-057. The college may impose additional sanctions on a student who fails to comply with any imposed sanctions including, but not limited to, preventing that student from registering for classes.

(1) **Warning:** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Reprimand:** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation:** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Other conditions and restrictions may include, but not be limited to, restrictions from being present on certain parts of the campus or in certain college buildings; restriction from attending certain college activities or participation in extra-curricular activities; orders of no contact between the student under probation and other students, college employees, or other persons.

(4) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(5) **Education.** The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(6) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(7) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(8) **Restitution:** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(9) **Suspension:** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(10) **Professional evaluation:** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to

college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(11) Expulsion: ~~((The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return.))~~ Permanent separation of the student from the college with no promise (implied or otherwise) that the student may return at any future time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student will also be barred from college premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice of trespass pursuant to WAC 132R-117-020(2). The notice of trespass may be given by any manner specified in chapter 9A.52 RCW.

WSR 19-15-040

PROPOSED RULES

BIG BEND

COMMUNITY COLLEGE

[Filed July 11, 2019, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-089.

Title of Rule and Other Identifying Information: WAC 132R-117-020 Trespass.

Hearing Location(s): On September 4, 2019, at 4:00 p.m., at the ATEC Building, Simplot A, 7662 Chanute Street N.E., Moses Lake, WA.

Date of Intended Adoption: September 5, 2019.

Submit Written Comments to: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu, fax 509-766-6355, by August 28, 2019.

Assistance for Persons with Disabilities: Contact Lora-lynn Allen, phone 509-793-2027, fax 509-766-6355, TTY 509-793-2325, email loraa@bigbend.edu, by August 28, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to process.

Reasons Supporting Proposal: Updating process.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Agency Personnel Responsible for Drafting: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2001; Implementation and Enforcement: Terrence Leas, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2077.

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

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

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

July 11, 2019
Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-117-020 Trespass. (1) The president of the college, or ~~((his/her designee is authorized in the instance of any event that is deemed to be unreasonably disruptive of order or which impedes the movement of persons or vehicles or which seems to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college, then the president or his/her designee shall have the power and authority subject to the students' right of demonstration as guaranteed pursuant to WAC 132R-04-040 to:~~

~~(a) Prohibit the entry of, or withdraw the license or privilege of any person or persons or any group of persons to enter onto or remain upon all or any portion of a college facility which is owned and/or operated by the college; or~~

~~(b) Give notice against trespass by any manner specified in chapter 9A.52 RCW to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility, which college facility is owned and/or operated by the college; or~~

~~(c) Order any person, persons or group of persons to leave or vacate all or any portion of a college facility which is owned and/or operated by the college.~~

(2) Any student who shall disobey a lawful order given by the president or his/her designee pursuant to the requirements of this rule, may be subject to criminal prosecution and may be subject to disciplinary action)) the president's designee, has the authority to grant, deny, or withdraw permission for people to be on college property. Any individual who is on college property must comply with college rules. Access to college property may be limited to certain times, certain uses, or certain groups of people. People who are on college property or within a college building without permission may be ordered to leave by any college official.

(2) People who remain on college property without permission, who disrupt college activities, interfere with people's ability to access buildings, or whose conduct threatens the health, safety, or security of anyone on campus may be removed from college property and given a twenty-four-hour trespass notice by the president, the president's designee, or a member of campus security.

(3) In the event a person's conduct continues to threaten the health, safety, or security of anyone on campus, the president or president's designee may trespass the person from

college property for up to one year, except expelled students may permanently be trespassed from campus. Any prior license or privilege to be on college property is revoked by the notice of trespass.

(4) A person who is trespassed from college property shall be given a written notice of trespass identifying:

(a) The reason why the person is being trespassed;

(b) The duration and scope of the trespass;

(c) The method for appealing the notice; and

(d) A warning that failing to comply with the notice may result in the person's arrest and criminal charges under chapter 9A.52 RCW.

(5) Appeals.

(a) If a current student is trespassed from campus, the initial trespass notice is considered a summary suspension under WAC 132R-04-064 and the student will receive an emergency appeal hearing under WAC 132R-04-064 with the conduct review officer as defined in WAC 132R-04-015(2). The authority to bar students from college property in this regulation is separate from and in addition to the authority of the student conduct officer as defined in WAC 132R-04-015(1). At the conclusion of the entire student conduct process, a student who is expelled may be permanently trespassed from college property in accordance with WAC 132R-04-063(11).

(b) If a current employee is trespassed from a particular portion of campus that the employee does not need to access to perform his or her job (e.g., ejected from DeVries Activity Center during a basketball game), the employee can appeal the decision under (c) of this subsection. If an employee is trespassed from all college property because his or her conduct threatens the health, safety, or security of anyone on campus, the employee will be considered to have been placed on paid administrative leave by issuance of the trespass notice and the college will follow its normal employment processes for investigating the alleged behavior and determining what level of discipline, if any, is appropriate.

(c) All other persons who have been removed or trespassed from university property may appeal the decision by submitting to the president or president's designee, by certified mail, a letter stating the reasons the person should not be barred from college property within twenty-one days of issuance of the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The president or president's designee shall review all relevant information and issue a written order affirming, modifying, or revoking the trespass within twenty days after the request for review is received. This decision is the college's final decision.

Title of Rule and Other Identifying Information: WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

Hearing Location(s): On August 27, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than August 28, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 27, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.loughheed@hca.wa.gov, by August 23, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new section adds administrative hearing rules for an action brought by an ICF/IID, in alignment with federal regulations.

The proposed rules allow an ICF/IID to request a hearing when a finding of noncompliance results in the termination of medicaid funding and any related provider agreements. The rules set out requirements for the notice of adverse action and the hearing request. The rules also describe the hearing and informal reconsideration processes, as well as the effective date for the termination of medicaid funding and related provider agreements.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, 42 C.F.R. Sec. 431.151, 153, 154, and 498.5.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 360-725-9970.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

WSR 19-15-041
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed July 11, 2019, 3:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-16-108.

July 11, 2019
Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID). The hearing process described in this section applies to requests for an appeal made by an intermediate care facility for individuals with intellectual disabilities (ICF/IID), as defined in WAC 388-825-020.

(1) **Right to hearing.** An ICF/IID may request a hearing when it is dissatisfied with the medicaid agency's finding of noncompliance resulting in the termination of medicaid funding and any related provider agreements under 42 C.F.R. Sec. 431.151 through 431.154.

(a) An agency review judge conducts the hearing and enters the agency's final order for cases held under this subsection.

(b) An ICF/IID cannot not appeal:

(i) The choice of sanction or remedy;

(ii) The monitoring remedy;

(iii) The level of noncompliance found, except when a favorable review decision would affect the range of civil money penalty amounts the agency could collect; or

(iv) The decision about when to conduct an initial survey of a prospective provider.

(2) **Notice of adverse action.** The agency gives the ICF/IID a written notice of adverse action that includes:

(a) The basis for the finding of noncompliance that resulted in the agency's decision to terminate medicaid funding and any related provider agreements;

(b) A statement of the deficiencies resulting in the decision;

(c) The effective date of the adverse action; and

(d) The ICF/IID's appeal rights and procedures, including deadlines, for filing a hearing request.

(3) **Request for hearing.** The ICF/IID, its legal representative, or other authorized official must file a written request for a hearing with the agency's board of appeals at P.O. Box 42700, Olympia, Washington, or by facsimile at 360-507-9018 within sixty calendar days of receiving the notice of adverse action.

(4) **Hearing.** If an ICF/IID requests a hearing on the termination of medicaid funding and any related provider agreements, the hearing is completed and the agency issues the final order on the hearing within one hundred twenty calendar days of the effective date of the adverse action.

(a) If the agency is unable to hold the hearing until after the effective date of the adverse action, the agency offers the ICF/IID an informal reconsideration that meets the requirements of subsection (5) of this section.

(b) The informal reconsideration process described in subsection (5) of this section is not the same reconsideration process defined in WAC 182-526-0010 or described in WAC 182-526-0605 through 182-526-0635.

(5) **Informal reconsideration for ICF/IID.** The informal reconsideration includes:

(a) Written notice to the ICF/IID of the agency's findings resulting in the termination of medicaid funding and any related provider agreements;

(b) A reasonable opportunity for the ICF/IID to dispute those findings in writing; and

(c) A written affirmation or reversal of the agency's action.

(6) **Termination of medicaid funding and related provider agreements.**

(a) The medicaid funding and any related provider agreements end on the effective date of the termination, unless:

(i) A hearing is timely requested and not provided by the agency until after the effective date of the termination; and

(ii) The termination is based on a survey agency certification stating that there is no jeopardy to beneficiaries' health and safety.

(b) If medicaid funding extends past the termination date, funding will be available only through the earlier of:

(i) The issuance date of a hearing decision that upholds the agency's action; or

(ii) One hundred twenty calendar days after the effective date of termination, as required by 42 C.F.R. Sec. 442.40.

WSR 19-15-055**PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed July 12, 2019, 3:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-013.

Title of Rule and Other Identifying Information: Chapter 308-15 WAC, Geologist licensing services.

Hearing Location(s): On October 1, 2019, at 1:30 p.m., at 405 Black Lake Boulevard, Building 2, Room 2108, Olympia, WA 98502.

Date of Intended Adoption: October 31, 2019.

Submit Written Comments to: Name: Julie Konnersman, Washington State Geologist Licensing Board, P.O. Box 9012, Olympia, WA 98507-9012, email geologist@dol.wa.gov, fax 360-570-7098, by September 30, 2019.

Assistance for Persons with Disabilities: Contact Kim Hall, administrative assistant, phone 360-664-1564, fax 360-570-7098, TTY 711, email geologist@dol.wa.gov, by September 30, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Several changes needed to include: Broadening the methods for applicants to meet educational requirements; identifying credentialed vocations outside of geology to perform certain services currently performed only by licensed geologists; and to codify in rules the policies put in place by the geologist licensing board.

Reasons Supporting Proposal: To support changes to the industry and to update all rules to reflect the current requirements.

Statutory Authority for Adoption: RCW 18.220.040, 18.220.050, and 43.24.086.

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: Shanana Gillespie, 2000 4th Avenue N.W., Olympia, WA

98502, 360-664-1570; Implementation and Enforcement: Rick Storvick, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1387.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt under RCW 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 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

July 12, 2019
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-010 State board of licensing. ~~((+))~~ ~~Meetings~~) The Washington state geologist licensing board, hereafter called the board, will hold ~~((quarterly))~~ at least one regular public meeting(s) each year. ~~((Special))~~ Additional public meetings may be held at such times and places as the board ~~((finds))~~ may deem necessary. ~~((Public notice of all public meetings will be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.~~

~~((2))~~ **Rules of order:** The latest edition of *Robert's Rules of Order* will govern the conduct of business at meetings and sessions of the board.

~~((3))~~ **Officers**) Annually, the board will elect a chair, a vice chair, and a secretary ~~((at its regular quarterly meeting in March.~~

~~((4))~~ **Quorum:** A quorum at any regular or special meeting or session will consist of four members of the board.

~~((5))~~ **Licensed geologists:** The board will maintain a roster of licensed geologists) for the upcoming year.

AMENDATORY SECTION (Amending WSR 07-13-038, filed 6/13/07, effective 7/14/07)

WAC 308-15-020 Definitions. (1) ~~(("Board" means the Washington state geologist licensing board.~~

~~((2))~~ **"Department"** means the Washington state department of licensing.

~~((3))~~ **"Geologic interpretation,"** as applied to the practice of geology and its specialties, is the ~~((iterative))~~ process ~~((by which geologists, using generally accepted geologic principles, determine geologic history, origin and process from))~~ used to evaluate geologic conditions based on review of available information, and observation and testing of rock, soil material and ~~((water))~~ groundwater characteristics ~~((, contents, distribution, orientation, lateral and vertical continuity, and resulting landforms)).~~

~~((4))~~ **"Geological"** (2) **"Geologic work of a character satisfactory to the board"** means that the applicant's qualifying work history consists of professional experience in the

practice of geology. ~~((Professional geological work is work performed at a professional level that requires the application of professional knowledge, principles and methods to geological problems through the exercise of individual initiative and judgment in investigating,))~~ Geologic work requires applying sufficient education, knowledge, and experience to geologic problems by investigating, and acquiring surface and subsurface data, and measuring, interpreting, and reporting on the physical ((phenomena)) properties of the earth. Implicit in this definition ((are the recognition)) is the understanding and pertinence of professional responsibility and integrity, and ((the acknowledgment of)) performance under minimal supervision. Professional ((geological)) geologic work specifically does not include routine activities by themselves such as drafting, ((sampling)) sample collection, sample preparation, or routine laboratory work, ((or core logging,)) where the elements of ((initiative,)) scientific judgment and ((decision making are lacking)) interpretation are not required, nor does it include activities which do not use scientific methods to ((process and)) interpret geologic data. ((It)) Professional geology work also does not include engineering or other physical sciences where ~~((geological))~~ geology investigation, analysis and interpretation are ~~((minimal or lacking))~~ not used. Professional specialty experience is considered to meet the requirements of this definition.

~~((5))~~ **"Geologist web site"** means the internet web site maintained by the department of licensing.

~~((6))~~ (3) **"National Association of State Boards of Geology"** or **"ASBOG"** means the organization responsible for developing, publishing and grading National Geologist Licensing Examinations.

~~((7))~~ (4) **"Professional specialty practice of a character satisfactory to the board"** means that the applicant has qualifying work history pertinent to the specialty that meets the standards for professional geologic work defined ~~((above))~~ in subsection (2) of this section. Elements, typical applications, and example project types ~~((of projects)),~~ for the engineering geologist and hydrogeologist specialties are ~~((outlined))~~ defined in WAC 308-15-053.

~~((8))~~ (5) **"Reciprocity"** means the issuance of a license without examination as a geologist or specialty geologist to ~~((a person))~~ an applicant who holds a license or certificate of qualifications issued by proper authority of any state, territory, or possession of the United States, District of Columbia, or any foreign country, if the applicant meets the requirements outlined in WAC 308-15-040 for a geologist license, in WAC 308-15-055 for an engineering geologist license, and in WAC 308-15-057 for a hydrogeologist license.

~~((9))~~ (6) **"Year of professional practice"** means at least 1600 hours of work in the practice ~~((during a))~~ of geology within one calendar year. Examples of a "year of professional practice" include 200 eight-hour days or 160 ten-hour days ~~((during a))~~ within one year. Part-time work will be counted on a prorated basis.

~~((10))~~ (7) **"Year of professional specialty practice"** means at least 1600 hours of work in a specialty ~~((during a))~~ within one calendar year, per examples given in subsection ~~((9))~~ (6) of this section.

~~((11))~~ (8) **"Geologist in training"** means an individual who has met ~~((at))~~ the educational requirements ~~((outlined))~~

described in WAC 308-15-040(2), and has passed the ASBOG Fundamentals of Geology examination, but does not meet the experience requirements outline in WAC 308-15-040(3).

AMENDATORY SECTION (Amending WSR 06-04-022, filed 1/23/06, effective 2/23/06)

WAC 308-15-030 How do I apply for a geologist license? (1) Review the available options for licensure:

(a) ~~((Examination))~~ If this is your initial geologist license, in WAC 308-15-050; and

(b) ~~((Reciprocity))~~ If you are licensed in another jurisdiction, in WAC 308-15-060.

(2) Complete the board's official application form, and submit ~~((your application according to the directions in the geologist application packet, which is available on the geologist web site and upon request from the board office))~~ it to the board office with the nonrefundable application fee.

(3) Verify you meet minimum educational requirements by having your official sealed transcripts sent directly to the board office from your college or university. Official sealed transcripts from schools outside the United States or Canada must be evaluated by a board-approved evaluation service. The evaluation service must send the original evaluation and a copy of the transcripts directly to the board office.

(4) ~~((Solicit))~~ Obtain personal references and verifications of experience in the format and on the forms specified in the application instructions. Verifications must be sent to the board directly from the ~~((originating source))~~ verifier.

(5) If ~~((applying for a license by reciprocity, solicit))~~ you are already licensed in another jurisdiction, obtain verification of your current license or certification and your examination scores on the form provided ~~((in the application packet))~~ by the board. Verification must be sent directly to the board from the issuing jurisdiction.

(6) If you are applying for a specialty license, submit ~~((a))~~ an applicable project list on the forms provided ~~((in the application packet))~~ by the board to show you meet the minimum requirements of the professional specialty practice ~~((of a character satisfactory))~~ to the satisfaction of the board.

(7) If requested by the board, submit one or more reports you ~~((contributed to or solely prepared))~~ signed and stamped.

(8) If you are applying for a license by examination, your complete application, as described in subsection (9) of this section, must be received by the board at least ninety calendar days before the date of the examination.

(9) An application is not complete and will not be considered until all of the following are received by the board:

(a) Application, signed and dated, and without omissions;

(b) Application fee and, if applying for a specialty by examination, the examination fee specified in WAC 308-15-150;

(c) Official sealed transcripts sent directly from ((the) your college(s) or ((universities)) university;

(d) Personal references sent directly from the ~~((originators))~~ reference source;

(e) Verification of experience sent directly ~~((from))~~ by the verifiers;

(f) If ~~((applying by reciprocity))~~ you are already a licensed geologist in another jurisdiction, verification of ~~((exam))~~ examination scores and license or certification in another jurisdiction;

(g) If you are applying for a specialty license, your applicable project list; and

(h) Other documentation as requested by the board.

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-040 What are the minimum requirements to be eligible for a geologist license? ~~((You are))~~ An applicant is eligible for a geologist license ((if you submit)) when a complete application ((according to WAC 308-15-030, demonstrating:

(1) **Personal references.** You are of good moral character, as attested to by two references.

~~((2))~~ is acceptable to the board, and demonstrates:

(1) **Education.** ~~((You have graduated from an accredited college or university with:~~

(a)) An applicant shall have graduated from a course of study satisfactory to the board as described in (a) of this subsection or satisfy educational equivalents as determined by the board on a case-by-case basis as described in (b) of this subsection:

(a) **Bachelor degree program.** An applicant shall have earned a bachelor's degree in geology, engineering geology, hydrogeology ((with at least twenty-four semester/thirty-six quarter hours of upper division geology courses; or

(b) A degree in a related geological science), or geological sciences, including successful completion of core classes approved by the board; or have a related bachelor's degree as approved by the board, ((and have either:

(i) Successfully completed classes in structural geology, mineralogy, petrology and sedimentary geology/stratigraphy. Twenty-four semester/thirty-six quarter hours must be upper division geology courses; or

(ii) Successfully completed)) which includes successful completion of coursework that is determined by the board to be educationally equivalent in content and rigor to ((the classes listed above. You must submit documentation that demonstrates your coursework is equivalent to the requirements in (b)(i) of this subsection acceptable to the board. Examples of documentation include course syllabi, copies of study materials, and the tables of contents of books used in the course.

~~((3))~~ that of a geological sciences degree program.

(b) **Educational equivalency:** The board may review and approve unique combinations of educational equivalents to a bachelor's degree. This may include advanced study pertinent to geology, nonmatriculated coursework, practical seminars, and/or on-the-job training acceptable to the board.

(2) **Experience.** ~~((You))~~ An applicant must have at least five years of ((professional geological)) geologic experience satisfactory to the board after completing the educational requirements in subsection ((2)) (1) of this section. ((Experience earned prior to meeting the minimum educational requirements will not be considered.)) At least three years of geological experience must be obtained under the supervision

of state-licensed geologists or others who, in the opinion of the board, are qualified to have responsible charge, or have been in responsible charge, of the applicant's geologic work. The following may be considered qualifying experience:

(a) ~~((Geological))~~ Geologic research or teaching at the university or college level, which, in the judgment of the board, is comparable to experience obtained in the practice of geology; ~~((and))~~

(b) Up to two ~~((years'))~~ years of credit for full-time graduate study in geology, engineering geology, hydrogeology or one of the related geological sciences approved by the board(~~(-~~

~~(4))~~; and

(c) Applicants with military training or experience will be evaluated by the board on a case-by-case basis to determine if the experience or training meets the licensing requirements.

(3) **Examination.** ~~((You))~~ An applicant must have passed the ASBOG Fundamentals of Geology and the ASBOG Practice of Geology examinations ~~((according to WAC 308-15-050,))~~ or another examination acceptable to the board.

AMENDATORY SECTION (Amending WSR 06-04-022, filed 1/23/06, effective 2/23/06)

WAC 308-15-050 What is the examination process to be licensed as a geologist? You must ~~((take))~~ sit for and pass the ASBOG examinations~~((The examination currently))~~ which consists of two parts: Fundamentals of Geology and Practice of Geology. ~~((Each part of the examination is four hours long. Information on the examination is available on the ASBOG web site.))~~

(1) **Applying for the examination:** You may ~~((either))~~ apply to sit for each section separately or for all sections simultaneously:

(a)(i) Apply to ~~((take))~~ sit for the Fundamentals of Geology ~~((exam after))~~ examination once you meet the minimum educational requirements ~~((for licensure, and the Practice of Geology exam after you meet the experience requirements outlined))~~ established in WAC 308-15-040.

~~((ii))~~ (ii) To apply to ~~((take))~~ sit for only the Fundamentals of Geology ~~((exam, you must))~~ examination, provide the board with ~~((an))~~ a completed application ~~((a certified))~~, an official copy of your transcripts, ~~((sent directly from your college or university;))~~ showing you meet the educational requirements, and the application fee listed in WAC 308-15-150. You do not need to submit employment and experience verification forms or personal references. Once you pass the Fundamentals of Geology examination, you will be enrolled as a geologist-in-training.

~~((ii))~~ (ii) After you meet the minimum experience requirements, you may apply for the Practice of Geology examination by submitting the remaining application documents and application fee; or)

(b)(i) Apply to sit for the Practice of Geology examination once you meet the experience requirements established in WAC 308-15-040.

(ii) To apply to sit for only the Practice of Geology examination, provide the board completed experience verifi-

cation forms showing you meet the requirements of WAC 308-15-040. These will be added to the application materials and fee you submitted to sit for the Fundamentals of Geology examination.

(c) Apply to ~~((take))~~ sit for both parts of the ASBOG examination ~~((after))~~ once you meet all ~~((other))~~ licensure requirements outlined in WAC 308-15-040, by submitting a completed license application packet and application fee. A completed application packet must include official transcripts and experience verification forms.

(2) **Fees:** You must submit the application fee with your application prior to the application deadline. Fees are listed in WAC 308-15-150. Following approval of your application you must submit your examination fees directly to ASBOG prior to the deadline specified by ASBOG.

(3) **Special accommodations:** If you ~~((have a disability))~~ need special accommodations, the board will provide accommodations consistent with the Americans with Disabilities Act. You must request special accommodations at least ninety days before the examination date.

(4) ~~((Notification of scoring: The board will notify you by mail of your examination score within ninety days of taking the examination.~~

~~((5))~~ **Failing the examination:** You may apply ~~((to retake the examination))~~ for reexamination by submitting a written request and the administrative fee for reexamination specified in WAC 308-15-150. Once you have been approved for reexamination, you must submit the examination fee directly to ASBOG by the deadline specified by ASBOG.

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-053 What are the specialty licenses? The types of specialty licenses are engineering geologist and hydrogeologist.

(1) **Engineering geologist.**

(a) **Elements of the engineering geologist specialty practice.** The practice of engineering geology involves the interpretation, evaluation, analysis, and application of geological information and data ~~((to civil works;))~~, as follows: Geotechnical soil and rock units are designated, characterized, and classified, using standard engineering soil and rock classification systems. ~~((Relationships))~~ Site characteristics are interpreted ~~((between landform development))~~ based on surface landforms, current and past geologic processes, ~~((ground and surface water, and))~~ the distribution and strength characteristics of soil and rock ~~((Processes evaluated include both surficial processes (for example, slope, fluvial, and coastal processes), and deep-seated processes (for example, volcanic activity and seismicity))~~, and ground and surface water. Geotechnical zones ~~((or))~~, domains or layers are designated based on soil and rock strength characteristics, common landforms, related geologic processes, or other pertinent factors. Proposed ~~((developmental))~~ land development or modification ~~((s are))~~ is evaluated and, where appropriate, analyzed to ~~((predict potential or likely changes in types and rates of surficial geologic processes))~~ estimate the likely behavior of soil and rock under static and dynamic conditions. Proposed modifications may include such things as

vegetation removal, using various types of ~~((earth))~~ materials in construction, applying loads to shallow or deep foundations, constructing cut or fill slopes and other grading, and modifying ground and surface water flow. The effects of surficial and deep-seated geologic processes are evaluated and analyzed to ~~((predict their))~~ estimate the potential effect on public health, public safety, land use, or proposed development.

(b) **Typical engineering geologic applications and types of projects.** Engineering geology is applied ~~((during all project phases,))~~ from conception through planning, design, construction, maintenance, and, in some cases, reclamation and closure. Planning-level engineering geologic work is commonly conducted in response to forest practice regulations, critical areas ordinances, and the State Environmental Policy Act. Typical planning-level engineering geologic applications include timber harvest planning, proposed location of residential and commercial developments and other buildings and facilities, and alternative route selection for roads, rail lines, trails, and utilities. Site-specific engineering geologic applications may include, for example, evaluation of and recommendations for cuts, fills, and tunnels for roads, trails, railroads, and utility lines; foundations for bridges and other ((drainage)) structures, retaining walls and shoring, dams, buildings, water towers, slope stability evaluation and stabilization, channel and shoreline stabilization ((facilities, fish ladders and hatcheries, ski lifts and other structures; landings for logging and other work platforms; airport landing strips)), and other structures; rock bolt systems; rockfall protection systems; blasting; and other major earthwork projects such as for aggregate sources and landfills.

(2) **Hydrogeologist.**

(a) **Elements of the hydrogeologist specialty.** ~~((In addition to tasks commonly performed by licensed geologists,))~~ The hydrogeologist license is a specialty license that requires having a geologist license. The practice of hydrogeology involves the study, interpretation, and application of the movement of water and other fluids through geologic materials, the mechanical, physical, chemical, and thermal interaction of fluids with geologic materials, and the transport of energy and chemical constituents by fluids in the subsurface.

(b) **Typical hydrogeologic applications and types of projects.** Typical applications include regional or basin groundwater resource, quantity and quality, characterization, development and protection of groundwater resources, subsurface characterization; design of vadose and saturated zone environmental cleanups; design, chemical testing, and construction supervision of test, production, recharge, injection, remediation, dewatering and resource protection wells; fluid flow and transport modeling; dewatering system design; and evaluation of potential impacts caused by past, current, or future activities on the quantity and quality of groundwater and soil gas, and the range of potential mitigations.

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-055 What are the minimum requirements to be eligible for an engineering geologist specialty license? You ~~((are))~~ must meet the following requirements to

be eligible for an engineering geologist license ((if you submit a complete application according to WAC 308-15-030, demonstrating)):

(1) You hold a current Washington state geologist license; and

(2) You have ~~((demonstrated))~~ knowledge of the engineering geology of Washington state; and

(3) You have completed and passed the requirements of advanced study pertinent to engineering geology and acceptable to the board as follows:

(a) Eighteen semester~~((s))~~ or twenty-seven quarter credit hours of graded academic coursework; or

(b) Two hundred seventy hours of qualifying seminars or workshops, as acceptable to the board; or

(c) Five hundred forty hours of on-the-job training under the supervision of state-licensed engineering geologists or others who, in the opinion of the board, are qualified to have responsible charge of engineering geologic projects; or

(d) ~~((A))~~ Any combination of (a), (b), and or (c) of this subsection, as acceptable to the board; and

(4) You have five years of professional engineering geology experience after ~~((completion of))~~ completing and passing the advanced study requirements specified in subsection (3) of this section. At least three years of engineering ~~((geological))~~ geology experience must be obtained under the supervision of Washington state-licensed engineering geologists or others who, in the opinion of the board, are qualified to have responsible charge of engineering ~~((geologic))~~ geology projects. The following may be considered qualifying engineering ~~((geologic))~~ geology experience:

(a) Engineering ~~((geological))~~ geology research or teaching at the university or college level, which, in the judgment of the board, is comparable to experience obtained in the practice of engineering geology; and

(b) Up to two years' credit for full-time graduate study in engineering geology or a curriculum containing equivalent academic content approved by the board; and

(5) You have passed the Washington state engineering geologist specialty examination or ~~((an))~~ another examination acceptable to the board.

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-057 What are the minimum requirements to be eligible for a hydrogeologist specialty license? You are eligible for a hydrogeologist license if you submit ~~((a complete))~~ an application ~~((according))~~ to the board, completed in accordance with WAC 308-15-030, ~~((demonstrating))~~ which demonstrates that:

(1) You hold a current Washington state geologist license; and

(2) You have demonstrated knowledge of the hydrogeology of Washington state; and

(3) You have completed and passed the requirements of advanced study pertinent to hydrogeology and acceptable to the board, as follows:

(a) Eighteen semester~~((s))~~ or twenty-seven quarter credit hours of graded academic coursework; or

(b) Two hundred seventy hours of seminars or workshops, as acceptable to the board; or

(c) Five hundred forty hours of on-the-job training under the supervision of state-licensed hydrogeologists or others who, in the opinion of the board, are qualified to have responsible charge of hydrogeologic projects; or

(d) A combination of (a), (b), and (c) of this subsection; and

(4) You have five years of professional hydrogeology experience after ~~((completion of))~~ completing and passing the advanced study requirements specified in subsection (3) of this section. At least three years of ~~((hydrogeologic))~~ hydrogeology experience must be obtained under the supervision of Washington state-licensed hydrogeologists or others who, in the opinion of the board, are qualified to have responsible charge of ~~((hydrogeologic))~~ hydrogeology projects. The following may be considered qualifying ~~((hydrogeologic))~~ hydrogeology experience:

(a) ~~((Hydrogeologic))~~ Hydrogeology research or teaching at the university or college level, which, in the judgment of the board, is comparable to experience obtained in the practice of hydrogeology; and

(b) Up to two years' credit for full-time graduate study in hydrogeology or a curriculum containing equivalent academic content approved by the board; and

(5) You have passed the Washington state hydrogeology specialty examination or ~~((an))~~ another examination acceptable to the board.

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-060 ~~What ((are the minimum requirements for obtaining a geologist or specialty))~~ qualifications must I meet to obtain a Washington state geologist license by reciprocity if I am already licensed in another jurisdiction? You are eligible for a geologist or specialty license by reciprocity if you submit a ~~((complete application according to WAC 308-15-030, demonstrating:~~

~~((4)))~~ geologist and/or specialty license and examination application to the board which demonstrates:

(1) You hold an active geologist license in good standing in a jurisdiction recognized by the board;

(2) You meet the education and experience requirements in WAC 308-15-040 and, if applying for a specialty geologist license, the experience requirements in WAC 308-15-055 or 308-15-057(;

~~((2))~~ You hold a current geologist, and if applicable, a specialty geologist license, registration, or certification in good standing, issued by a state or jurisdiction approved by the board); and

(3) You have passed the ASBOG Fundamentals of Geology and ASBOG Practice of Geology examinations or an equivalent examination acceptable to the board. If you are applying for a specialty geologist license, you must also verify that you have passed a specialty geologist examination adopted by or acceptable to the board, or take the Washington state specialty geologist examination.

NEW SECTION

WAC 308-15-065 **What happens if I do not complete my application?** (1) If you fail to complete the licensing process and the board's records show no application activity for five consecutive years, the board will consider your application abandoned. No application activity includes, but is not limited to, failure to submit the required documents within five consecutive years from the receipt of the most recent information submitted.

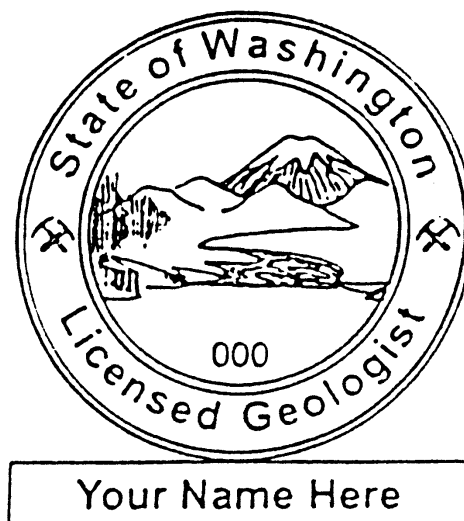
(2) Your application will be considered abandoned if you fail to provide the board with written communication during five consecutive years indicating you are attempting to complete the licensing process.

(3) Once the board considers your application abandoned, your application will be destroyed, in accordance with the board's record retention schedule in effect at the time. You will then be required to reapply for licensure, and comply with the licensing requirements in effect at the time of reapplication.

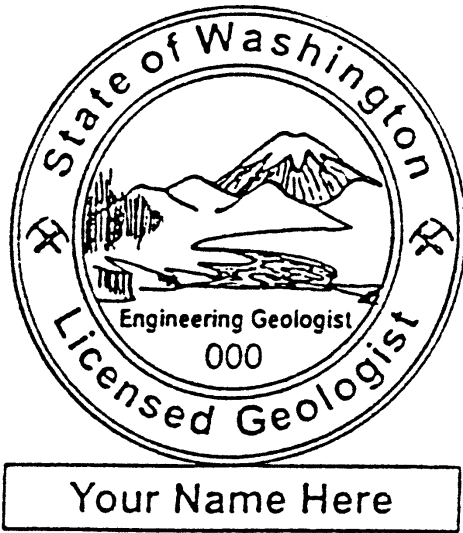
AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-070 **Do I need a seal?** Upon licensure, you must obtain a seal bearing your name, license number, and the legend "State of Washington Licensed Geologist." If you are licensed as an engineering geologist or hydrogeologist, the specialty must be noted on the seal. Seals may be ~~((rubber, embossed,))~~ physically or digitally produced. Facsimiles of the seal designs authorized by the director are shown ~~((below))~~ in this section. Deviations to the authorized seal designs are not allowed.

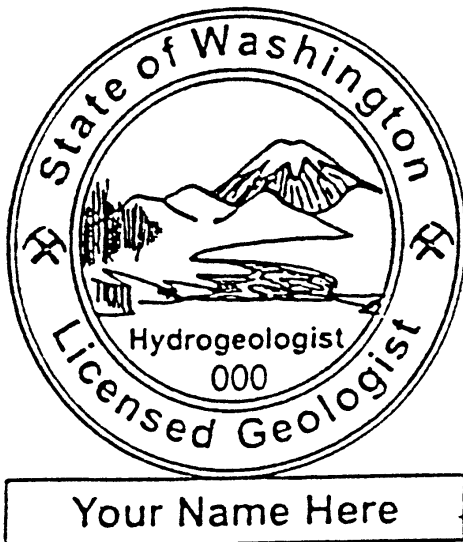
Geologist stamp here



Engineering geologist stamp here



Hydrogeologist stamp here



AMENDATORY SECTION (Amending WSR 07-13-038, filed 6/13/07, effective 7/14/07)

WAC 308-15-075 When do I need to ~~((use))~~ **apply my stamp/seal?** (1) You must apply your stamp/seal, ((sign)) signature, and the date on every final geology or specialty geology ((report, letter report, or document that is)) work product prepared by you or ((prepared)) under your supervision or direction, and submitted to other parties, as part of the public practice of geology.

(a) All figures, maps, and plates bound within final reports or documents do not need to be individually stamped/sealed, signed and dated. You must individually stamp, sign, and date unbound final figures, maps, and plates ((must be individually stamped/sealed, signed and dated)).

(b) Draft geology or specialty geology work ~~((does))~~ products do not have to be stamped/sealed, but ((the)) these

types of documents and ((all)) associated figures, maps, and plates must be ((clearly)) marked as draft.

(2) ~~((You must stamp/seal, sign, and date every final geology or specialty geology design and specification that is prepared by you or prepared under your supervision or direction. Draft geology or specialty geology design and specification drawings do not have to be stamped/sealed, but each design and specification must be clearly marked as draft.~~

~~((3))~~ If you stamp~~((/seal))~~, sign and date a work ~~((performed by someone other than yourself)) product prepared by another geologist, you are responsible to the same extent, as if you prepared ((the report, design or specification)) that work product yourself.~~

(3) The terms "signature" or "signed" as used in chapter 18.220 RCW and this chapter, mean the following:

(a) A handwritten identification or a digital representation of your handwritten identification that represents the act of putting your name on a document to attest to its validity. The handwritten or digital identification must be:

(i) Original and written by hand, or a scanned image of an original, handwritten identification;

(ii) Permanently affixed to the document(s) being certified;

(iii) Applied to the document by the identified licensee;

(iv) Placed across the seal/stamp of the licensee.

(b) A digital identification is an electronic authentication process attached to or logically associated with an electronic document. The digital identification may include a scanned or digitized signature. The digital identification must be:

(i) Unique to the licensee using it;

(ii) Capable of independent verification;

(iii) Under the exclusive control of the licensee using it;

and

(iv) Linked to a document in such a manner that the digital identification is invalidated if any data in the document are changed. Final work products prepared pursuant to regulatory compliance shall be stamped consistent with this section and are not considered exemptions under RCW 18.220.-190(4).

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-080 ~~((What))~~ **How do I ((need to know about renewing or reinstating)) renew my license?** ~~((+))~~ **Term of license:** Your license will be issued for a) The renewal period ((≠)) is one year. Your license renewal date is your birthday. You must notify the department in writing of any address changes.

~~((2))~~ **Initial license:** ~~Your first license will expire on your next birthday unless your next birthday falls ninety days or less after the issuance date, in which case your first license will expire on the second birthday following the issuance date.~~

(3) ~~Renewal date:~~ Your license renewal date is your birthday.

(4) ~~Timely renewal:~~ It is your responsibility) You are responsible to make a timely renewal whether or not you receive a renewal notice from the department. ((Your renewal is considered timely if you:

~~(a) Send the renewal fee to the department on or before your renewal date, as evidenced by the postmark;~~

~~(b) Deliver the renewal fee to the department before the close of business on your renewal date; or~~

~~(c) Renew your license over the internet on or before your renewal date.~~

~~(5) **Invalid license:**~~ If you fail to renew your license ~~((according to subsection (4) of this section)),~~ your license is invalid. If your license is invalid, you are prohibited from offering and/or providing professional geologist services until ~~((the))~~ your license is renewed or reinstated.

~~((6) **Late fee:**)~~ If you fail to pay your renewal fee within ninety days ~~((following))~~ after your renewal date, you must pay the renewal fee plus a late fee equal to one year's renewal fee at the current rate.

~~((7) **Reinstatement:**)~~ If you fail to renew your license for a period of five years or more, you may be reinstated upon payment of the current year's renewal fee and a late fee equal to one year's renewal fee at the current rate. In addition to the payment of fees, you must submit the following:

~~((a))~~ (1) A signed statement that you are knowledgeable ~~((with))~~ about the current laws and rules governing geologists in Washington state;

~~((b))~~ (2) A professional resume of your geologist activities during the delinquent period, including licensure in another jurisdiction, with sufficient detail to demonstrate to the board that you have maintained your professional geologist skills; and

~~((c))~~ (3) A detailed explanation of the circumstances surrounding the reason you allowed your license to expire.

NEW SECTION

WAC 308-15-083 How do I obtain retired status? If you are a licensed geologist, you may be eligible to obtain retired status if you are at least sixty-five years of age and have discontinued active professional practice. If granted retired status, your ongoing licensing renewal fees are waived.

(1) To obtain retired status, submit a written request to the board. If the board determines you are eligible, the retired status would become effective on the first scheduled license renewal date that occurs on or after you reach age sixty-five. You do not need to renew an expired license to be eligible for this status. The board will not provide refund of renewal fees if the application for retired status is made and granted before the expiration date of the license.

(2) **Privileges.** In addition to the waiver of the renewal fee, as a licensee in retired status, you are permitted to:

(a) Retain the board-issued wall certificate of licensure.

(b) Use the title "geologist," provided you also use the term "retired," the abbreviation "ret," "emeritus geologist," or similar language in written or verbal communications to indicate you are no longer in active practice.

(c) Provide experience verifications and references for individuals seeking licensure under chapter 18.220 RCW.

(d) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to geologic work you performed before you were granted retired status.

(e) Serve in a professional capacity as a "good Samaritan," as set forth in RCW 38.52.195 and 38.52.1951, provided said work is otherwise performed in accordance with chapter 18.220 RCW.

(3) **Restrictions.** As a retired licensee, you are not permitted to:

(a) Perform any professional geology work, as provided for in chapter 18.220 RCW, unless said activity is under the direct supervision of a Washington state licensed geologist;

(b) Apply your professional seal, as provided for in RCW 18.220.090 to a professional geologic work product.

(4) **Certificate of licensure reinstatement.** As a retired status licensee, you may resume active geologist practice upon written request to the board and payment of the current renewal fee. If approved, your license will be returned to active status by the board, and all rights and responsibilities of an active license status will be in effect. At the date of expiration of the reinstated license, you may choose to either continue active licensure or may again apply for retired status, in accordance with the provisions of this chapter.

(5) **Exemptions.** Under no circumstances shall you be eligible for retired status if your license has been revoked, surrendered, or suspended by the board under chapter 18.220 RCW. If you have been suspended from geologic practice or are subject to terms of a board order at the time you reach age sixty-five, you shall not be eligible for retired status until such time that the board has removed the restricting conditions.

NEW SECTION

WAC 308-15-085 How do I withdraw from active practice? You can withdraw from active practice by requesting in writing your license be placed on either inactive or retired status. Your license must be in good standing before you can request it be placed in inactive status. See WAC 308-15-083 for information about obtaining retired status.

Under inactive status, you are not permitted to perform any professional geology work, as provided for in chapter 18.220 RCW, unless said activity is under the direct supervision of a Washington state licensed geologist who has an active license in the records of the board.

NEW SECTION

WAC 308-15-087 How do I reactivate my inactive license? (1) If you are returning to active status from less than five years of inactive status, submit to the board:

(a) A letter of application requesting reactivation of your license; and

(b) The current renewal fee.

(2) If you are returning to active status after five years of inactive status, submit to the board:

(a) A letter of application requesting reinstatement; and

(b) The current renewal fee plus the late penalty fee.

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-103 How are brief adjudicative proceedings (BAPs) conducted? (1) A brief adjudicative pro-

ceeding is an alternative to a formal hearing. You will not be required to testify or be present during the proceeding. A decision on your case will be made based upon review of documents only.

~~(2) The proceeding will be conducted by a presiding officer, designated by the board, (conducts brief adjudicative proceedings. The presiding officer) who is objective and will not have personally participated in (the) any decision to issue the initiating document.~~

~~((2) The parties or their representatives)) (3) You may present any written documentation that you believe supports your case as well as a statement or brief addressing why you believe your position in the case is correct. The presiding officer will designate the date by which written documents must be submitted by the parties.~~

~~((3) The presiding officer may, at the presiding officer's 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 may employ board expertise as a basis for a decision.~~

~~(6)) The presiding officer will ~~(not issue an oral order.)~~ issue a written initial order within ten days of the ((final)) date for submission of materials ((or oral argument, if any, the presiding officer will enter an initial order)). That initial decision will contain instructions on how you may appeal the decision if you choose.~~

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

WAC 308-15-105 When can a brief adjudicative proceeding(s) be used instead of a formal hearing? (1) The board will conduct brief adjudicative proceedings as provided in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. ~~(Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.220 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of geologists. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.))~~

(2) Brief adjudicative proceedings may be used to determine the following issues ~~((including, but not limited to))~~:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

~~(c) ((Whether a sanction proposed by the board is appropriate based on the stipulated facts;~~

~~(d))~~ Whether an applicant meets minimum requirements for an initial or renewal application;

~~((e))~~ (d) Whether an applicant has failed the professional licensing examination;

~~((f))~~ (e) Whether an applicant or licensee failed to cooperate in an investigation by the board;

~~((g))~~ (f) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

~~((h))~~ (g) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

~~((i))~~ (h) Whether ~~((a person))~~ an individual has engaged in false, deceptive, or misleading advertising; or

~~((j))~~ (i) Whether ~~((a person))~~ an individual has engaged in unlicensed practice.

~~((3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.))~~

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-140 What are the rules of professional conduct? These rules of professional conduct are applicable to all individuals that have been issued a license as a geologist or specialty geologist in accordance with chapter 18.220 RCW.

(1) **What are the general responsibilities of a geologist?**

(a) A geologist must undertake professional service or render expert opinion only when qualified by training or experience in the technical areas involved.

(b) When serving as an expert or technical witness before a court, commission, or other tribunal, a geologist must express only those opinions founded upon adequate professional knowledge of the matters at issue.

(c) A geologist must stamp, sign and ((stamp/seal)) date only professional work ~~((s))~~ products prepared in the public practice of geology including, but not limited to, maps and reports for which the geologist has direct professional knowledge, and for which the geologist is in responsible charge.

(d) A geologist must not take credit for work conducted by others. When using the results of other geologists' work in the performance of the public practice of geology, a geologist must give due credit to the other geologists by citation or ~~((acknowledgement))~~ acknowledgment.

(e) A geologist must not make false statements or misrepresentations, or permit the publication or use of ~~((the))~~ another geologist's name or geological work in association with ~~((any))~~ fraudulent activities.

(f) A geologist must make full disclosure to ~~((all parties concerned of any))~~ identified affected parties of conflict of interest in projects or properties ~~((on))~~ for which the geologist performs geological work.

(g) If a ~~((geologist's))~~ geologist is consulted and renders a professional ((judgment)) opinion which is overruled or ~~((not adhered to under circumstances where))~~ ignored, the

geologist has ~~((reasonable cause to believe there is an))~~ a duty to inform the affected party where there is present or imminent threat to the public health, welfare, or property~~((;)).~~ The geologist must immediately notify the client~~((/))~~ or employer ~~((of the))~~ and document their best efforts to explain possible consequences. If the client~~((/))~~ or employer does not take action in a period of time consistent with the level of danger, the geologist must use best efforts to notify the apparent appropriate regulatory agency.

(h) A geologist must issue no statements, criticisms, or arguments on geological matters ~~((that are))~~ inspired or paid for by interested parties, unless the geologist indicates on whose behalf the statements are made.

(i) A geologist ~~((must))~~ should continue ~~((the geologist's))~~ professional development throughout ~~((the geologist's))~~ their career, and ~~((must))~~ should also provide opportunities for the professional development of ~~((those individuals under the geologist's))~~ others practicing under their supervision.

(2) What are the specific responsibilities of a geologist to ~~((an employer or))~~ a client or employer?

(a) A geologist must avoid conflicts of interest with a client~~((/))~~ or employer and must disclose the circumstances to the client~~((/))~~ or employer if a conflict is unavoidable.

(b) A geologist must not, during the time of the geologist's retention or employment by a client~~((/))~~ or employer, use information developed for, or the resources of, said client~~((/))~~ or employer for private gain or in any other manner that may conflict with the ~~((client's))~~ client's or employer's interest without the knowledge and consent of the client~~((/))~~ or employer, except as specified in subsection (1)(h) of this section. In the case of former clients~~((/))~~ or employers, a geologist must honor agreements with former clients~~((/))~~ or employers with regard to proprietary information, except as specified by subsection (1)(h) of this section.

(c) A geologist must either engage or advise a client~~((/))~~ or employer to engage other experts or specialists if the ~~((client's))~~ client's or employer's interests are best served by such service.

(d) A geologist has the right to withdraw from service without due notice if:

(i) The geologist knows or has reason to think that the client or employer is involved in illegal or fraudulent practices, or practices dangerous to the public welfare.

(ii) The geologist knows or has reason to think that the continued employment will result in illness or injury to the geologist or the geologist's dependents.

(e) A geologist must not accept compensation concurrently from more than one client~~((/))~~ or employer for the same work on a project, unless the circumstances of payment are fully disclosed and agreed to by all financially interested parties.

~~((e))~~ (f) A geologist must advise the geologist's clients or employers ~~((or clients))~~ when, as a result of ~~((their studies))~~ the geological work, the geologist ~~((believes))~~ considers a project will not be viable.

~~((f))~~ (g) A geologist must negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required.

~~((g))~~ (h) A geologist must not request, propose or accept professional compensation on a contingent basis under circumstances in which the geologist's professional judgment or ethics may be compromised.

(3) What are the specific responsibilities of a geologist to the board?

(a) A geologist must respond to formal requests of the board within the time frame and in the manner specified by the board in its request.

(b) A geologist~~((s))~~, when requested by the board, must present information and assistance to the board in pursuing violations of laws and rules relating to the public practice of geology in ~~((the state of))~~ Washington state.

(c) If a geologist has knowledge or reasonable cause to ~~((believe another person or))~~ think an individual or another geologist is in violation of the ~~((licensing law,))~~ laws governing the license or practice of geology contained in chapter 18.220 RCW, RCW 18.220.130, 18.235.130 or the related administrative rules, the geologist must present such information in writing to the board.

~~((4))~~ **What are prohibited acts?** The prohibited acts are found in RCW 18.220.130, 18.220.170 and 18.235.130.)

AMENDATORY SECTION (Amending WSR 16-12-091, filed 5/31/16, effective 7/1/16)

WAC 308-15-150 Fees. ~~((1))~~ ~~Suspension of fees.~~ Effective July 1, 2016, a portion of the listed fees shown in subsection (2) of this section are temporarily suspended and replaced with the following:

Renewal Fees

Annual renewal fee for geologist	\$40.00
Annual renewal for each specialty	\$50.00
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$80.00
Annual renewal fee for each specialty, with late fee (if paid ninety days or more after due date)	\$100.00

The fees set forth in this section shall revert back to the fee amounts shown in WAC 308-15-150 on July 1, 2017.

~~((2))~~ **Fees.**

Type of Fee	Amount
Application fees - includes initial license	
Application fee for geologist (applying by examination)	\$100.00
Application fee for each specialty (applying by examination)	\$100.00
Application fee for geologist (applying by reciprocity)	\$200.00
Application fee for each specialty (applying by reciprocity)	\$150.00

Type of Fee	Amount
Examination fees	
<i>((Fees for the fundamentals of geology and practice of geology examinations are submitted directly to ASBOG))</i>	
Administration fee for reexamination	\$65.00
Specialty examination (hydrogeologist or engineering geologist ((exam)) <u>examination</u>)	\$300.00
Renewal fees	
Annual renewal fee for geologist	\$100.00
Annual renewal fee for each specialty	\$85.00
Annual renewal for geologist, with late fee <i>(if paid ninety days or more after due date)</i>	\$200.00
Annual renewal for each specialty, with late fee <i>(if paid ninety days or more after due date)</i>	\$170.00
Miscellaneous fees	
Duplicate ((license or)) wall certificate	\$25.00
Certification of license records to other jurisdictions	\$45.00
Proctor examination for another jurisdiction	\$100.00

In addition to applicable state examination fees, ASBOG may collect, from the applicants, the charges of examination development, examination administration and grading. Terms and conditions for payment of the charges to ASBOG are determined by ASBOG.

AMENDATORY SECTION (Amending WSR 07-13-038, filed 6/13/07, effective 7/14/07)

WAC 308-15-160 What are the board member rules of conduct~~((Activities incompatible with public duties — Financial interests in transactions.))~~? (1) When a board member ~~((of the board))~~ either owns a beneficial interest in or is an officer, agent, employee, or member of an entity ~~((, or individual that is))~~ engaged in ~~((a transaction involving the))~~ activity that is subject to a board action, the board member shall~~((:~~

~~((a) Recuse him or herself from the board discussion regarding the specific transaction;~~

~~((b) Recuse him or herself from the board vote on the specific transaction; and~~

~~((c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.~~

~~((2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.~~

~~((3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:~~

- ~~((i) Is, or will be, the subject of board action; or~~
- ~~((ii) Is one to which the board is or will be a party; or~~
- ~~((iii) Is one in which the board has a direct and substantial proprietary interest.~~

~~((b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board.") state such involvement and be recused from board contact and participation related to that board action, except that the board member may provide information and appear as a fact witness in that action.~~

~~((2) When a board member has a business relationship with a respondent who is subject to a board action, the board member shall notify the board and board staff of that relationship. The board member shall either state that the nature of the relationship is such that it will not affect the board member's impartiality and the member will continue to participate in the action or the board member shall announce their recusal from the board action.~~

~~((3) Board staff will make a written notation for the case file of any statement by a board member regarding a business relationship with the respondent and the basis for recusal or continuing participation in the board action.~~

~~((4) "Board action" means any action on the part of the board, including, but not limited to:~~

~~((a) ((A)) An investigation, discussion, decision, determination, finding, ruling, ((or)) order or other regulatory activity within the board's jurisdiction; and~~

~~((b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.~~

~~((5) The following are examples of possible scenarios related to board member rules of conduct. Activities incompatible with public duties; financial interests in transactions:~~

~~((a) **Example 1:**~~

~~The geologist licensing board disciplines licensed geologists in Washington. The board is conducting an investigation involving the services provided by a licensed geologist. One of the members of the board is currently serving as a subcontractor to that geologist on a large project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed geologist services.~~

~~((b) **Example 2:**~~

~~The geologist licensing board makes licensing decisions on applications for licensure. An applicant for licensure owns a geotechnical consulting business~~

which employs licensed geologists, including one of the board members. The board member employed by the business must recuse himself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.

(c) Example 3:

~~The geologist licensing board makes licensing decisions on applications from geologists registered in other states or territories of the United States, the District of Columbia, or other countries. The board can grant licensure if an individual's qualifications and experience are equivalent to the qualifications and experience required of a person licensed under Washington law. An out-of-state applicant is employed as a geologist by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the geologist for the project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state geologist's qualifications and experience.~~

~~(6) Recusal disclosure. If recusal occurs pursuant to subsection (1) of this section, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.)~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-15-107 Records required for the brief adjudicative proceeding.

**WSR 19-15-065
PROPOSED RULES**

**BIG BEND
COMMUNITY COLLEGE**

[Filed July 15, 2019, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-087.

Title of Rule and Other Identifying Information: WAC 132R-02-050 Brief adjudicative procedures.

Hearing Location(s): On September 4, 2019, at 3:00 p.m., at the ATEC Building, Simplot A, 7662 Chanute Street N.E., Moses Lake, WA.

Date of Intended Adoption: September 5, 2019.

Submit Written Comments to: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu, fax 509-766-6355, by August 28, 2019.

Assistance for Persons with Disabilities: Contact Lora-lyn Allen, phone 509-793-2027, fax 509-766-6355, TTY

509-793-2325, email lora@bigbend.edu, by August 28, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to process.

Reasons Supporting Proposal: Updating process.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Agency Personnel Responsible for Drafting: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2001; Implementation and Enforcement: André Guzman, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2077.

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

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

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

July 9, 2019

Melinda Dourte

Executive Assistant

to the President

AMENDATORY SECTION (Amending WSR 90-02-016, filed 12/26/89, effective 1/26/90)

WAC 132R-02-050 Brief adjudicative procedures.

This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
- (2) Challenges to contents of education records;
- (3) Student conduct proceedings. The procedural rules in chapter 132R-04 WAC apply to these proceedings;
- (4) Parking violations. The procedural rules in chapters 132R-116 and 132R-118 WAC apply to these proceedings;
- (5) Outstanding debts owed by students or employees;
- (6) Loss of eligibility for participation in institution-sponsored athletic events, pursuant to chapter 132R-05 WAC;

(7) Appeals to trespass orders. The procedural rules in chapter 132R-117 WAC apply to these proceedings;

(8) Appeals pursuant to any other formal rule adopted by Big Bend Community College which specifically provides for a brief adjudicative procedure.

WSR 19-15-077
PROPOSED RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed July 17, 2019, 3:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-04-070.

Title of Rule and Other Identifying Information: WAC 246-933-250 Examination and licensure requirements, the veterinary board of governors (board) proposes to remove the clinical competency test (CCT) as an examination requirement.

Hearing Location(s): On September 23, 2019, at 11:15 a.m., at Yakima Valley College, West Nob Hill Boulevard and South 16th Avenue, Building #30, Yakima, WA 98902.

Date of Intended Adoption: September 23, 2019.

Submit Written Comments to: Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 9, 2019.

Assistance for Persons with Disabilities: Contact Lorelei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov, by September 16, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is amending WAC 246-933-250 to remove unnecessary barriers to licensure. Specifically, the board proposes to remove the requirement for CCT. Per WAC 246-933-250, licensees must "successfully complete either the North American Veterinary Licensing Examination (NAVLE), or the National Board Examination for Veterinary Medical Licensing (NBE) with the CCT." However, CCT was created in 1979 and discontinued in 2000. Applicants applying in Washington who took the licensure exam prior [to] 1979 have gained skills and abilities over their careers that far surpass what CCT would have assessed.

Applicants who have not taken CCT may apply by reciprocity per RCW 18.92.130. However, the reciprocity statute requires the applicant to provide proof that: Their license is in good standing; they have held an active license in another state for at least the previous two years; and the state would extend a like privilege to a Washington applicant without requiring an examination. This must be done through a letter addressed to the board.

This is often an onerous process, and in some cases the applicant is not able to get another state to provide such a letter. In these cases, the applicant's only recourse is to appeal the board's decision or pass NAVLE (the current examination).

The board finds that CCT requirement is no longer relevant. This change must be made through rule in order to change the licensing requirements and process.

Reasons Supporting Proposal: Per WAC 246-933-250, licensees must successfully complete either NAVLE or NBE with CCT. However, CCT was not required prior to 1979. Applicants applying in Washington who took the licensure exam prior without CCT have gained skills and abilities over their careers that far surpass what CCT would have assessed.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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 Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov.

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

July 17, 2019

Elizabeth C. Davies, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 07-20-036, filed 9/25/07, effective 10/26/07)

WAC 246-933-250 Examination and licensure requirements. To qualify for licensure in this state, a candidate must:

(1) Successfully complete either the North American Veterinary Licensing Examination (NAVLE)((-)) or the National Board Examination for Veterinary Medical Licensing (NBE)((-with the Clinical Competency Test (CCT))); and

(2) Successfully complete the Washington state jurisprudence examination; and

(3) Be a graduate of a program that is accredited by the American Veterinary Medical Association. A person who is a graduate of a college of veterinary medicine not accredited by the American Veterinary Medical Association must:

(a) Successfully complete the American Veterinary Medical Association's Educational Commission for Foreign Veterinary Graduates program (ECFVG); or

(b) Successfully complete the American Association of Veterinary State Board's Program for the Assessment of Veterinary Education Equivalence (PAVE); and

(4) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

WSR 19-15-096
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed July 22, 2019, 9:35 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-825-990 License fees, genetic counselor, proposing to decrease licensing application and active renewal fees, update late renewal penalties, and adjust license duplication and verification fees to meet department standards.

Hearing Location(s): On August 27, 2019, at 2:00 p.m., at the Department of Health, Town Center 2, Room #145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 4, 2019.

Submit Written Comments to: Jeff Wise, Department of Health, P.O. Box 47850, Tumwater, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, by August 27, 2019.

Assistance for Persons with Disabilities: Contact Jeff Wise, phone 360-236-4987, TTY 360-833-6388 or 711, email jeff.wise@doh.wa.gov, by August 14, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current fees are generating surplus revenue for the genetic counselor program, largely related to their growing licensee base and minimal disciplinary costs. This program is projected to have a funding balance of \$142,000 by June 2019, which is forecasted to grow to approximately \$354,000 by June 2025. Professions need to maintain a reserve that is based on level of risk including revenue stability, disciplinary trends, and size of the profession, in order to cover unanticipated costs. The proposed seventy-five percent fee reduction is anticipated to bring the program's fund balance down to target reserve levels of \$57,000 by fiscal year 2029. The department of health (department), is also proposing a decrease to the late renewal penalties to \$50.00, license duplication fee to \$10.00, and license verification fee to \$25.00, in order to bring these amounts in line with the department's standard for all health professions.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. In response to a petition by the Washington State Genetic Counselors Network, the department is proposing to decrease licensing and active renewal fees for genetic counselors, after determining that current fees are generating a program fund surplus. The goal of the proposed fee decrease is to bring licensing fee revenues into alignment with the actual costs of regulating this program, and avoid the projected growing fund surplus. The department's proposal to decrease the late renewal penalties and adjust the license duplication and verification fees is intended to bring these amounts in line with the department's standard for all health professions.

In addition, the state auditor's office published their performance audit report, "Aligning Healthcare Professional Fees with Licensing Costs," in November 2018, to examine if the department aligns the fees it charges to health care professions with the costs of licensing. In response, the department is developing processes to review fees more consistently and enhance transparency of fund balances and fee setting. Department policy and office of financial management

guidelines that require professions to have a sufficient reserve to cover unexpected costs, were also used.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.280.

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: Nancy Elliott, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4878; Implementation and Enforcement: Jeff Wise, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4987.

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

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

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

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

July 18, 2019

John Weisman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-08-084, filed 4/1/14, effective 7/1/14)

WAC 246-825-990 License fees. (1) Licenses must be renewed every year on the practitioner's birthday as provided under chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title	Fee
Application	((200.00)) <u>50.00</u>
Renewal	((200.00)) <u>50.00</u>
Late renewal penalty	((+100.00)) <u>50.00</u>
Expired license reissuance	100.00
Duplicate license	((30.00)) <u>10.00</u>
((Certification)) <u>Verification</u> of licensure	((30.00)) <u>25.00</u>

(3) The following nonrefundable fees will be charged for a provisional license:

Title	Fee
Application	30.00
Renewal	30.00
Late renewal penalty	30.00
Duplicate provisional license	((30.00)) <u>10.00</u>
Verification of provisional licensure	<u>25.00</u>

WSR 19-15-097
PROPOSED RULES
BOARD OF TAX APPEALS

[Filed July 22, 2019, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-066.

Title of Rule and Other Identifying Information: Rename and redefine chapter 456-12 WAC.

Hearing Location(s): On August 27, 2019, at 11:00 a.m., at 1110 Capitol Way South, Olympia, WA 98501.

Date of Intended Adoption: September 24, 2019.

Submit Written Comments to: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, email bta@bta.wa.gov, fax 360-586-9020, by August 20, 2019.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, email bta@bta.wa.gov, by August 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rename and redefine chapter 456-12 WAC to encompass all administrative processes.

Statutory Authority for Adoption: RCW 82.03.170.

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

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446; and Enforcement: Kate Adams, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446.

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.

Explanation of exemptions: Agency exempt under RCW 34.05.328 (5)(b)(iii).

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 regulation applies only if a business files an annual property tax appeal. The proposed rule does not impose more than a minor cost on such businesses. Additionally, it does not create any new filing or recordkeeping requirements that have not already been

established as a procedural requirement for presenting evidence at the Board of Tax Appeals.

July 22, 2019

Kate Adams

Executive Director

Chapter 456-12 WAC

~~((PUBLIC RECORDS))~~ ADMINISTRATIVE PROCESSES

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-015 Purpose of this chapter. The purpose of this chapter is to ~~((provide))~~ set forth rules on the organization and administration of the board ~~((of tax appeals with))~~ and rules that comply with chapter ~~((42-17))~~ 42.30 RCW, regarding open public meetings, and chapter 42.56 RCW, regarding public records.

WSR 19-15-102

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 22, 2019, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-10-033.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) division of child support (DCS) is proposing to amend WAC 388-14A-5400 How does the division of child support tell the custodial parent when DCS adjusts the amount of debt owed on the case?, in order to clarify that the debt adjustment notice process described in that section applies not only to court orders for child support, but to any child support order.

The debt adjustment notice process is used to provide notice to a custodial parent (CP) that DCS has reduced the amount of support debt on a case if that reduction was due to specific reasons listed in the rule; this notice gives the CP a right to hearing if the CP objects to the debt adjustment. Those reasons are: (1) A mathematical error in the debt calculation; (2) a typographical error in the stated debt; (3) proof that DCS should have suspended the support obligation for all or part of the time period involved in the calculation, or proof that the noncustodial parent made payments that DCS had not previously credited against the support debt.

The current rule provides that this process is used for adjustment of debt owed under a court order for child support, but DCS uses this process for any child support order. Occasionally, an administrative law judge will dismiss a hearing based on a debt adjustment notice based on the reduction of debt under an administrative child support order. Such a technical reading has a due process impact and DCS is amending the rule to ensure that all CPs have the same right

to notice and a hearing when DCS reduces the support debt on a case.

Hearing Location(s): On August 27, 2019, at 10:00 a.m., at Office Building 2, 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 August 28, 2019.

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., August 27, 2019.

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 August 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify that DCS may use the debt adjustment notice process under RCW 74.20.101 in any case, no matter if the child support obligation is established by a court order or administrative order.

Reasons Supporting Proposal: The current version of WAC 388-14A-5400, which deals with the debt adjustment notice process, refers specifically to debt owed under court orders for child support. DCS is amending the rule to clarify that the debt adjustment notice process can be used for any child support order. This will ensure that due process will be provided and all CPs are entitled to notice and a hearing when DCS reduces the support debt on a case.

Statutory Authority for Adoption: RCW 26.23.030(3), 26.23.110(14), 74.08.090, 74.20.040, and 74.20.101.

Statute Being Implemented: RCW 74.20.101.

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 Headquarters, P.O. Box 9162, Olympia, WA 98507, 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(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This proposal does not affect small businesses.

July 18, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5400 How does the division of child support tell the custodial parent when DCS adjusts the amount of debt owed on the case? (1) The division of child support (DCS) mails a debt adjustment notice to the payee under a ~~((court))~~ child support order within thirty days of the date DCS reduces the amount of the ~~((court-ordered))~~ support debt it intends to collect if that reduction was due to:

(a) A mathematical error in the debt calculation;

(b) A typographical error in the stated debt;

(c) Proof that DCS should have suspended the support obligation for all or part of the time period involved in the calculation; or

(d) Proof the noncustodial parent (NCP) made payments that DCS had not previously credited against the support debt.

(2) The debt adjustment notice must contain the following information:

(a) The amount of the reduction;

(b) The reason DCS reduced the support debt, as provided under subsection (1) of this section;

(c) The name of the NCP and a statement that the NCP may attend and participate as an independent party in any hearing requested by the payee under this section; and

(d) A statement that DCS continues to provide support enforcement services whether or not the payee objects to the debt adjustment notice.

(3) A debt adjustment notice served in Washington becomes final unless the payee, within twenty days of service of the notice in Washington, files a request with DCS for a hearing under subsection (4) of this section. The effective date of a hearing request is the date DCS receives the request.

(4) A debt adjustment notice served in another state becomes final according to WAC 388-14A-7200.

(5) A hearing under this section is for the limited purpose of determining if DCS correctly reduced the support debt as stated in the notice of debt adjustment.

(6) A payee who requests a late hearing must show good cause for filing a late hearing request if it is filed more than one year after the date of the notice of debt adjustment.

WSR 19-15-105

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 22, 2019, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-067.

Title of Rule and Other Identifying Information: WAC 182-550-2590 Agency prior authorization requirements for Level 1 and Level 2 LTAC services, 182-550-2600 Inpatient psychiatric services, 182-550-2900 Payment limits—Inpa-

tient hospital services, and 182-550-4550 Administrative day rate and swing bed day rate.

Hearing Location(s): On August 27, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than August 28, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 27, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by August 23, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to clarify that pharmacy and pharmacy services may be billed when a client is admitted under administrative status for inpatient hospital stays.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Joan Chappell, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1071.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

July 22, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2590 Agency prior authorization requirements for Level 1 and Level 2 LTAC services. (1)

The medicaid agency requires prior authorization for Level 1 and Level 2 long term acute care (LTAC) inpatient stays. The prior authorization process includes all the following:

(a) For an initial thirty-day stay:

(i) The client must:

(A) Be eligible under one of the programs listed in WAC 182-550-2575; and

(B) Require Level 1 or Level 2 LTAC services as defined in WAC 182-550-1050.

(ii) The LTAC provider of services must:

(A) Before admitting the client to the LTAC hospital, submit a request for prior authorization to the agency by fax, electronic mail, or telephone, as published in the agency's LTAC billing instructions;

(B) Include sufficient medical information to justify the requested initial stay;

(C) Obtain prior authorization from the agency's medical director or designee, when accepting the client from the transferring hospital; and

(D) Meet all the requirements in WAC 182-550-2580.

(b) For any extension of stay, the criteria in (a) of this subsection must be met, and the LTAC provider of services must submit a request for the extension of stay to the agency with sufficient medical justification.

(2) The agency authorizes Level 1 or Level 2 LTAC services for initial stays or extensions of stay based on the client's circumstances and the medical justification received.

(3) A client who does not agree with a decision regarding a length of stay has a right to a fair hearing under chapter 182-526 WAC. After receiving a request for a fair hearing, the agency may request additional information from the client and the facility, or both. After the agency reviews the available information, the result may be:

(a) A reversal of the initial agency decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted according to chapter 182-526 WAC.

(4) The agency may authorize an administrative day rate payment, as well as payment for pharmacy services and pharmaceuticals, for a client who meets one or more of the following. The client:

(a) Does not meet the requirements for Level 1 or Level 2 LTAC services;

(b) Is waiting for placement in another hospital or other facility; or

(c) If appropriate, is waiting to be discharged to the client's residence.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2600 Inpatient psychiatric services.

(1) The medicaid agency, on behalf of the mental health division (MHD), regional support networks (RSNs) and prepaid inpatient health plans (PIHPs), pays for covered inpatient psychiatric services for a voluntary or involuntary inpatient psychiatric admission of an eligible Washington apple health client, subject to the limitation and restrictions in this section and other published rules.

(2) The following definitions and abbreviations and those found in WAC 182-550-1050 apply to this section (where there is any discrepancy, this section prevails):

(a) "Authorization number" refers to a number that is required on a claim in order for a provider to be paid for pro-

viding psychiatric inpatient services to a Washington apple health client. An authorization number:

(i) Is assigned when the certification process and prior authorization process has occurred;

(ii) Identifies a specific request for the provision of psychiatric inpatient services to a Washington apple health client;

(iii) Verifies when prior or retrospective authorization has occurred;

(iv) Will not be rescinded once assigned; and

(v) Does not guarantee payment.

(b) "Certification" means a clinical determination by an MHD designee that a client's need for a voluntary or involuntary inpatient psychiatric admission, length of stay extension, or transfer has been reviewed and, based on the information provided, meets the requirements for medical necessity for inpatient psychiatric care. The certification process occurs concurrently with the prior authorization process.

(c) "IMD" See "institution for mental diseases."

(d) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment, or care of people with mental diseases, including medical attention, nursing care, and related services. The MHD designates whether a facility meets the definition for an IMD.

(e) "Involuntary admission" refer to chapters 71.05 and 71.34 RCW.

(f) "Mental health division (MHD)" is the unit within the department of social and health services (DSHS) authorized to contract for and monitor delivery of mental health programs. MHD is also known as the state mental health authority.

(g) "Mental health division designee" or "MHD designee" means a professional contact person authorized by MHD, who operates under the direction of a regional support network (RSN) or a prepaid inpatient health plan (PIHP).

(h) "PIHP" see "prepaid inpatient health plan."

(i) "Prepaid inpatient health plan (PIHP)" see WAC 388-865-0300.

(j) "Prior authorization" means an administrative process by which hospital providers must obtain an MHD designee's for a client's inpatient psychiatric admission, length of stay extension, or transfer. The prior authorization process occurs concurrently with the certification process.

(k) "Regional support network (RSN)" see WAC 388-865-0200.

(l) "Retrospective authorization" means a process by which hospital providers and hospital unit providers must obtain an MHD designee's certification after services have been initiated for a Washington apple health client. Retrospective authorization can be before discharge or after discharge. This process is allowed only when circumstances beyond the control of the hospital or hospital unit provider prevented a prior authorization request, or when the client has been determined to be eligible for Washington apple health after discharge.

(m) "RSN" see "regional support network."

(n) "Voluntary admission" refer to chapters 71.05 and 71.34 RCW.

(3) The following department of health (DOH)-licensed hospitals and hospital units are eligible to be paid for providing inpatient psychiatric services to eligible Washington apple health clients, subject to the limitations listed:

(a) Medicare-certified distinct part psychiatric units;

(b) State-designated pediatric psychiatric units;

(c) Hospitals that provide active psychiatric treatment outside of a medicare-certified or state-designated psychiatric unit, under the supervision of a physician according to WAC 246-322-170; and

(d) Free-standing psychiatric hospitals approved as an institution for mental diseases (IMD).

(4) An MHD designee has the authority to approve or deny a request for initial certification for a client's voluntary inpatient psychiatric admission and will respond to the hospital's or hospital unit's request for initial certification within two hours of the request. An MHD designee's certification and authorization, or a denial, will be provided within twelve hours of the request. Authorization must be requested before admission. If the hospital chooses to admit the client without prior authorization due to staff shortages, the request for an initial certification must be submitted the same calendar day (which begins at midnight) as the admission. In this case, the hospital assumes the risk for denial as the MHD designee may or may not authorize the care for that day.

(5) To be paid for a voluntary inpatient psychiatric admission:

(a) The hospital provider or hospital unit provider must meet the applicable general conditions of payment criteria in WAC 182-502-0100; and

(b) The voluntary inpatient psychiatric admission must meet the following:

(i) For a client eligible for Washington apple health, the admission to voluntary inpatient psychiatric care must:

(A) Be medically necessary as defined in WAC 182-500-0070;

(B) Be ordered by an agent of the hospital who has the clinical or administrative authority to approve an admission;

(C) Be prior authorized and meet certification and prior authorization requirements as defined in subsection (2) of this section. See subsection (8) of this section for a voluntary inpatient psychiatric admission that was not prior authorized and requires retrospective authorization by the client's MHD designee; and

(D) Be verified by receipt of a certification form dated and signed by an MHD designee (see subsection (2) of this section). The form must document at least the following:

(I) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(II) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician (according to WAC 246-322-170);

(III) The inpatient services can reasonably be expected to improve the client's level of functioning or prevent further regression of functioning;

(IV) The client has been diagnosed as having an emotional or behavioral disorder, or both, as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association; and

(V) The client's principle diagnosis must be an MHD covered diagnosis.

(ii) For a client eligible for both medicare and a Washington apple health program, the agency pays secondary to medicare.

(iii) For a client eligible for both medicare and a Washington apple health program and who has not exhausted medicare lifetime benefits, the hospital provider or hospital unit provider must notify the MHD designee of the client's admission if the dual eligibility status is known. The admission:

(A) Does not require prior authorization by an MHD designee; and

(B) Must be under medicare standards.

(iv) For a client eligible for both medicare and a Washington apple health program who has exhausted medicare lifetime benefits, the admission must have prior authorization by an MHD designee.

(v) When a liable third party is identified (other than medicare) for a client eligible for a Washington apple health program, the hospital provider or hospital unit provider must obtain an MHD designee's authorization for the admission.

(6) To be paid for an involuntary inpatient psychiatric admission:

(a) The involuntary inpatient psychiatric admission must be under the admission criteria specified in chapters 71.05 and 71.34 RCW; and

(b) The hospital provider or hospital unit provider:

(i) Must be certified by the MHD under chapter 388-865 WAC;

(ii) Must meet the applicable general conditions of payment criteria in WAC 182-502-0100; and

(iii) When submitting a claim, must include a completed and signed copy of an Initial Certification Authorization form Admission to Inpatient Psychiatric Care form, or an Extension Certification Authorization for Continued Inpatient Psychiatric Care form.

(7) To be paid for providing continued inpatient psychiatric services to a Washington apple health client who has already been admitted, the hospital provider or hospital unit provider must request from an MHD designee within the time frames specified, certification and authorization as defined in subsection (2) of this section for any of the following circumstances:

(a) If the client converts from involuntary (legal) status to voluntary status, or from voluntary to involuntary (legal) status as described in chapter 71.05 or 71.34 RCW, the hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of the change. Changes in legal status may result in issuance of a new certification and authorization. Any previously authorized days under the previous legal status that are past the date of the change in legal status are not billable;

(b) If an application is made for determination of a patient's Washington apple health eligibility, the request for certification and prior authorization must be submitted within twenty-four hours of the application;

(c) If there is a change in the client's principal (~~ICD9-CM~~) ICD-10-CM diagnosis to an MHD covered diagnosis,

the request for certification and prior authorization must be submitted within twenty-four hours of the change;

(d) If there is a request for a length of stay extension for the client, the request for certification and prior authorization must be submitted before the end of the initial authorized days of services (see subsections (11) and (12) of this section for payment methodology and payment limitations); (~~and~~)

(e) If the client is to be transferred from one community hospital to another community hospital for continued inpatient psychiatric care, the request for certification and prior authorization must be submitted before the transfer(~~); or~~ or

(f) If a client who has been authorized for inpatient care by the MHD designee has been discharged or left against medical advice prior to the expiration of previously authorized days, a hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of discharge. Any previously authorized days past the date the client was discharged or left the hospital are not billable.

(8) An MHD designee has the authority to approve or deny a request for retrospective certification for a client's voluntary inpatient psychiatric admission, length of stay extension, or transfer when the hospital provider or hospital unit provider did not notify the MHD designee within the notification time frames stated in this section. For a retrospective certification request before discharge, the MHD designee responds to the hospital or hospital unit within two hours of the request, and provides certification and authorization or a denial within twelve hours of the request. For retrospective certification requests after the discharge, the hospital or hospital unit must submit all the required clinical information to the MHD designee within thirty days of discharge. The MHD designee provides a response within thirty days of the receipt of the required clinical documentation. All retrospective certifications must meet the requirements in this section. An authorization or denial is based on the client's condition and the services provided at the time of admission and over the course of the hospital stay, until the date of notification or discharge, as applicable.

(9) To be paid for a psychiatric inpatient admission of an eligible Washington apple health client, the hospital provider or hospital unit provider must submit on the claim form the authorization (see subsection (2)(a) for definition of prior authorization and retrospective authorization).

(10) The agency uses the payment methods described in WAC 182-550-2650 through 182-550-5600, as appropriate, to pay a hospital and hospital unit for providing psychiatric services to Washington apple health clients, unless otherwise specified in this section.

(11) Covered days for a voluntary psychiatric admission are determined by an MHD designee utilizing MHD approved utilization review criteria.

(12) The number of initial days authorized for an involuntary psychiatric admission is limited to twenty days from date of detention. The hospital provider or hospital unit provider must submit the Extension Certification Authorization for Continued Inpatient Psychiatric Care form twenty-four hours before the expiration of the previously authorized days. Extension requests may not be denied for a person detained under ITA unless a less restrictive alternative is identified by the MHD designee and approved by the court. Extension

requests may not be denied for youths detained under ITA who have been referred to the children's long-term inpatient program unless a less restrictive alternative is identified by the MHD designee and approved by the court.

(13) The agency pays the administrative day rate and pays for pharmacy services and pharmaceuticals for any authorized days that meet the administrative day definition in WAC 182-550-1050(~~(, and)~~) when all the following conditions are met:

- (a) The client's legal status is voluntary admission;
- (b) The client's condition is no longer medically necessary;
- (c) The client's condition no longer meets the intensity of service criteria;
- (d) Less restrictive alternative treatments are not available, posing barrier to the client's safe discharge; and
- (e) The hospital or hospital unit and the MHD designee mutually agree that the administrative day is appropriate.

(14) The hospital provider or hospital unit provider will use the MHD approved due process for conflict resolution regarding medical necessity determinations provided by the MHD designee.

(15) In order for an MHD designee to implement and participate in a Washington apple health client's plan of care, the hospital provider or hospital unit provider must provide any clinical and cost of care information to the MHD designee upon request. This requirement applies to all Washington apple health clients admitted for:

- (a) Voluntary inpatient psychiatric services; and
 - (b) Involuntary inpatient psychiatric services, regardless of payment source.
- (16) If the number of days billed exceeds the number of days authorized by the MHD designee for any claims paid, the agency will recover any unauthorized days paid.

AMENDATORY SECTION (Amending WSR 19-13-006, filed 6/6/19, effective 7/7/19)

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

- (a) Have a core-provider agreement with the medicaid agency; and
- (b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of that hospital, as defined in WAC 182-550-1050; or
- (c) Be an out-of-state hospital that meets the conditions in WAC 182-550-6700.

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

- (a) Inpatient care or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.
- (b) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.
- (c) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.

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

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

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

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

(f) Two separate inpatient hospitalizations if a client is readmitted to the same or affiliated hospital or distinct unit within fourteen calendar days of discharge and the agency determines that one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000 (7)(f) for the agency's review of fourteen-day readmissions.

(g) Inpatient claims for fourteen-day readmissions considered to be provider preventable as described in WAC 182-550-2950.

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

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

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

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

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

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

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

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

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

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

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

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

(ii) Either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) All inpatient hospital services provided; and

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

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

(6) When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room charges must not exceed the hospital's usual and customary charges to the general public, as required by 42 C.F.R. Sec. 447.271.

(7) The agency allows hospitals an ~~((all-inclusive))~~ administrative day rate for those days of a hospital stay in which a client no longer meets criteria for the acute inpatient level of care ~~((The agency allows this day rate only when an appropriate placement outside the hospital is not available))~~, as provided in WAC 182-550-4550.

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

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

Adjustments include:

(a) Client participation (e.g., spenddown);

(b) Any third-party liability amount, including medicare part A and part B; and

(c) Any other adjustments as determined by the agency.

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

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

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-4550 Administrative day rate and swing bed day rate. (1) **Administrative day rate.** The medicaid agency allows hospitals an ~~((all-inclusive))~~ administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because an appropriate placement outside the hospital is not available.

(a) The agency uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1st of each year.

(b) The agency does not pay for ancillary services, except for pharmacy services and pharmaceuticals, provided during administrative days.

(c) The agency identifies administrative days during the length of stay review process after the client's discharge from the hospital.

(d) The agency pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a stay until an appropriate subacute placement can be made.

(2) **Swing bed day rate.** The agency allows hospitals a swing bed day rate for those days when a client is receiving agency-approved nursing service level of care in a swing bed. The agency's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The agency does not pay a hospital the rate applicable to the acute inpatient level of care for those days of a hospital stay when a client is receiving agency-approved nursing service level of care in a swing bed.

(b) The agency's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 182-550-6000 and 182-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The agency allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving agency-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The agency does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

WSR 19-15-126
PROPOSED RULES
BOARD OF TAX APPEALS

[Filed July 23, 2019, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-065.

Title of Rule and Other Identifying Information: WAC 456-12-125 Electronic correspondence.

1. Consistent with changing standards in communication, and to ensure efficient use of state resources, the board adopts electronic mail as its primary method of written communication.

2. When possible, decisions and other correspondence of the board will be sent by electronic mail.

3. For purposes of these rules, decisions and other board correspondence sent by electronic mail will have the same effect as if sent by United States mail.

Hearing Location(s): On August 27, 2019, at 11:00 a.m., at 1110 Capitol Way South, Olympia, WA 98501.

Date of Intended Adoption: August 28, 2019.

Submit Written Comments to: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, email bta@bta.wa.gov, fax 360-586-9020, by August 20, 2019.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, email bta@bta.wa.gov, by August 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add new section to chapter 456-12 WAC making electronic mail the board's primary method of written communications [communications].

Statutory Authority for Adoption: RCW 82.03.170.

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

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446; and Enforcement: Kate Adams, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446.

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. Agency exempt under RCW 34.05.328 (5)(b)(iii).

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 regulation applies only if a business files an annual property tax appeal. The proposed rule does not impose more than a minor cost on such businesses. Additionally, it does not create any new filing or recordkeeping requirements that have not already been established as a procedural requirement for presenting evidence at the board of tax appeals.

Kate Adams
Executive Director

NEW SECTION

WAC 456-12-125 Electronic correspondence. (1) Consistent with changing standards in communication, and to ensure efficient use of state resources, the board adopts electronic mail as its primary method of written communication.

(2) When possible, decisions and other correspondence of the board will be sent by electronic mail.

(3) For purposes of these rules, decisions and other board correspondence sent by electronic mail will have the same effect as if sent by United States mail.

(4) The board will accept submissions via electronic mail as provided in these rules.

(5) This rule does not apply to or affect the requirements for serving a party to a proceeding.

WSR 19-15-130
PROPOSED RULES
BATES TECHNICAL COLLEGE

[Filed July 23, 2019, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-053.

Title of Rule and Other Identifying Information: Amending chapter 495A-130 WAC to update with current state statutes and provide additional information for tuition and fee schedules at Bates Technical College.

Hearing Location(s): On September 11, 2019, at 10:30 a.m. - 12:30 p.m., at the Clyde Hupp Room, Building A, Room A329, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

Date of Intended Adoption: September 25, 2019.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by September 6, 2019.

Assistance for Persons with Disabilities: Contact Ms. Becky Welch, phone 253-680-7100, fax 253-680-7101, email bwelch@batestech.edu, by September 4, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to align with tuition and fee schedule rules and statutes.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 28B.10.140, 28B.50.140; chapter 34.05 RCW and 1991 c 238.

Statute Being Implemented: RCW 34.05.250; chapter 28B.50 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163; Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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

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

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

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

July 22, 2019
Dr. Jean Hernandez
Special Assistant
to the President

NEW SECTION

WAC 495A-130-010 Tuition and fee schedules. Chapter 28B.15 RCW sets the parameters for tuition and fee levels at state community and technical colleges. The legislature establishes the tuition and fee rates each biennium. The tuition and fee rates charged by Bates Technical College are based on this legislation, the specific amounts to be charged are transmitted to the college by the state board for community and technical colleges.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-130-020 Location of schedules. Additional and detailed information and specific amounts to be charged for each category of students will be found in the college catalog and in the following locations on the Bates Technical College campus:

- (1) The office of admissions;
- (2) The registration and records office; and
- (3) College web site.

NEW SECTION

WAC 495A-130-030 Tuition and fee waivers. (1) Bates Technical College may establish tuition and fee waivers as authorized by state law and by the state board for community and technical college. This will be done in accordance with regular college fiscal processes. Information regarding specific waivers will be available as provided in WAC 495A-130-020.

(2) Upon an applicant's request, individual determinations on tuition and fee waivers will be reviewed by the college, in a brief adjudicative proceeding under RCW 34.05-482 through 34.05.494.

WSR 19-15-131
PROPOSED RULES
BATES TECHNICAL COLLEGE

[Filed July 23, 2019, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-055.

Title of Rule and Other Identifying Information: Amending chapter 495A-140 WAC to update with current state statutes and clarify language for usage of facilities at Bates Technical College.

Hearing Location(s): On September 10, 2019, at 1:30 a.m. [p.m.] - 3:30 p.m., at the Clyde Hupp Room, Building A, Room A329, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

Date of Intended Adoption: September 25, 2019.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by September 6, 2019.

Assistance for Persons with Disabilities: Contact Ms. Becky Welch, phone 253-680-7100, fax 253-680-7101, email bwelch@batestech.edu, by September 4, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to align with state rules and statutes and improve the clarity of the language.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 28B.10.140; chapter 34.05 RCW and 1991 c 238.

Statute Being Implemented: RCW 34.05.250; chapter 28B.50 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163; Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washing-

ton state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

July 22, 2019
Dr. Jean Hernandez
Special Assistant
to the President

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-010 Use of college facilities. Bates Technical College, District No. 28, serves Pierce and other counties by providing continued educational opportunity for its citizens. In keeping with this general purpose, the college believes that facilities should be available for a variety of uses (~~(which)~~) that are of benefit to the general public (~~(if such general)~~) provided said uses do not interfere with the educational mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-020 (~~(Limitation of use to school activities.)~~) Facility use aligns with college mission. (1) When allocating use of college facilities, the highest priority is always given to activities specifically related to the college's mission. No arrangements will be made that may interfere with or operate to the detriment of ~~(the)~~ the college's own teaching, research, or public service programs. In particular, college buildings, properties, and facilities ~~(are)~~ including those assigned to student programs ~~(are)~~ are used primarily for:

- (a) The regularly established teaching, research, or public service activities of the college and its departments;
- (b) Cultural, educational, or recreational activities of the students, faculty, or staff;
- (c) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests ~~(are)~~ when arranged under the sponsorship of the college or its departments.
- (d) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees (~~(and presented with their active)~~), official sponsorship, and active participation;
- (e) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies (~~(or)~~), civic groups, or community organizations whose

activities are of widespread public service and of a character appropriate to the college.

(2) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the college community to speak on campus subject to the availability of facilities and compliance with college policies and procedures. The appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration, or the board of trustees, implicitly or explicitly, of the speaker's views.

(3) Recognized student organizations have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding, and compliance with college policies and procedures.

(4) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to insure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Arrangements by both organizations and individuals must be made through the designated administrative officer. Allocation of space shall be made in accordance with college rules and on the basis of time, space, priority of request and the demonstrated needs of the applicant.

~~((4))~~ (5) The college may restrict an individual's or a group's use of college facilities if that person or group has, in the past, physically abused college facilities. Charges may be imposed for damage or for any unusual costs for the use of facilities. The individual, group or organization requesting space will be required to state in advance the general purpose of any meeting.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-040 General policies limiting use. (1) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities or forums.

(2) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use may be intermittent only.

(3) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and rules.

(4) Activities of a political or commercial nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.

(5) These rules shall apply to recognized student groups using college facilities.

(6) Handbills, leaflets, newspapers, and similar materials except those which are commercial, obscene, or unlawful may be distributed only in designated areas on the campus

where, and at times when, such distribution will not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or the board of trustees.

(a) Materials may be distributed free of charge by any student(s), by members of recognized student organizations, or by college employees on or in college facilities at locations specifically designated by the office of student services or designee.

(b) Such handbills, leaflets, newspapers, and related matter must bear identification as to the publishing agency and distributing organization or individual.

(c) All nonstudents will register with the office of student services prior to the distribution of any handbill, leaflet, newspaper, or related matter.

(d) Any person or persons who violate provisions of (a) and (b) of this subsection will be subject to disciplinary action or have their materials removed from the college premises.

(7) Use of audio or sound amplifying equipment is permitted only in locations and at times which will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer. Any sound amplification device may only be used at a volume that does not disrupt the normal use of classrooms, offices, laboratories, or any previously scheduled college event or activity.

(8) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except ~~((commissioned police officers as prescribed by law))~~ in the manners outlined in WAC 495A-121-041(9).

(9) The right of peaceful dissent within the college community will be preserved. The college retains the right to take steps to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.

(10) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.

(11) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities), groups must obey or comply with directions of the designated administrative officer, campus public safety officer, or individual in charge of the meeting.

(12) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions on the students although remedies might ~~((also))~~ be available through local law enforcement agencies.

NEW SECTION

WAC 495A-140-045 Use of facilities for expressive activities. Expressive activity includes, but is not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and other types of assemblies to share information, perspective, or viewpoints.

Students, student organizations, and the general public may use prespecified locations on Bates Technical College, District No. 28, for expressive activities between the hours of 7:00 a.m. and 10:00 p.m., Monday through Friday, when the college is open to the public under the following conditions:

(1) There will be no overnight camping on college facilities or premises between the hours of 10:00 p.m. and 7:00 a.m. Camping is defined to include sleeping, cooking activities, storing personal belongings, personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(2) College groups are encouraged to contact campus safety and facilities no later than forty-eight hours in advance of the activity. However, if an expressive activity does not displace other activities occurring at the college, the college group may be permitted to make a last minute request to set up an activity.

(3) All sites used for expressive activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(4) All college and noncollege groups must comply with fire, safety, sanitation, or special regulations specified for the activity. The college cannot and will not provide utility connections or hookups for purposes of expressive activities conducted pursuant to this policy.

(5) The activity must be conducted in accordance with any other applicable board policies, college policies, and regulations at the college, local, state, and federal level.

(6) The expressive activities do not pose hazards or safety risks to the employees, students, or other college visitors.

(7) Expressive activities do not include obscene, lewd, or indecent conduct.

(8) Noncollege groups may use college facilities for expressive activity as identified in this procedure provided space is available and college regulations are followed.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-050 Administrative control. The board hereby delegates to the president authority to set up administrative procedures for the use of college facilities; and to establish rental schedules where appropriate. The college reserves the right to determine if an infraction of these rules has been committed.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-060 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president ~~((, or his or her designee,))~~ or designee to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW.

(2) ~~((Members of the college community -))~~ Students, faculty, and staff ~~((s))~~ members of the college who do not comply with these regulations will be reported to the appropriate college office or ~~((agency))~~ official for action in accordance with these rules.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-070 Prohibited conduct at college facilities. (1) The use or possession of unlawful drugs or narcotics, not medically prescribed, or of intoxicants on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities are subject to disciplinary action.

(2) The use of tobacco is prohibited in accordance with ~~((health regulations))~~ college, local, state, and federal laws.

(3) Destruction of property is also prohibited by state law in reference to public institutions.

(4) College facilities will not be used for commercial sales, solicitation, advertising, or promotional activities except when said activities:

(a) Clearly serve the educational objectives of the college;

(b) Display of books are of interest to the academic community;

(c) Display or demonstration of technical or research equipment serve the interest of the college;

(d) Said solicitation activities must not interfere with or operate to the detriment of conducting college affairs; and

(e) Are conducted under the sponsorship or at the request of:

(i) A college department or official; or

(ii) An officially chartered student club or the associated students of the college.

(5) Activities must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, other traffic, or interfere with ingress or egress to the college, college buildings or facilities, or college activities.

(6) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law or described in WAC 495A-121-041(9).

(7) The activity must not create safety hazards or pose safety risks to others.

(8) The activity must not substantially interfere with educational activities inside or outside any college building or prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees, or visitors to the college.

(9) College buildings, rooms, and facilities may be rented by noncollege groups in accordance with the college's facilities use policy. When renting college buildings or rooms, an individual or organization may be required to post a bond and obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy. When the college grants permission to use its facilities, it is with the expressed understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

(10)(a) Individuals participating in expressive activities must not bring any firearms, explosives, dangerous chemicals or other dangerous weapons that could be used to inflict bodily harm or to damage real or personal property on the college grounds.

(b) Certified law enforcement officer may enter the campus in lawful possession of firearms while conducting official law enforcement duties.

(11)(a) Individuals participating in expressive activities do not possess, use, or consume alcohol, prohibited drugs or tobacco on campus property.

(b) Prohibited drugs include those defined in chapter 69.41 RCW or any controlled substance under chapter 69.50 RCW, except as prescribed for use by the individual's licensed practitioner.

(12) College facilities may not be used for commercial sales, solicitations, advertising, or promotional activities.

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of an officially chartered student club, college department, or college office.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-080 Control of pets in college facilities. Pets are not permitted in campus buildings or on the grounds except for guide or service dogs ~~((for the visually or hearing impaired))~~ as noted in WAC 162-022-100.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-090 Basis of fee assessment. (1) The basis for establishing and charging use fees reflects the college's assessment of the present market, the cost of operations, and an evaluation of the intended purpose and its relationship to the purposes of this college. The board of trustees ~~((has determined that groups or organizations affiliated with the college should be permitted access to facilities at the lowest charge on the fee schedule which may include complimentary use))~~ delegates to the president the authority to set an appropriate fee schedule. A current fee schedule is available

to interested persons from the office of the executive director of ((college)) facilities and operations.

~~(2) ((The college does not wish to compete with private enterprise. Therefore, the college reserves the right to deny applications for facility use when the administration and/or the board of trustees feels a commercial facility should be patronized.))~~ At no time will facility use be granted for a commercial activity at a rental rate, or upon terms, less than the full and fair rental value of premises used.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-100 Application procedures. (1) At least seven working days prior to the date of intended use of any college facility, an authorized representative of the requesting organization must submit proper and complete written application which may be obtained through the college's office of the executive director of ((college)) facilities and operations. ~~((A single application may be sufficient for a series of meetings by an organization unless those meetings vary significantly in some substantive way; if so, separate applications will be required.~~

~~(2) Upon approval of the application, an authorized representative of the using organization shall sign the rental agreement. By affixing a signature as representing the using organization, the signatory specifies he or she has authority to enter into agreement on behalf of the organization and if the organization fails to pay the amount due, the signatory becomes responsible for all charges which may include interest payment for overdue accounts as specified on the rental form but not less than one percent per month.~~

~~(3) Large events, events requiring expenditures on the part of the college, or where significant areas are blocked out for the renter, a minimum of up to fifty percent advance deposit may be required at the time of application.~~

~~(4)) The college policies and procedures must be followed accordingly.~~

(2) The college reserves the right to make pricing changes without prior written notice.

~~((5))~~ (3) Use of a facility is limited to the facilities specified on the agreement.

~~((6))~~ (4) The priorities for facility use place primary emphasis on regular college events and activities. The president ((and the board of trustees)) or designee reserves the right to cancel any permit and refund any payments for use of college facilities and equipment when they deem such action advisable and in the college's best interests.

~~((7))~~ (5) In the event of a cancellation of a facility use permit by the applicant, that organization is liable for all college costs and expenses in preparing the facility for its use.

~~((8))~~ (6) Any admission charge is to be specified and ((approved)) preapproved by the college.

~~((9))~~ (7) Organizations using Bates Technical College's facilities shall conduct all activities in accordance with applicable local, state, and federal laws including all rules adopted by the board of trustees.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-140-110 Supervision during activity. (1) Signatories of the rental agreement as well as adult organization leaders are responsible for group conduct and are expected to remain with their group during activities. When the use of special facilities makes it necessary that supervision be provided, the ~~((trustees))~~ president reserves the right to require a staff member represent the college at any activity on college facilities. ~~((Such))~~ Said service shall be paid at the current rate, by the organization requesting use of the facility(;) and does not relieve the organization from safeguarding the college's property.

(2) The security staff or some other authority of the college will open and lock all rented facilities. Keys to buildings or facilities will not be issued or loaned on any occasion to any ~~((using))~~ organization ~~((with the exception of keys to designated off-campus locations))~~ renting facilities from the college.

WSR 19-15-132

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed July 23, 2019, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-096.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses.

Hearing Location(s): On Wednesday, September 4, 2019, at 9:00 a.m., at the Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507. Check in at the first floor counter.

Date of Intended Adoption: September 5, 2019.

Submit Written Comments to: George Price, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email gprice@dol.wa.gov, fax 360-570-7827, by September 3, 2019.

Assistance for Persons with Disabilities: George Price, phone 360-902-0120, fax 360-570-7827, email gprice@dol.wa.gov, by September 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adding a new section to chapter 308-96A WAC will allow the department to create definitions for the types of electric, hybrid and alternative fuel vehicles for the purposes of implementing EHB [E2SHB] 2042 passed during the 2019 legislative session.

Reasons Supporting Proposal: Legislative changes to the corresponding RCW are effective on August 1 and October 1, 2019.

Statutory Authority for Adoption: RCW 46.01.110, 46.16A.220.

Statute Being Implemented: Not applicable.

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: Jill Johnson, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-0183; Implementation and Enforcement: George Price, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-0120.

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 new rule clarifies fees that are set in statute, however this rule does not add additional costs to stakeholders.

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

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

July 23, 2019
Jill O. Johnson
Policy Analyst

NEW SECTION

WAC 308-96A-138 Electric, hybrid and clean alternative fuel vehicles—Definitions and fees. (1) The definitions in this section are created for the purposes of assessing licensing fees in section 23, chapter 287, Laws of 2019.

(a) "Clean alternative fuel" means electricity, dimethyl ether, hydrogen, methane, natural gas, liquefied natural gas, compressed natural gas, or propane.

(b) "Electric" means at least one method of propulsion that is capable of being reenergized by an external source of electricity and capable of traveling at least thirty miles using only battery power and can reach a speed of at least thirty-five miles per hour.

(c) "Hybrid" means two or more power sources or fuel types and has the capability to drive at a speed of more than thirty-five miles per hour. This definition excludes vehicles that are considered electric or plug-in hybrid.

(2) **Will an electric vehicle be assessed the fee in section 23(1), chapter 287, Laws of 2019 in addition to the fees described in RCW 46.17.323?** Yes.

(3) **Will an electric vehicle be assessed the fee in section 23(2), chapter 287, Laws of 2019 in addition to the fees described in RCW 46.17.323?** No.

(4) **Will a hybrid or clean alternative fuel vehicle be assessed the fee in RCW 46.17.323 in addition to the fees described in section 23, chapter 287, Laws of 2019?** No. These vehicles are only subject to the electrification fee in section 23(2), chapter 287, Laws of 2019.

**WSR 19-15-133
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2018-09—Filed July 23, 2019, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-141.

Title of Rule and Other Identifying Information: Adverse notifications.

Hearing Location(s): On August 28, 2019, at 9:00 a.m., at the Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 3, 2019.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by August 27, 2018.

Assistance with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules to increase consumer awareness of available agency assistance and to help consumers with their insurance questions by requiring contact information for the office of the insurance commissioner on certain notifications from the company and carrier.

Reasons Supporting Proposal: When a consumer receives an adverse notice from their insurance company or health carrier, there may be confusion. The commissioner will consider rule making to provide the office of the insurance commissioner's contact information on these certain notifications in order to assist the consumer and educate them on the insurance process.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.545, 48.19.035, 48.43.525, and 48.43.535.

Statute Being Implemented: None.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation: Steve Valandra, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Doug Hartz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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 David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, email daviddf@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The office of the insurance commissioner has found that none of the existing insurance companies impacted by the proposed rule may be considered small businesses under RCW 19.85.020(3).

July 23, 2019
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-30-770 Adverse notification requirements.

(1) This section applies to all insurers, fraternal benefit societies, health carriers including disability, health maintenance organizations (HMOs), health care service contractors (HCSCs), and limited licensed carriers, and to all insurance policies, health plans, and insurance contracts.

(2) For the purpose of this section only the term "Adverse notification" means a notice, statement, or document from an insurer, fraternal benefit societies, health carriers including disability, HMOs, HCSCs, and limited licensed carriers to their insured, or enrollee, or both, describing one or more of the following:

(a) A claim denial;

(b) A final claim payment for less than the amount of the claim submitted. This does not include a claim that is paid less than the original amount to reflect the contracted health care provider's rate;

(c) An adverse benefit determination as defined in RCW 48.43.005(2); and

(d) Rescission, cancellation, termination or nonrenewal of a policy unless initiated by an insured. This does not apply to the end of a scheduled policy term or cancellation due to nonpayment of premium.

(3) On each adverse notification provided, the notice must include the following information:

"If you have questions or concerns about the actions of your insurance company or agent, or would like information on your rights to file an appeal, contact the Washington state Office of the Insurance Commissioner's consumer protection hotline at 1-800-562-6900 or visit www.insurance.wa.gov. The insurance commissioner protects and educates insurance consumers, advances the public interest, and provides fair and efficient regulation of the insurance industry."

(4) The notice specified in subsection (3) of this section must be in the same font type and not less than the font size of the majority of the notification. This notice must appear on the first page, at the end of the adverse notification, or where this notice currently exists if adverse notices are already provided to insureds.

WSR 19-15-141
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed July 24, 2019, 7:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-116.

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock brand inspection.

Hearing Location(s): On August 28, 2019, at 10:00 a.m., at the Department of Agriculture, Conference Room 238, 21 North First Avenue, Yakima, WA 98902; and on August 29, 2019, at 10:00 a.m., at the Department of Agriculture, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: September 6, 2019.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email WSDARulesComments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., August 29, 2019.

Assistance for Persons with Disabilities: Contact Stacia Speck, animal services division coordinator, phone 360-725-5642, fax 360-902-2087, TTY 800-833-6388, email sspeck@agr.wa.gov, by August 21, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-610 WAC to align with recently enacted legislation to:

- Establish a definition for legacy brand;
- Increase the membership of the livestock identification advisory committee;
- Expand the electronic cattle transaction reporting (ECTR) system to allow for all cattle producers to report change of ownership and out-of-state movement transactions electronically;
- Modify those able to perform livestock inspections;
- Reflect livestock inspection fees;
- Reflect a legacy brand transfer fee; and
- Reflect brand transfer fees.

The department is also proposing to amend chapter 16-610 WAC by establishing an ECTR licensing and renewal fee; increasing the certified inspector certification fee; modifying the requirements associated with being a certified inspector; moving the language regarding the ECTR system into a section of its own; retitling the chapter to more accurately reflect the different forms of identification being regulated; establishing definitions for call out fee, certified veterinarian, electronic official individual identification, and field livestock inspector; and revising language to increase clarity and readability and to conform with current industry practices.

Reasons Supporting Proposal: The livestock identification program, which has roots dating back to the 1860s, provides asset protection and theft deterrence for the livestock industry through inspections, verifying ownership documentation, and issuing a clear "title" to the new owner of cattle and horses. The program is entirely funded by fees paid by the livestock industry and receives no state general fund dollars.

During the 2019 legislative session, the livestock industry worked with the Washington state legislature to develop a new fee structure to fully fund the program. ESSB 5959 (chapter 92, Laws of 2019) makes multiple changes to the department's livestock identification program in order to

restore financial solvency to the program, and allows the department to move animal disease traceability forward by expanding ECTR and the use of official electronic individual identification.

The United States Department of Agriculture announced in April 2019 that official electronic cattle identification will become an industry-wide requirement as of 2023.

Ensuring that the rule language matches what is in statute will reduce confusion to the stakeholders and improve compliance.

Establishing the license and renewal fee for use of the ECTR system will allow producers to obtain a license and use ECTR to electronically report change of ownership transactions involving cattle. Currently, producers have to contact either a certified veterinarian or the department to obtain a livestock identification inspection. The recently passed legislation imposes a \$20.00 call out fee to obtain a livestock identification inspection. Expanding the use of ECTR will allow producers to report transactions without paying the call out fee. The use of ECTR is completely voluntary, anyone not wishing to obtain an ECTR license can continue to obtain livestock identification inspections by contacting the department.

ESSB 5959 creates a new "field livestock inspector" category - this individual is not required to be an accredited veterinarian. The department is proposing to increase the certification cost by \$25/3-year certification in order to cover the cost of training, supplies, brand book issuance, and administrative oversight. If the brand book was purchased separately, it alone would cost the applicant an additional \$25.00.

Statutory Authority for Adoption: RCW 16.57.025, [16.57.]350, and [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350.

Statute Being Implemented: Chapters 16.57, 16.58, 16.65 RCW; and chapter 92, Laws of 2019.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Robbie Parke, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1836; Implementation: Jodi Jones, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1889; and Enforcement: John Price, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1946.

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 department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards,

including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 34.05.310 (4)(d), (e), and (f).

Explanation of exemptions: Adding a definition for legacy brand, expanding the membership of the livestock identification advisory committee to twelve members instead of six, increasing livestock inspection and brand transfer fees, and establishing a call out fee are exempt from a small business economic impact statement (SBEIS) under RCW 19.85.025(3)/34.05.310 (4)(e) and (f) because they are explicitly and specifically dictated by statute and set or adjust fees pursuant to legislative standards (chapter 92, Laws of 2019).

Clarifying changes to the rule language including: Retitling the chapter; moving the information regarding the ECTR system into a new section; providing additional information on what must be submitted when reporting transactions in the ECTR system; clarifying what type of inspections certified veterinarians and field livestock inspectors are not certified to perform; updating website addresses; clarifying that the inspection fee of \$1.21 per head applies to all cattle that are identified with a valid brand recorded to the owner (instead of just Washington state brand owners); and adding definitions for call out fee, certified veterinarian, electronic official individual identification, and field livestock inspector are exempt from an SBEIS under RCW 19.85.025(3)/34.05.310 (4)(d) because they make web address changes or clarify the language of the rule without changing its effect.

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. Establishing a \$33.00 per year licensing fee for the use of ECTR. The \$33.00 per year fee is considered less than "minor cost" as defined in RCW 19.85.020(2) because it does not exceed one percent of the average annual payroll for beef cattle farmers (\$828.40) or dairy cattle farmers (\$4,634.16).

Increasing the certification fee for certified veterinarians and field livestock inspectors. The additional \$25.00 (\$8.33 per year) fee for certified veterinarians for a three year period is considered less than "minor cost" as defined in RCW 19.85.020(2) because it does not exceed one percent of average annual payroll for veterinarian practices (\$4,694.75). The category of field livestock inspectors is completely new. The rule will impose a \$60.00 certification fee for the three year period (\$20.00 per year) just like certified veterinarians. Since there are no businesses currently impacted by this proposal, the department, as allowed under RCW 19.85.020(2) is considering this a minor cost since it does not exceed \$100.00 per year.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email WSDARulesComments@agr.wa.gov.

July 24, 2019

Jodi Jones

Animal Services
Operations Director

Chapter 16-610 WAC

LIVESTOCK ~~((BRAND INSPECTION))~~ IDENTIFICATION

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-005 Definitions. In addition to the definitions found in RCW 16.57.010, 16.58.020, and 16.65.010, the following definitions apply to this chapter:

"Association of livestock breeders" means any properly incorporated association whose membership is made up of livestock breeders.

"Beef commission assessment point" means a person or business, as designated by the Washington state beef commission, required to collect and submit the mandatory per-head beef promotional fees directly to the commission when the sale of cattle occurs.

"Beef promotion fee" means the mandatory state and/or federal beef commission assessment fee under RCW 16.67.120 and 16.67.122 that is collected on each head of cattle at the time of sale.

"Call out fee" is a trip fee charged for conducting livestock inspections.

"Certified veterinarian" means an individual licensed to practice veterinary medicine in Washington state under chapter 18.92 RCW who has been certified to perform livestock inspections by the director.

"Electronic official individual identification" means an official USDA approved 840 radio-frequency identification (RFID) tag. Official USDA RFID ear tags are imprinted with an official USDA animal identification number (AIN), bear the official U.S. shield, and are tamper proof.

"Farmers cooperative association" means any cooperative association of livestock producers. Farmers cooperative association does not include livestock youth organizations such as 4-H, FFA, or other junior livestock groups.

"Field livestock inspector" means an individual who has been certified by the director to perform livestock inspections.

"Livestock heritage brand" means a designation given to a brand that has been deactivated by the recorded owner. A heritage brand may not be applied to livestock.

"Legacy brand" means a brand that has been in continuous use for at least twenty-five years.

"Market" means a public livestock market as defined in RCW 16.65.010(1).

"Special sale" means a public sale conducted by an individual, youth organization, livestock breeders association, or farmers cooperative association on a seasonal or occasional basis.

"USDA" means the United States Department of Agriculture.

LIVESTOCK IDENTIFICATION ADVISORY
~~((BOARD))~~ COMMITTEE

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-010 Livestock identification advisory ~~((board))~~ committee. (1) The livestock identification advisory ~~((board))~~ committee is established in RCW 16.57.015 for the purpose of advising the director regarding:

(a) Livestock identification programs administered under chapter 16.57 RCW and these rules;

(b) Inspection fees; and

(c) Related licensing fees.

(2) The ~~((board))~~ committee is appointed by the director and is composed of ~~((six))~~ twelve voting members ~~((representing))~~ as follows: Two beef producers, ~~((public))~~ two livestock market ~~((operators, horse owners, dairy farmers,))~~ owners, two horse producers, two dairy producers, two cattle feeders, and two meat processors. ~~((The director is an ex-officio member of the advisory board.~~

~~((3))~~ The board must) Organizations representing the groups represented on the committee may submit nominations for these appointments to the director for the director's consideration. No more than two members at the time of their appointment or during their term may reside in the same county. Members may be reappointed and vacancies must be filled in the same manner as original appointments are made.

(3) The committee shall elect a member to serve as ~~((board chair. The board chair, or the chair's designee, is responsible for organizing and conducting board meetings.~~

~~((4))~~ The board must meet with the director at least once a year to offer its advice. Additional meetings may be held at the request of the director or a majority of the board's membership.

~~((5))~~ committee chair. The committee must meet at least twice a year. The committee shall meet at the call of the director, chair, or a majority of the committee. A quorum of the committee consists of a majority of members. If a member has not been designated for a position, that position may not be counted for purposes of determining a quorum. A member may appoint an alternate who meets the same qualifications as the member to serve during the member's absence. The director may remove a member from the committee if that member has two or more unexcused absences during a single calendar year.

(4) Livestock identification advisory ~~((board))~~ committee members must be residents of the state of Washington and actively engaged in the industry they represent.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-012 Livestock identification advisory ~~((board))~~ committee—Length of term. (1) Advisory ~~((board))~~ committee members serve staggered three-year terms. Terms begin on July 1 and end on June 30.

(2) Positions are numbered one through ~~((six))~~ twelve as follows:

(a) Positions one and two - Beef producers;

(b) Positions ~~((two—Public))~~ three and four - Livestock market ~~((operators))~~ owners;

(c) Positions ~~((three))~~ five and six - Horse ~~((owners))~~ producers;

(d) Positions ~~((four))~~ seven and eight - Dairy ~~((farmers))~~ producers;

(e) Positions ~~((five))~~ nine and ten - Cattle feeders; and

(f) Positions ~~((six))~~ eleven and twelve - Meat processors.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-013 Livestock identification advisory ~~((board))~~ committee—Vacancies. (1) To fill a vacancy resulting from an expired term, the director must solicit nominations from ~~((affected statewide industry groups))~~ the organization representing the group statewide. Nominations from industry groups must be submitted to the director before May 1 of the year in which the term expires. If a nomination is not received for a vacant position, the director may appoint a qualified person to fill that position.

(2) The director may fill, for the unexpired portion of a term, vacancies that occur before a term expires. When such vacancies occur, ~~((advisory board members and the presidents of affected statewide industry groups))~~ the director will solicit nominations from organizations representing the groups statewide, which may then submit names to the director for consideration.

AMENDATORY SECTION (Amending WSR 16-21-008, filed 10/7/16, effective 11/7/16)

WAC 16-610-015 Certificate of permit. (1) A certificate of permit (WSDA form #7020), commonly known as a "transportation permit" or a "haul slip," must accompany livestock:

(a) In transit (cattle);

(b) Consigned to a public livestock market, special sale, or livestock processing facility; or

(c) Upon entry into a certified feedlot (cattle).

(2) The certificate of permit may not be used as a bill of sale for cattle or horses.

(3) A certificate of permit may be purchased by contacting the department at ~~((360-902-1855 or livestockid@agr.wa.gov))~~:

Washington State Department of Agriculture

Animal Services Division

1111 Washington Street S.E.

P.O. Box 42577

Olympia, WA 98504-2577

Email: livestockid@agr.wa.gov

Phone: 360-902-1855

The price is \$5.00 for a book of twenty-five.

(4) The certificate of permit must include:

(a) Owner's name and address;

(b) Livestock breed;

(c) Sex of the animal;

(d) Brand or other methods of livestock identification;

and

(e) Any other information that the director considers necessary.

AMENDATORY SECTION (Amending WSR 16-21-008, filed 10/7/16, effective 11/7/16)

WAC 16-610-018 Proof of ownership documents. (1) Proof of ownership for cattle and horses may be established at the time of a livestock inspection by presenting one of the following documents:

(a) An official livestock inspection certificate issued by the director.

(b) An official electronic cattle transaction reporting certificate.

(c) A duplicate certificate or certified copy of an original inspection document issued by the director.

~~((e))~~ (d) For cattle only, a self-inspection certificate completed prior to June 10, 2010, and any other information required in WAC 16-610-016.

~~((d))~~ (e) An official inspection certificate issued by another state or province that maintains a livestock inspection program.

~~((e))~~ (f) Registration papers on purebred horses.

~~((f))~~ (g) Registration papers on purebred cattle if the brand is not recorded in this state.

~~((g))~~ (h) For horses only, a bill of sale. A sample equine bill of sale is available by accessing the department's web site at ~~((http://agr.wa.gov/FoodAnimal/Livestock/))~~ https://agr.wa.gov/departments/animals-livestock-and-pets/livestock.

~~((h))~~ (i) A certificate of veterinary inspection issued by a state that does not maintain a livestock inspection program. Vaccination/test tags and the animal description must be verifiable and match the document.

(2) Only original inspection certificates, official duplicate certificates, or certified copies of inspection certificates are acceptable. The name of the livestock owner must appear on the document that is submitted. Carbon copies, faxed copies or photocopies will not be accepted except for registration papers on purebred livestock.

AMENDATORY SECTION (Amending WSR 15-23-069, filed 11/16/15, effective 12/17/15)

WAC 16-610-020 Cattle inspections for brands, electronic official individual identification, or other proof of ownership. (1) All cattle must be inspected for brands, electronic official individual identification or other proof of ownership:

(a) Before being moved out of Washington state, unless the provisions of WAC 16-610-035(2) apply.

(b) When offered for sale at any public livestock market or special sale approved by the director.

(c) Upon delivery to any cattle processing plant where the United States Department of Agriculture maintains a meat inspection program, unless the cattle:

(i) Originate from a certified feedlot; or

(ii) Are accompanied by an inspection certificate issued by the director, ~~((or))~~ a veterinarian certified by the director, a field livestock inspector certified by the director, or an

agency in another state or Canadian province authorized by law to issue such a certificate.

~~((2) All cattle)) (d) Upon~~ entering or reentering any certified feedlot licensed under chapter 16.58 RCW ~~((must be inspected for brands or other proof of ownership)) and~~ before commingling with other cattle unless the cattle are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or a field livestock inspector certified by the director, or an agency in another state or Canadian province authorized by law to issue such a certificate.

~~((3) All cattle must be inspected for brands or other proof of ownership at)) (2) At~~ any point of private sale, trade, gifting, barter, or any other private action that constitutes a change of ownership. For transactions involving cattle not being moved or transported out of Washington state:

(a) Cattle must be presented for an inspection within fifteen days from the date of the initial transaction and accompanied by a certificate of permit. It shall be the responsibility of the seller to notify the department immediately that a sale has occurred. It shall be the responsibility of the buyer to present the animals for inspection.

(b) Cattle sold for 4-H and FFA youth projects are exempt from the fifteen day inspection requirement and can be inspected, if not prior, when consigned to a terminal show.

~~((c) Until the earlier of January 1, 2016, or the date of notice that an electronic livestock movement reporting system is available for use, individual private sales of unbranded female dairy breed cattle involving fifteen head or less are exempt from the inspection requirement.~~

~~(4) Individual private sales, trades, gifting, barter, or any other action that constitutes a change of ownership of unbranded dairy cattle are required to obtain inspections under this section except when the seller holds an electronic cattle transaction reporting license under chapter 16.57 RCW and reports transactions through that system.~~

~~(a) Transactions involving dispersal or liquidation sales, or covered by subsection (1) and (2) of this section, or cattle being moved or transported out of Washington state, may not be reported electronically and inspection is required.~~

~~(b) For purposes of this section, "dairy cattle" means all cattle, regardless of age or sex, that are in use to produce milk or other dairy products for human consumption including, but not limited to, breeds such as Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, and Milking Shorthorn.~~

~~(c) License:~~

~~(i) Holders of a valid milk producers license under chapter 15.36 RCW may apply for an electronic cattle transaction reporting license. Applications shall be made upon a form provided by the department to include:~~

~~(A) Milk producers license number;~~

~~(B) First and last name of the holder of the milk producer license;~~

~~(C) Active email address, phone number, and mailing address for the licensed milk producer; and~~

~~(D) Business name, physical address, mailing address, and phone number.~~

~~(ii) Upon approval of the application, the director will provide the licensee with system authorization to begin utilizing the electronic cattle transaction reporting system.~~

~~(iii) As a condition of licensure, the electronic cattle transaction reporting licensee consents to up to two site visits per year. The purpose of a site visit is to conduct examinations and inspections of cattle and any associated records for movement verification. Records must be kept for three years and include information such as, but not limited to, cattle origin and destination, official individual identification tag number of each cattle sold, breed and sex of cattle sold, and date the transaction occurred. Site visits will be conducted during normal business hours and scheduled in advance. Time and mileage fees as described in WAC 16-610-065 will be assessed at the time of each site visit and will be collected from the licensee.~~

~~(iv) The director may deny, suspend, or revoke an electronic cattle transaction reporting license for failure to comply with any condition of licensure under this section or any requirement of this chapter or chapter 16.57 RCW.~~

~~(d) Reporting:~~

~~(i) All transactions reported to the department through the electronic cattle transaction reporting system must be reported within twenty-four hours of the transaction and include the following information:~~

~~(A) Buyer's name, phone number, and physical address of destination;~~

~~(B) Buyer's email address if available;~~

~~(C) Number of cattle sold;~~

~~(D) Official individual identification tag number of each cattle sold;~~

~~(E) Breed and sex of cattle sold; and~~

~~(F) Date the transaction occurred;~~

~~(ii) Only dairy cattle that are officially identified with a green tag per RCW 16.57.160(3), an animal identification number radio frequency tag, a brucellosis vaccination metal tag, or a brucellosis vaccination radio frequency tag may be reported electronically.~~

~~(iii) A fee of one dollar and thirty cents per head will be assessed for electronically reported transactions, along with any other applicable fees including, but not limited to, the fees listed in subsection (5) of this section. The fees are due and collected at the time of reporting through the electronic cattle transaction reporting system.~~

~~(5) Exemptions from mandatory inspections do not exempt cattle owners or sellers from paying beef promotion fees owed to the Washington state beef commission under chapter 16.67 RCW or the animal disease traceability fee owed to the department under chapter 16.36 RCW.)~~

NEW SECTION

WAC 16-610-021 Electronic cattle transaction reporting. (1) Individual private sales, trades, gifting, barter, or any other action that constitutes a change of ownership or movement out of state of cattle are required to obtain inspections under WAC 16-610-020 except when the seller holds an electronic cattle transaction reporting license under chapter 16.57 RCW and reports transactions through that system.

(2)(a) Any person may apply for an electronic cattle transaction reporting license. Applications shall be made on a form provided by the department to include:

(i) First and last name of the applicant.

(ii) Business name, physical address, mailing address, email address, and phone number.

(b) The license expires annually on June 30th.

(3) The initial license application fee is thirty-three dollars. The annual renewal fee is thirty-three dollars.

(4) The director may deny, suspend, or revoke an electronic cattle transaction reporting license for failure to comply with any condition of licensure under this section or any requirement of this chapter or chapter 16.57 RCW.

(5) All holders of an electronic cattle transaction reporting license must transmit to the department a record of each transaction containing the unique identification of each individual animal included in the transaction as assigned through a department-authorized identification method. All transactions reported to the department through the electronic cattle transaction reporting system must be reported within twenty-four hours of the transaction and include the following information:

(a) Buyer's first and last name, email address, phone number, mailing address, and physical address of destination;

(b) Number of cattle sold;

(c) Electronic official individual identification tag number of each head of cattle sold;

(d) Type and sex of each head of cattle sold;

(e) Breed and color of each head of cattle sold; and

(f) Date the transaction occurred.

(6) The following information is required for cattle that are branded in addition to the requirements in subsection (4) of this section:

(a) Design and location of the brand(s) on each head of cattle sold; and

(b) Washington brand number if the brand is recorded to the seller.

(i) If the brand is not recorded in Washington to the seller, the seller must provide proof of ownership under WAC 16-610-018.

(ii) A fee of one dollar and thirty cents per head will be assessed for electronically reported transactions, along with any other applicable fees including, but not limited to, the fees listed in subsection (7) of this section. The fees are due and collected at the time of reporting through the electronic cattle transaction reporting system.

(7) Exemptions from mandatory inspections do not exempt cattle owners or sellers from paying beef promotion fees owed to the Washington state beef commission under chapter 16.67 RCW or the animal disease traceability fee owed to the department under chapter 16.36 RCW.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-035 Inspections for cattle and horses moving out of Washington state. (1) ~~(Except as provided in subsection (2) of this section,)~~ All cattle and horses must be inspected by the director, a field livestock inspector, or a certified veterinarian for brands, electronic official individual identification (cattle only), or other proof of ownership before being moved out of Washington state.

(2) Exceptions:

(a) Cattle and horses may be moved out of Washington state without inspection when they are destined for a public livestock market in another state where brand inspection is performed by Washington state department of agriculture inspectors or an agent according to an agreement with the other state.

(b) Cattle and horses moving out of Washington state to public livestock markets must be accompanied by a certificate of permit showing that the livestock are destined for and are being transported directly to the designated out-of-state inspection point. The certificate of permit is not valid for transportation to any point other than the designated inspection point.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-045 Cattle inspections at certified feedlots ~~(and)~~, slaughter plants, and public livestock markets. Inspections of cattle required under WAC 16-610-020 (1)(c) or ~~((16-610-020(2)))~~ (d) and at any other beef commission assessment collection point must be conducted by the director.

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-050 Cattle inspections for private transactions. Inspections of cattle required under WAC 16-610-020~~((3))~~ (2) may be conducted by:

(1) The director; ~~((#))~~

(2) Veterinarians certified by the director; or

(3) Field livestock inspectors certified by the director.

AMENDATORY SECTION (Amending WSR 12-02-068, filed 1/3/12, effective 2/3/12)

WAC 16-610-053 Physical address requirements. (1) Livestock inspection certificates, electronic cattle transaction reporting certificates, certificate of permits, and equine bill of sales shall contain a destination physical address except where specifically exempted in this section. For purposes of this section, a physical address is the actual street location of the destination.

(2) All cattle and horses must be transported and delivered directly to the physical address noted on a livestock inspection certificate, electronic cattle transaction reporting certificate (cattle only), certificate of permit, and/or equine bill of sale. Cattle and horses shall not be diverted to any other physical address or location except for:

(a) A temporary destination due to a medical emergency where the immediate health of the animal is in jeopardy; or

(b) A category two restricted holding facility as defined in chapter 16-30 WAC if the cattle will be transported and delivered to a lot of like status.

(3) If the destination physical address cannot be determined due to no physical address assigned by the appropriate county jurisdiction or local emergency services, the following can be used:

(a) Descriptive driving directions to the physical location of where the cattle or horse(s) is being transported and delivered to; or

(b) The global positioning system (GPS) coordinates of the physical location of where the cattle or horse(s) is being transported and delivered to. GPS coordinates must contain two latitude or three longitude digits to the left of the decimal point and six digits to the right of the decimal point.

(4) Failing to provide the required destination physical address or acceptable alternative as defined in subsection (3) of this section or diverting cattle and horses from the destination physical address may result in a civil infraction per WAC 16-610-095.

VETERINARIAN AND FIELD LIVESTOCK INSPECTOR CERTIFICATION

AMENDATORY SECTION (Amending WSR 16-21-008, filed 10/7/16, effective 11/7/16)

WAC 16-610-060 Veterinarian and field livestock inspector certification. (1)(a) The director may certify veterinarians, who are licensed and accredited in Washington state and field livestock inspectors who comply with the requirements of this section, to issue livestock inspection certificates.

(b) Veterinarians and field livestock inspectors may not conduct inspections at certified feedlots, slaughter plants, public livestock markets, or special sales.

(c)(i) Veterinarians and field livestock inspectors may not perform livestock inspections for an individual or business if a conflict of interest exists.

(ii) For the purpose of this rule, a "conflict of interest" includes, but is not limited to, a financial or other interest, direct or indirect, in the livestock, the facility in which the livestock are presented for sale, or the event at which the livestock are being exhibited.

(2) Veterinarians licensed and accredited in Washington state and field livestock inspectors who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name (~~and principal business~~), address, telephone number, and email address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number if the applicant is a veterinarian;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of (~~thirty-five~~) sixty dollars per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a (~~certificate~~) certification was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of (~~thirty-five~~) sixty dollars per applicant.

(5) All (~~veterinarians~~) applicants applying for certification or renewal of certification must complete department-provided training and pass a written test with no less than a score of ninety percent. The department will provide to each person applying for certification or renewal of certification a copy of the most current brand book and any supplements issued to date to each certified veterinarian or field livestock inspector. Training will include, but will not be limited to, the:

(a) Reading of printed brands;

(b) Reading of brands or other marks on animals, including the location of brands on animals;

(c) Reading of a microchip or other electronic official individual identification;

(d) Completion of official documents; and

(~~(e)~~) (e) Review of satisfactory ownership documents.

(6) The director will maintain a list of veterinarians and field livestock inspectors certified to perform livestock inspections. Interested parties may request a copy of the list by contacting the department at (~~(360-902-1855 or livestock id@agr.wa.gov)~~):

Washington State Department of Agriculture

Animal Services Division

1111 Washington Street S.E.

P.O. Box 42577

Olympia, WA 98504-2577

Email: livestockid@agr.wa.gov

Phone: 360-902-1855

Web site: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(7) Inspections by certified veterinarians and field livestock inspectors are conducted upon request and provided at the discretion of the veterinarian or field livestock inspector.

(8) Certified veterinarians and field livestock inspectors must submit all required inspection fees to the director and copies of each inspection certificate within thirty days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian or field livestock inspector fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-062 Veterinarian and field livestock inspector certification—Suspension and revocation. (1) The director may suspend or revoke a veterinarian's or field livestock inspector's certification to issue inspection certifi-

icates if the veterinarian or field livestock inspector knowingly:

- (a) Makes or acquiesces in false or inaccurate statements on livestock inspection certificates regarding:
 - (i) The date or location of the inspection;
 - (ii) The marks, electronic official individual identification, or brands on the livestock inspected;
 - (iii) The owner's name; or
 - (iv) Any other statement about the livestock inspected.
- (b) Fails to properly verify the ownership status of the animal before issuing an inspection certificate.
- (c) Issues an inspection certificate without actually conducting an inspection of the livestock.
- (d) Fails to submit inspection fees and certificates issued to the director within thirty days from the date of issue.
- (e) Conducts livestock inspections when a conflict of interest exists.
 - (2) Actions under this section will be taken in accordance with chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 12-21-013, filed 10/5/12, effective 11/5/12)

WAC 16-610-065 Livestock identification fees. All livestock identification inspection fees charged by the director are specified in statute under RCW 16.57.220 but are reproduced in this section for ease of reference.

((For purposes of this section, the time and mileage fee means seventeen dollars per hour and the current mileage rate set by the office of financial management.)) A call out fee of twenty dollars will be charged for conducting livestock inspections in accordance with RCW 16.57.220, 16.58.130 and 16.65.090. Public livestock markets, special sales, open consignment horse sales, certified feedlots, and USDA inspected slaughter facilities will be charged a call out fee per inspector per day, with the exception of:

Special sales conducted by youth livestock organizations such as 4-H, FFA, and junior livestock groups are exempt from call out fees.

Certificate	Fees:
Inspection Certificate - Cattle	(1) The livestock inspection fee for cattle is \$(1.60) 4.00 per head ((or the time and mileage fee, whichever is greater,)) except: The fee for livestock inspection for cattle is \$(1.10) 1.21 per head ((or the time and mileage fee, whichever is greater,)) when cattle are identified with a valid brand recorded to the owner ((of the cattle in Washington)) <u>or identified with an electronic official individual identification tag.</u>

Certificate	Fees:
	((The time and mileage fee may be waived for private treaty transactions of ten head or less of cattle bearing the seller's Washington recorded brand and special sales of 4-H, FFA, and junior/youth groups. The time and mileage waiver: (a) Will be limited to twelve waivers within a calendar year; and (b) Does not apply to multiple sales to the same buyer within a thirty day period.)) (2) The livestock inspection fee for cattle is \$(4.00) 4.40 per head for cattle delivered to a USDA inspected slaughter facility with a daily capacity of no more than five hundred head of cattle. (3) No inspection fee is charged for a calf that is inspected prior to moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington state-recorded brand <u>or identified with an electronic official individual identification tag.</u>
Inspection Certificate - Horse	(4) The livestock inspection fee for horses is \$(3.50) 3.85 per head ((or the time and mileage rate, whichever is greater, except:)).
Inspection Certificate - Groups of thirty or more horses	(5) The livestock inspection fee for groups of thirty or more horses is \$(2.00) 2.20 per head ((or the time and mileage fee, whichever is greater)), if: (a) The horses are owned by one individual; and (b) The inspection is performed on one date and at one location; and (c) Only one certificate is issued.
Inspection Certificate - Minimum fee	(6) The minimum fee for a livestock inspection is \$(5.00) 5.50 . The minimum fee does not apply to livestock consigned to and inspected at a public livestock market, special sale, or a cattle processing plant.
Annual individual identification certificate for individual animals	(7)(a) The livestock inspection fee for an annual individual identification certificate for cattle and horses is \$(20.00) 22.00 per head ((or the time and mileage fee, whichever is greater)).

Certificate	Fees:
	(b) The livestock inspection fee for an annual individual identification certificate for groups of thirty or more horses or cattle is \$(5.00) 5.50 per head ((or the time and mileage fee, whichever is greater)), if: (i) The horses or cattle are owned by one individual; (ii) The inspection is performed on one date and at one location; and (iii) Only one certificate is issued.
Lifetime individual identification certificate	(8) A livestock inspection fee for a lifetime individual identification certificate for horses and cattle is \$(60.00) 63.00 per head ((or the time and mileage fee, whichever is greater)).

AMENDATORY SECTION (Amending WSR 16-21-008, filed 10/7/16, effective 11/7/16)

WAC 16-610-066 Replacement copies of brand inspection documents. (1) Individuals can request replacement copies of inspection documents issued by the director which are held by the department.

(2) All requests for replacement copies will be submitted on AGR Form 930-7093 to the department. This form (~~is available on the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>~~) may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: livestockid@agr.wa.gov
Phone: 360-902-1855
Web site: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(3) A twenty-five dollar fee will be charged per document for replacement copies and must accompany the form.

(4) Replacement copies will only be issued to a requestor whose name appears as the buyer, seller, or owner on the document being requested.

AMENDATORY SECTION (Amending WSR 16-21-008, filed 10/7/16, effective 11/7/16)

WAC 16-610-085 Production brands. (1) Before a production brand may be used in Washington state, it must be recorded with the director according to the provisions of chapter 16.57 RCW and in the same manner as an ownership brand.

(2) Forms to record a brand may be obtained (~~by contacting the department at 360-902-1855, emailing livestockid@agr.wa.gov or accessing the department's web site at~~

~~<http://agr.wa.gov/FoodAnimal/Livestock/>~~) from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: livestockid@agr.wa.gov
Phone: 360-902-1855
Web site: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(3) The director will not charge a fee to record a production brand if the person recording the brand has already paid to record an ownership brand.

(4) Production brands are not recognized for ownership purposes, recorded for ownership purposes, or accepted for livestock inspection purposes.

(5) Dairy cattle: Owners may use any digit or combination of digits as a production brand to identify their dairy cattle as long as the brand is located on the neck or between the hock and the stifle of a hind leg.

(6) Beef cattle: Owners may use a production brand to identify beef cattle but only when the cattle also bear a brand that is currently recorded to the owner of the animal.

(a) On beef cattle, production brands may be located on either side of the animal on the shoulder or hip.

(b) Any numeral digit or combination of digits may be used for a beef cattle production brand as long as they do not conflict with currently recorded ownership brands.

(7) Only Arabic numerals can be used for production brands.

NEW SECTION

WAC 16-610-088 Transfer of recorded brands. (1)(a) The application to transfer a brand shall be accompanied by a notarized form that includes a facsimile of the brand, a description, information about the current owners, and a twenty-seven dollar and fifty cent transfer fee.

(b) A legacy brand transfer requires a one hundred dollar transfer fee.

(2) The application form to transfer a brand or a legacy brand may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: livestockid@agr.wa.gov
Phone: 360-902-1855
Web site: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

AMENDATORY SECTION (Amending WSR 12-02-068, filed 1/3/12, effective 2/3/12)

WAC 16-610-095 Penalty schedule for notices of infraction. (1) If any person fails to comply with the requirements of chapters 16-610 WAC and 16.57 RCW (Identifica-

tion of livestock), the director may issue that person a notice of infraction and may assess a penalty.

(2) The following infractions have the base penalty listed, not including statutory assessments.

Livestock Identification Program

Civil Infraction Schedule for Violations of Chapter 16.57 RCW

Violation	Base Penalty
RCW 16.57.260	Removal of cattle and horses from Washington state without an inspection certificate or an ECTR transaction certificate.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.267	Failing to present an animal for mandatory inspection.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.270	Refusing to assist in establishing ownership and identity.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.350	Interfering with the director in the performance of livestock identification duties.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.440	Transporting or delivering cattle or horses to any destination other than the designated physical address.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00

Violation	Base Penalty
RCW 16.57.050	Using an unrecorded brand.
Each offense	\$37.00
RCW 16.57.160	Failing to designate a physical address
Each offense	\$37.00
RCW 16.57.243	Moving cattle without proof of ownership.
Each offense	\$37.00
RCW 16.57.275	Transporting a carcass without proof of ownership.
Each offense	\$37.00
RCW 16.57.277	Failing to attach custom slaughter tags.
Each offense	\$37.00
RCW 16.57.410	Acting as a registering agency without a permit.
Each offense	\$37.00

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-122 Release of cattle and horses from public livestock markets. (1) Before allowing the removal of any cattle or horses from any public livestock market, a licensee or the licensee's agent or employee must:

- (a) Obtain a livestock inspection clearance from the director for the cattle or horses being removed; and
- (b) Issue a release to the person wishing to remove the cattle or horses.

(2) The licensee shall hold proceeds from the sale of impounded cattle or horses for a reasonable period of time not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other estray proceeds under RCW 16.57.300.

(3) Cattle and horses that have been offered for sale at a public livestock market but did not sell, will not be assessed an additional inspection fee upon reconsignment if:

- (a) The reconsignment occurs within eight days of the original sale;

(b) The animals are reconsigned to the original sale facility;

(c) The animals have not been removed from the original sale facility before reconsignment;

(d) The animals have not been commingled with other animals; and

(e) No animals have been added or removed from the group.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-140 Approval of special sales and open consignment horse sales. (1) An individual, farmers cooperative association, association of livestock breeders, or youth livestock organization such as 4-H, FFA, or other junior livestock group may submit an application to the director for a special sale or open consignment horse sale. Approval of applications for a special sale or open consignment horse sale is at the discretion of the director.

(2) A livestock market may submit an application to the director for a special sale or open consignment horse sale on a day not specifically assigned to it. Approval of special sales and open consignment horse sales on unassigned days is at the discretion of the director.

(3) Special sales and open consignment horse sales are limited to three sales per month per applicant in any location, as long as all requirements are met and the proper permits and license have been obtained.

(4) "Special sale" does not mean a public sale by a group of individuals conducting private treaty sales of horses brought to a central location if:

(a) Funds are not handled by a third party; and

(b) The buyer meets the inspection requirements contained in RCW 16.57.260.

(5) Application for approval of a special sale or open consignment horse sale must be made at least fifteen days in advance of the proposed sale.

(6) The application for a special sale or open consignment horse sale must be made on forms provided by the director and must contain the following:

(a) Name, address, email address, and ~~((contact))~~ phone number of the applicant;

(b) Type of applicant: Producer, livestock market, or association;

(c) Name of sale and/or event;

(d) Type and number of livestock expected to be sold;

(e) Date, time, and location of the sale;

(f) Name and ~~((contact))~~ phone number of the veterinarian who will be providing animal health services; and

(g) The signature of the applicant.

(7) In addition to the requirements in subsections (5) and (6) of this section, the application for an open consignment horse sale must also provide the director with the following:

(a) A detailed statement showing all of the assets and liabilities of the applicant;

(b) A schedule of rates and charges that the applicant will impose on the seller or consignor, including the entry fee, commission, pass out (no sale) fees, stabling, etc.;

(c) Verification of custodial account, as per RCW 16.65.140;

(d) Written evidence of valid bond, as per RCW 16.65.232; and

(e) The projected approximate value of the horses to be handled.

(8) The director charges a special sale application fee of fifty dollars, which is specified in RCW 16.65.420, and an open consignment horse sale license fee of one hundred dollars, as specified in RCW 16.65.042. Applications will not be processed until the application fee is paid. There is no application fee for youth livestock organizations.

WSR 19-15-142

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 24, 2019, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-054.

Title of Rule and Other Identifying Information: WAC 182-503-0050 Verification of eligibility factors, 182-503-0055 Asset verification system (new), and 182-503-0080 Washington apple health—Application denials and withdrawals.

Hearing Location(s): On August 27, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than August 28, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 28, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.loughheed@hca.wa.gov, by August 23, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As required by 42 U.S.C. Section 1396w, the agency is revising these sections and adding a new WAC section to implement an asset verification program to determine or redetermine the eligibility of an individual for Washington apple health.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 U.S.C. Section 1396w.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, 42 U.S.C. Section 1396w.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement:

Mark Westenhaver, P.O. Box 45534, Olympia, WA 98504-2716 [98504-5534], 360-725-1324.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule pertains to clients and therefore does not impose any costs on businesses.

July 24, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-06-007, filed 2/17/17, effective 3/20/17)

WAC 182-503-0050 Verification of eligibility factors. (~~For the purposes of this section, "we" refers to the medicare agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.~~)

(1) General rules.

(a) We may verify the information we use to determine, redetermine, or terminate your (~~Washington~~) apple health eligibility.

(b) We verify the eligibility factors listed in WAC 182-503-0505(3).

(c) Before we ask you to provide records to verify an eligibility factor, we use information available from state databases, including data from the department of social and health services and the department of employment security, federal databases, or commercially available databases to verify the eligibility factor.

(d) We may require information from third parties, such as employers, landlords, and insurance companies, to verify an eligibility factor if the information we received:

- (i) Cannot be verified through available data sources;
- (ii) Did not verify an eligibility factor; or
- (iii) Is contradictory, confusing, or outdated.

(e) We do not require you to submit a record unless it is necessary to determine or redetermine your eligibility.

(f) If you can obtain verification within three business days and we determine the verification is sufficient to confirm an eligibility factor, we base our initial eligibility decision upon that record.

(g) If we are unable to verify eligibility as described in (f) of this subsection, then we may consider third-party sources.

(h) If a fee is required to obtain a necessary record, we pay the fee directly to the holder of the record.

(i) We do not deny or delay your application if you failed to provide information to verify an eligibility factor in a particular type or form.

(j) Except for eligibility factors listed in WAC 182-503-0505 (3)(c) and (d), we accept alternative forms of verification. If you give us a reasonable explanation that confirms

your eligibility, we may not require additional documentation.

(k) Once we verify an eligibility factor that will not change, we may not require additional verification. Examples include:

- (i) U.S. citizenship;
- (ii) Family relationships by birth;
- (iii) Social Security numbers; and
- (iv) Dates of birth, death, marriage, dissolution of marriage, or legal separation.

(l) If we cannot verify your immigration status and you are otherwise eligible for Washington apple health, we approve coverage and give additional time as needed to verify your immigration status.

(2) Submission timelines.

(a) We allow at least ten calendar days for you to submit requested information.

(b) If you request more time to provide information, we allow the time requested.

(c) If the tenth day falls on a weekend or a legal holiday as described in RCW 1.16.050, the due date is the next business day.

(d) We do not deny or terminate your eligibility when we give you more time to provide information.

(e) If we do not receive your information by the due date, we make a determination based on all the information available.

(3) Notice requirements.

(a) When we need more information from you to determine your eligibility for (~~Washington~~) apple health coverage, we send all notices according to the requirements of WAC 182-518-0015.

(b) If we cannot determine you are eligible, we send you a denial or termination notice including information on when we reconsider a denied application under WAC 182-503-0080.

(4) Equal access and limited-English proficiency services. If you are eligible for equal access services under WAC 182-503-0120 or limited-English proficiency services under WAC 182-503-0110, we provide legally sufficient support services.

(5) Eligibility factors for nonmodified adjusted gross income (MAGI)-based programs. If you apply for a non-MAGI program under WAC 182-503-0510(3), we verify the factors in WAC 182-503-0505(3). In addition, we verify:

(a) Household composition, if spousal or dependent deeming under chapter 182-512 WAC or spousal or dependent allowance under chapters 182-513 and 182-515 WAC applies;

(b) Income and income deductions;

(c) Resources, including:

(i) Trusts, annuities, (~~and~~) life estates, and promissory notes under chapter(~~s 182-512, 182-513, and~~) 182-516 WAC;

(ii) Real property transactions; and

(iii) Financial records, as defined in WAC 182-503-0055, held by financial institutions.

(d) Medical expenses required to meet any spenddown liability under WAC 182-519-0110;

(e) All post-eligibility deductions used to determine cost of care for clients eligible for long-term services and supports under chapters 182-513 and 182-515 WAC;

(f) Transfers of assets under chapter 182-513 WAC and WAC 182-503-0055 when the program is subject to transfer of assets limitations;

(g) Shelter costs for long-term care cases where spousal and dependent allowances apply;

(h) Blindness or disability, if you claim either; and

(i) Social Security number for a community spouse if needed when you apply for long-term care.

(6) Verification for MAGI-based programs.

(a) After we approve your coverage based on your self-attestation, we may conduct a post-eligibility review to verify your self-attested information.

(b) When conducting a post-eligibility review, we attempt to verify eligibility factors using your self-attested information available to us through state, federal, and commercially available data sources, or other third parties, before requiring you to provide information.

(c) You may be required to provide additional information if:

(i) We cannot verify an eligibility factor through other data sources listed in subsection (b) of this section; or

(ii) The information received from the data source is not reasonably compatible with your self-attestation.

(7) Reapplication following post-eligibility review. If your eligibility for MAGI-based (~~Washington~~) apple health terminates because of a post-eligibility review and you reapply, we may request verification of eligibility factors prior to determining eligibility.

NEW SECTION

WAC 182-503-0055 Asset verification system. (1) This rule implements the asset verification system (AVS) outlined in section 1940 of the Social Security Act.

(2) This rule applies to the programs described in WAC 182-503-0510 (which includes all applications and renewals for any client and any financially responsible person for such programs), subject to:

(a) The disclosure of resources, as defined in WAC 182-512-0200, to determine eligibility; or

(b) Provisions related to the transfer of assets, as described in WAC 182-513-1363.

(3) For the purposes of this section:

(a) "Financial institution" means the same as defined in section 1101 of the Right to Financial Privacy Act, and may include, but is not limited to:

(i) Banks; or

(ii) Credit unions.

(b) "Financial record" means any record held by a financial institution pertaining to a customer's relationship with the financial institution; and

(c) "Financially responsible person" means a person who is financially responsible as described in WAC 182-506-0015.

(4) You and any other financially responsible people must provide authorization for us to obtain any financial record held by a financial institution.

(5) The authorization, provided under subsection (4) of this section, will remain in effect until one of the following occurs:

(a) Your application for apple health is denied;

(b) Your eligibility for apple health is terminated; or

(c) You revoke your authorization in a written notification to us.

(6) We will:

(a) Use the authorization provided under subsection (4) of this section to electronically verify your financial records and those of any other financially responsible person to determine or renew your eligibility for apple health; or

(b) Inform you in writing at the time of application and renewal that we will obtain and use information available through AVS to determine your eligibility for apple health.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0080 Washington apple health—Application denials and withdrawals. (1) We follow the rules about notices and letters in chapter 182-518 WAC. We follow the rules about timelines in WAC 182-503-0060.

(2) We deny your application for (~~Washington~~) apple health (~~WAH~~) coverage when:

(a) You tell us either orally or in writing to withdraw your request for coverage; or

(b) Based on all information we have received from you and other sources within the time frames stated in WAC 182-503-0060, including any extra time given at your request or to accommodate a disability or limited-English proficiency:

(i) We are unable to determine that you are eligible; or

(ii) We determine that you are not eligible.

(c) You are subject to asset verification and refuse to provide authorization as described in WAC 182-503-0055.

(3) We send you a written notice explaining why we denied your application (per chapter 182-518 WAC).

(4) We reconsider our decision to deny your (~~WAH~~) apple health coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within thirty days of the date on the denial notice; (~~or~~)

(b) You give us authorization to verify your assets as described in WAC 182-503-0055 within thirty days of the date on the denial notice;

(c) You request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) or HCA review judge decides our denial was wrong (per chapter 182-526 WAC).

(5) If you disagree with our decision, you can ask for a hearing. If we denied your application because we (~~don't~~) do not have enough information, the ALJ will consider the information we already have and (~~anymore~~) any more information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

WSR 19-15-150
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed July 24, 2019, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-091.

Title of Rule and Other Identifying Information: WAC 182-531-1740 Treat and refer services, 182-546-0200 Scope of coverage for ambulance transportation, 182-546-0250 Ambulance services the department does not cover, and 182-546-0400 General limitations on payment for ambulance services.

Hearing Location(s): On August 27, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than August 28, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 27, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.loughheed@hca.wa.gov, by August 23, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to implement E2SHB 1358 which directs the agency to adopt standards for the reimbursement of health care services provided to eligible clients by fire departments pursuant to a community assistance referral and education services program under RCW 35.21.930. The standards must allow payment for covered health care services provided to individuals whose medical needs do not require ambulance transport to an emergency department.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and E2SHB 1358.

Statute Being Implemented: RCW 41.05.021, 41.05.160; and E2SHB 1358.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1348; Implementation and Enforcement: Abigail Cole, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1835.

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.

Explanation of exemptions: RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The creation of WAC 182-531-1740, and the amendments to WAC 182-546-0200, 182-546-0250, and 182-546-0400, do not impose additional compliance costs or requirements on providers.

July 24, 2019

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-531-1740 Treat and refer services. (1) The purpose of treat and refer services is to reduce the number of avoidable emergency room transports, i.e., transports that are nonemergency or nonurgent.

(2) Treat and refer services are covered health care services for a client who has accessed 911 or a similar public dispatch number, and whose condition does not require ambulance transport to an emergency department based on the clinical information available at the time of service.

(3) Treat and refer services can be provided by any city and town fire department, fire protection district organized under Title 52 RCW, regional fire protection service authority organized under chapter 52.26 RCW, provider of emergency medical services that levy a tax under RCW 84.52.069, and federally recognized Indian tribe.

(4) To receive payment for covered health care services provided to clients under this section, an entity that meets the criteria in subsection (3) of this section must be an enrolled medicaid provider with an active core provider agreement for the service period specified in the claim, and have an established community assistance referral and education services program under RCW 35.21.930.

(a) Prior to billing and receiving payment, participating providers must submit a participation agreement and attestation form to the agency certifying their compliance with RCW 35.21.930.

(b) Providers must immediately notify the agency if they no longer meet the requirements of RCW 35.21.930. Providers who no longer meet the requirements of the program and continue to bill and receive payment under the program must return any overpayment under RCW 41.05A.170.

(5) Treat and refer services must be documented in a standard medical incident report that includes a clinical or mental health assessment.

(6) The health care professionals providing treat and refer services must:

(a) Be state-certified emergency medical technicians, state-certified advanced emergency medical technicians, or state-certified paramedics under chapters 18.71 and 18.73 RCW;

(b) Be under the supervision and direction of an approved medical director according to RCW 35.21.930(1); and

(c) Not perform medical procedures they are not trained and certified to perform, according to RCW 35.21.930(1).

(7) Entities that meet the criteria in subsections (3) and (4) of this section must retain the standard medical incident

report in subsection (5) of this section according to WAC 182-502-0020.

(8) Payments under this section are subject to review and audit under chapter 182-502A WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-546-0200 Scope of coverage for ambulance transportation. (1) The ambulance program is a medical transportation service. The ~~((medical assistance administration (MAA)))~~ medicaid agency pays for ambulance transportation to and from covered medical services when the transportation is:

(a) Within the scope of an eligible client's medical care program (see WAC ~~((388-501-0060))~~ 182-501-0060);

(b) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0005 based on the client's condition at the time of the ambulance trip and as documented in the client's record;

(c) Appropriate to the client's actual medical need; and

(d) To one of the following destinations:

(i) The nearest appropriate ~~((MAA contracted))~~ agency-contracted medical provider of ~~((MAA covered))~~ agency-covered services; or

(ii) The designated trauma facility as identified in the emergency medical services and trauma regional patient care procedures manual.

(2) ~~((MAA))~~ The agency limits coverage to medically necessary ambulance transportation that is required because the client cannot be safely or legally transported any other way. If a client can safely travel by car, van, taxi, or other means, the ambulance trip is not medically necessary and the ambulance service is not covered by ~~((MAA))~~ the agency. See WAC ~~((388-546-0250))~~ 182-546-0250 (1) and (2) for noncovered ambulance services.

(3) If medicare or another third party is the client's primary health insurer and that primary insurer denies coverage of an ambulance trip due to a lack of medical necessity, ~~((MAA))~~ the agency requires the provider when billing ~~((MAA))~~ the agency for that trip to:

(a) Report the third party determination on the claim; and

(b) Submit documentation showing that the trip meets the medical necessity criteria of ~~((MAA))~~ the agency. See WAC ~~((388-546-1000 and 388-546-1500))~~ 182-546-1000 and 182-546-1500 for requirements for nonemergency ambulance coverage.

(4) ~~((MAA))~~ The agency covers the following ambulance transportation:

(a) Ground ambulance when the eligible client:

(i) Has an emergency medical need for the transportation;

(ii) Needs medical attention to be available during the trip; or

(iii) Must be transported by stretcher or gurney.

(b) Air ambulance when justified under the conditions of this chapter or when ~~((MAA))~~ the agency determines that air ambulance is less costly than ground ambulance in a particular case. In the latter case, the air ambulance transportation must be prior authorized by ~~((MAA))~~ the agency. See WAC

~~((388-546-1500))~~ 182-546-1500 for nonemergency air ambulance coverage.

(5) See also WAC 182-531-1740 Treat and refer services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-546-0250 Ambulance services the ~~((department))~~ agency does not cover. (1) The ~~((department))~~ medicaid agency does not cover ambulance services when the transportation is:

(a) Not medically necessary based on the client's condition at the time of service (see exception at WAC ~~((388-546-1000))~~ 182-546-1000);

(b) Refused by the client (see exception for ITA clients in WAC ~~((388-546-4000))~~ 182-546-4000(2));

(c) For a client who is deceased at the time the ambulance arrives at the scene;

(d) For a client who dies after the ambulance arrives at the scene but prior to transport and the ambulance crew provided minimal to no medical interventions/supplies at the scene (see WAC ~~((388-546-0500))~~ 182-546-0500(2));

(e) Requested for the convenience of the client or the client's family;

(f) More expensive than bringing the necessary medical service(s) to the client's location in nonemergency situations;

(g) To transfer a client from a medical facility to the client's residence (except when the residence is a nursing facility);

(h) Requested solely because a client has no other means of transportation;

(i) Provided by other than licensed ambulance providers (e.g., wheelchair vans, cabulance, stretcher cars); or

(j) Not to the nearest appropriate medical facility.

(2) If transport does not occur, the ~~((department))~~ agency does not cover the ambulance service, except as provided in WAC ~~((388-546-0500(2)))~~ 182-546-0500(2) and 182-531-1740 Treat and refer services.

(3) The ~~((department))~~ agency evaluates requests for services that are listed as noncovered in this chapter under the provisions of WAC ~~((388-501-0160))~~ 182-501-0160.

(4) For ambulance services that are otherwise covered under this chapter but are subject to one or more limitations or other restrictions, the ~~((department))~~ agency evaluates, on a case-by-case basis, requests to exceed the specified limits or restrictions. The ~~((department))~~ agency approves such requests when medically necessary, according to the provisions of WAC ~~((388-501-0165 and 388-501-0169))~~ 182-501-0165 and 182-501-0169.

(5) An ambulance provider may bill a client for noncovered services as described in this section, if the requirements of WAC ~~((388-502-0160))~~ 182-502-0160 are met.

AMENDATORY SECTION (Amending WSR 18-12-091, filed 6/5/18, effective 7/6/18)

WAC 182-546-0400 General limitations on payment for ambulance services. (1) In accordance with WAC 182-502-0100(8), the agency pays providers the lesser of the provider's usual and customary charges or the maximum allow-

able rate established by the agency. The agency's fee schedule payment for ambulance services includes a base rate or lift-off fee plus mileage.

(2) The agency:

(a) Pays providers under fee-for-service for ground ambulance services provided to a client who is enrolled in an agency-contracted managed care organization (MCO).

(b) Pays providers under fee-for-service for air ambulance services provided to a client who is enrolled in an agency-contracted MCO.

(3) The agency does not pay providers for mileage incurred traveling to the point of pickup or any other distances traveled when the client is not on board the ambulance. The agency pays for loaded mileage only as follows:

(a) The agency pays ground ambulance providers for the actual mileage incurred for covered trips by paying from the client's point of pickup to the point of destination.

(b) The agency pays air ambulance providers for the statute miles incurred for covered trips by paying from the client's point of pickup to the point of destination.

(4) The agency does not pay for ambulance services if:

(a) The client is not transported, unless the services are provided under WAC 182-531-1740 Treat and refer services;

(b) The client is transported but not to an appropriate treatment facility; or

(c) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC 182-546-0500(2)).

(5) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs, the agency's payment is as follows:

(a) If medicare covers the service, the agency pays the lesser of:

(i) The full coinsurance and deductible amounts due, based upon medicaid's allowed amount; or

(ii) The agency's maximum allowable for that service minus the amount paid by medicare.

(b) If medicare does not cover or denies ambulance services that the agency covers according to this chapter, the agency pays its maximum allowable fee; except the agency does not pay for clients on the qualified medicare beneficiaries (QMB) only program.

WSR 19-15-154

PROPOSED RULES

SECRETARY OF STATE

[Filed July 24, 2019, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-090.

Title of Rule and Other Identifying Information: Permanent adoption of WAC 434-230-135, and amending WAC 434-230-130, necessary to update and clarify procedures, and implement recent legislative changes; WAC 434-261-116 providing a mechanism for county notification to the secretary of state on intent to conduct a risk limiting audit; and

WAC 434-379-010 to clarify the random sampling process used for signature checking of state initiatives.

Hearing Location(s): On September 4, 2019, at 11:00 a.m., at 520 Union Avenue, Olympia, [WA] 98504.

Date of Intended Adoption: September 5, 2019.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email sheryl.moss@sos.wa.gov, fax 360-664-4169, by September 3, 2019.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4146, fax 360-664-4169, email Sheryl.moss@sos.wa.gov, by September 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide consistency throughout the state and maximize efficiency in the use of prepaid postage by counties, to provide a mechanism for counties to notify the secretary of state if the county intends to conduct a risk limiting audit as part of an election, and to clarify the statistical sampling method used for signature checking by the secretary of state.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.04.420, 29A.40.-091.

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

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

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

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

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

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

July 24, 2019

Mark Neary

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-230-130 Envelopes. Mail-in ballots must be accompanied by the following:

(1) A security envelope or sleeve, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service (~~display the words "APPLY FIRST CLASS POSTAGE HERE" or "POSTAGE PAID" in the upper right hand corner,~~) and conform to ~~((postal department))~~ regulations required by the county auditor's U.S. Postal Service business reply mail account.

NEW SECTION

WAC 434-230-135 Ballot return postage. (1) The secretary of state will work with each county auditor to identify the most cost effective U.S. Postal Service business reply permit type for their county. Once the appropriate business reply mail permit type is determined, each county auditor must:

(a) Establish and maintain the U.S. Postal Service business reply mail permit identified and use it exclusively for ballot return postage;

(b) Connect the business reply mail permit to the secretary of state's U.S. Postal Service enterprise payment system (or succeeding) account;

(c) Use ballot return envelopes approved by the U.S. Postal Service for the business reply mail permit established in (a) of this subsection; and

(d) Provide an independent count of the ballots returned by mail for each election, separate and distinct from the number provided by U.S. Postal Service, if requested by the secretary of state for audit purposes.

(2) County auditors may use their existing envelope stock until February 15, 2020, if return envelope design changes are required to comply with this rule.

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

WAC 434-261-116 Preparing for a risk-limiting audit. (1) At least ninety days before a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in the audit.

(2) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than thirty days before the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in RLAs for that election. The secretary of state may establish different risk limits for comparison audits and ballot polling audits, and for audits of statewide and county contests. In comparison audits, the risk limit will not exceed five percent for statewide contests, and ten percent for county contests.

~~((2))~~ (3) No later than eighteen days before the primary or election, the county auditor must appoint an audit board to conduct the risk-limiting audit. Observers nominated by the major political party county chairpersons in accordance with RCW 29A.60.170 may be present during the audit. Members of the canvassing board may serve as members of the audit board. The county auditor or members of their staff may assist the audit board in conducting the audit. All observers are allowed in accordance with RCW 29A.60.170 and WAC 434-261-020.

~~((3))~~ (4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(a) In the case of centrally counted paper ballots, the ballot manifest must uniquely identify for each tabulated ballot the scanner on which the ballot is scanned, the ballot batch of which the ballot is a part, the number of ballots in the batch, and the storage container in which the ballot batch is stored after tabulation. The county must secure and maintain in

sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(b) In the case of electronic ballots cast on direct recording electronic voting devices (DREs), the ballot manifest must uniquely identify the device on which the ballot was cast or tabulated, the number of ballots cast or tabulated on the device, and the storage container or location in which each paper ballot or VVPAT is stored. The county must maintain and document uninterrupted chain-of-custody for each DRE and VVPAT. Ballots cast on each DRE and VVPAT must constitute a single batch.

~~((4))~~ (5) No later than the sixth day after election day, the county must pause or finish tabulating all ballots cast by voters registered in the county received through that day. The county may, but is not required to, include in the RLA tabulation any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after completing the RLA tabulation, and to the extent permitted by its voting system, the county must also generate and preserve:

(a) A summary results report, showing overvotes, undervotes, and valid write-in votes;

(b) A results file export suitable for uploading to the secretary of state's election night reporting system; and

(c) A CVR export, if conducting a comparison audit.

~~((5))~~ (6) Counties conducting a comparison audit must verify that:

(a) The number of individual CVRs in its CVR export equals the aggregate number of ballots reflected in the county's ballot manifest as of the sixth day after election day; and

(b) The vote totals for all choices in all ballot contests in the CVR export equals the vote totals in the summary results report for the RLA tabulation.

After verifying the accuracy of the CVR export, the county must apply a hash value to the CVR export file using the hash value utility provided by the secretary of state.

~~((6))~~ (7) Comparison audit uploads. No later than 5:00 p.m. on the sixth day after election day, each county conducting a comparison audit must upload:

(a) Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the secretary of state's office;

(b) Its verified and hashed CVR export, and the CVR export's hash value, to the secretary of state's office; and

(c) Its RLA tabulation results export to the secretary of state's election night reporting system.

~~((7))~~ (8) Ballot polling audit uploads. No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit or upload:

(a) Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the secretary of state's office;

(b) Its cumulative tabulation report, to the secretary of state's office; and

(c) Its RLA tabulation results export to the secretary of state's election night reporting system.

~~((8))~~ (9) The secretary of state will convene a public meeting on the seventh day after election day to establish a

random seed for use with the secretary of state's RLA tool's random number generator.

~~((9))~~ (10) The seed is a number consisting of at least twenty digits, and each digit will be selected in order by sequential rolls of a ten-sided die. The secretary of state will designate one or more staff members to take turns rolling the die. The secretary of state will publish online the random seed after it is established.

~~((10))~~ (11) No later than 5:00 p.m. on the Friday after election day, the secretary of state will select by lot a statewide contest, and for each county at least one ballot contest other than the selected statewide contest. The county auditor shall randomly select a ballot contest for audit if in any particular election there is no statewide contest. These will be considered the target contests for the RLA. The secretary of state will publish online a complete list of all target contests.

~~((11))~~ (12) The target contest with the closest diluted margin for each county determines the number of ballots that must be examined during the RLA.

~~((12))~~ (13) The secretary of state will determine the number of ballots to audit to satisfy the risk limit for the target contests based on the ballot manifests submitted by the counties. The number of ballots to audit will be determined according to the formulas maintained on file in the secretary of state's office.

~~((13))~~ (14) The secretary of state will randomly select the individual ballots to audit. The secretary of state will use a random number generator with the seed established under subsection ~~((9))~~ (10) of this ~~(rule)~~ section to identify individual ballots as reflected in the county ballot manifests. The secretary of state will notify each county of the randomly selected ballots that each county must audit no later than the seventh day after election day.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-379-010 Random sampling procedure. In the verification of signatures on initiative and referendum petitions, under RCW 29A.72.230, the following statistical test may be employed:

(1) Take a minimum three percent (~~(unrestricted)~~) random sample of the signatures submitted;

(2) Check each signature sampled to determine the number of valid signatures in the sample, the number of signatures in the sample which are invalid because the individual signing is not registered to vote or the signature is improper in form, and the number of signatures which are duplicated in the sample;

(3) Calculate an allowance for the chance error of sampling by multiplying the square root of the number of invalid signatures in the sample by 1.5;

(4) Estimate the upper limit of the number of signatures in the population which are invalid by dividing the sum of the invalid signatures in the sample and the allowance for the chance error of sampling by the sampling ratio, i.e., the number of signatures sampled divided by the number of signatures submitted;

(5) Determine the maximum allowable number of pairs of signatures in the population by subtracting the sum of the

number of signatures required by Article II, Section 1 of the Washington state Constitution and the estimate of the upper limit of the number of invalid signatures in the population from the number of signatures submitted;

(6) Determine the expected number of pairs of signatures in the sample by multiplying the square of the sampling ratio by the maximum allowable number of pairs of signatures in the population;

(7) Determine the acceptable number of pairs of signatures in the sample by subtracting 1.65 times the square root of the expected number of pairs of signatures in the sample from the expected number of pairs of signatures in the sample;

(8) If the number of pairs of signatures in the sample is greater than the acceptable number of pairs of signatures in the sample, each signature shall be canvassed to determine the exact number of valid signatures;

(9) If the number of pairs of signatures in the sample is less than the acceptable number of pairs of signatures in the sample, the petition shall be deemed to contain sufficient signatures and the serial number and ballot title shall be certified to the state legislature as provided in RCW 29A.72.230 or to the county auditors as provided in RCW 29A.72.250.

WSR 19-15-155

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed July 24, 2019, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-011.

Title of Rule and Other Identifying Information: Chapter 137-104 WAC, Community custody violation hearings.

Hearing Location(s): On August 28, 2019, at 2:00 p.m., at the Department of Corrections, Headquarters Building, Room 1037, 7345 Linderson Way S.W., Tumwater, WA 98501. Please bring a driver's license or other state I.D. and check-in with security at the 1st floor reception desk.

Date of Intended Adoption: August 30, 2019.

Submit Written Comments to: Jennifer Williams, Senior Contracts Attorney, Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email Jennifer.Williams1@doc1.wa.gov, fax 360-664-2009.

Assistance for Persons with Disabilities: Contact Jennifer Williams, senior contracts attorney, phone 360-725-8364, fax 360-664-2009, email Jennifer.Williams1@doc1.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ensure the rules are consistent with desired hearing practices. Effects include reduction of prehearing confinement times and is necessary for administrative policy compliance.

Reasons Supporting Proposal: Ensure the rules are consistent with desired hearing practices. Positive results [results] include reduction of prehearing confinement times and administrative policy compliance.

Statutory Authority for Adoption: RCW 72.01.090, 72.65.100, and 72.09.130.

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

Name of Proponent: Thomas Layne, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Thomas Layne, Tumwater, Washington 98504, 360-725-9301.

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

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

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

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

July 24, 2019
Stephen D. Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-010 Purpose. The purpose of this chapter is to specify policies and procedures pertaining to the ((Washington state)) department of corrections' community custody administrative hearings and violation ((hearings)) responses. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted as having sufficient flexibility to be consistent with law and permit the department to accomplish its statutory purposes.

AMENDATORY SECTION (Amending WSR 07-08-082, filed 4/2/07, effective 5/3/07)

WAC 137-104-020 Definitions. For purposes of this chapter, the following words have the following meanings:

(1) "Aggravating factors" are circumstances that elevate a low level violation to a high level violation as defined by department policy.

(2) "Appeals panel" means three reviewing ((officers)) staff designated by the secretary with the authority to review ((hearing officers' decisions, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.94A.737.

(2)) offender appeals of department findings and imposed sanctions.

(3) "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

(4) "Community corrections officer" means ((an employee of the department responsible for carrying out specific duties concerning the supervision of sentenced offenders and monitoring of sentence conditions.

(3)) community corrections officer as defined by RCW 9.94A.030.

(5) "Community custody" means ((that portion of an offender's sentence of confinement in lieu of earned release time served in the community subject to controls placed on the offender's movement and activities by the department. Offenders supervised on community custody include those subject to community placement (as defined in RCW 9.94A.030), drug offender sentencing alternative (as described in RCW 9.94A.505), community custody for a sex offense (as described in RCW 9.94A.505), community custody max, first-time offender waiver (as described in RCW 9.94A.505), or a work ethic camp program (as defined in RCW 9.94A.030), and those sentenced to community custody by the court for crimes committed on or after July 1, 2000, whose sentence is less than one year of confinement. For purposes of this subsection, "community custody max" means a term of community custody for certain sex offenders who have completed their maximum sentences of confinement.

(4)) community custody as defined by RCW 9.94A.030.

(6) "Department" means the ((Washington state department of corrections.

(5) "Deputy secretary" means the deputy secretary of the prisons division of the department, or the deputy secretary's designee.

(6) "Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. Sanctions may include, but are not limited to, partial or total confinement; home detention with electronic monitoring; work crew; community service; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervisions enhanced through electronic monitoring; or any other sanctions available in the community)) department of corrections.

(7) "Ex parte communication" means any predisposition communication between the hearing officer and a party or other individual on behalf of that party regarding the department hearing and the merits of the matter without notice and opportunity for all parties to participate.

(8) "Hearing officer" means an employee of the department authorized to conduct department hearings.

((8)) (9) "Hearings ((program manager)) administrator" means the ((manager)) administrator of the hearings unit of the department((, or the hearings program manager's designee)).

((9)) (10) "High level violations" means that the violations must be directly related to a condition of supervision as per department policy.

(11) "Low level violations" means any violations not listed as high as per department policy.

(12) "Mitigating factors" are circumstances that may warrant a reduced violation response.

(13) "Offender" means any person in the custody of or subject to the jurisdiction of the department.

((10)) (14) "Partial confinement" means ((confinement in a facility or institution operated or utilized under contract by the state or by any other unit of government, to include, but not be limited to, work release, treatment center, residential facility, or home detention with electronic monitoring.

(11) "Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

(12) "Secretary" means the secretary of the department, or the secretary's designee.

(13) "Stipulated agreement" means an agreement between the offender and the department in which the offender admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means department imposed sanctions that are served in the community rather than total confinement.

(14) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities or a county or municipal jail.

(15) "Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington)) partial confinement as defined by RCW 9.94A.030.

(15) "Total confinement" means total confinement as defined by RCW 9.94A.030.

(16) "Violation" means willful noncompliance with a court-ordered or department-imposed condition, requirement or instruction.

(17) "Violation process" means the process by which the court or the department addresses one or more alleged violations.

NEW SECTION

WAC 137-104-021 General requirements. (1) When addressing the violation the department will ensure that:

(a) The department has jurisdiction to sanction the offender;

(b) The alleged violation was willful; and

(c) The offender is provided the opportunity to respond to the alleged violation.

(2) A low level violation may be aggravated to a high level violation upon review of aggravating factors and approval by a hearing officer.

(3) A reduced response to a violation may be approved as defined by department policy and upon review of mitigating factors.

NEW SECTION

WAC 137-104-025 Community custody sanctions.

(1) The state and its officers, agents, and employees may not be held criminally or civilly liable for violation response decisions made in accordance with law per RCW 9.94A.737.

(2) The sanction the department imposes shall be determined by the offender's violation behavior and prior violation processes and shall be reasonably related to the crime of conviction, the violation committed, the offender's risk of reoffending, or the safety of the community. The department's response to violation behavior will be defined by department policy.

(3) A community custody offender who violates any court-ordered or department-imposed condition, require-

ment, or instruction will be sanctioned by the department as provided in RCW 9.94A.737, 9.94A.633, 9.94A.660, 9.94A.662, and 9.94A.6332.

(a) The sanction for an offender who commits a low level violation may be a nonconfinement sanction, or a total or partial confinement sanction of not more than three days.

(b) The sanction for an offender who commits a high level violation may be a nonconfinement sanction, or a total or partial confinement sanction of not more than thirty days, unless subject to return under RCW 9.94A.633 or revocation of an alternative sentence under RCW 9.94A.660 and 9.94A.662. The department will credit an offender's sanction time served pending the hearing or negotiated sanction review.

(i) The offender may be out of custody or held in total or partial confinement pending a formal hearing or negotiated sanction review.

(ii) The offender may be held in total or partial confinement to serve an imposed sanction for a high level violation as determined by department policy.

AMENDATORY SECTION (Amending WSR 07-08-082, filed 4/2/07, effective 5/3/07)

WAC 137-104-030 Hearing officers. (1) Hearing officers will report to and be supervised by the hearings (~~program manager, within the department's~~) administrator, and will report through a chain of command separate from that of community corrections or prisons divisions(~~, through an independent chain of command~~).

(2) Hearing officers may not hear a case in which they have direct personal involvement in the incident under consideration and must formally disqualify themselves by notifying the hearings (~~program manager~~) administrator/designee. The hearings (~~program manager~~) administrator/designee will select a replacement hearing officer.

(3) Hearing officers shall disqualify themselves if they believe that they cannot render a fair judgment in the hearing. The hearings (~~program manager~~) administrator/designee may change the hearing officer assigned to hear a case upon a (~~written~~) request from an offender and a showing of good cause.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-040 Notice (~~and service~~). (~~(1) When placed on community custody, offenders shall be provided with written notice of all court and department imposed conditions and/or requirements.~~

~~(2) If an offender is being held in total confinement prior to the hearing for allegedly violating conditions and/or requirements of community custody, the department shall, within three working days of a probable cause determination by the hearings unit, serve the notice of allegations, hearing and rights, and waiver form.~~

~~(a) Within three working days of the service of the notice of allegations, hearing and rights, and waiver form, the community corrections officer shall submit to the hearing officer and the offender, a report of alleged violations which shall contain the following: Alleged violations, a summary of facts supporting the allegations, and all other supporting documen-~~

tary evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(b) Reports of alleged violations may be submitted electronically.

(3) The factual allegations may be amended and/or new allegations added at any time prior to the hearing, provided, the offender receives written notice of such new and/or amended allegations and all other supporting documentary evidence at least twenty-four hours prior to the hearing. The offender may waive the right to such notice at the hearing.

(4) Offenders who have allegedly violated conditions and/or requirements of community custody, but are not detained, shall be served with the notice of allegations, hearing and rights, and waiver form within thirty days of the community corrections officer becoming aware of the alleged violation behavior.

(a) A report of alleged violations and all other supporting documentary evidence shall be provided to the offender at least seven working days prior to the hearing.

(b) The report of alleged violations shall contain the following: Alleged violations, a summary of facts supporting the allegations, and the evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(c) Reports may be submitted electronically.

(5) Community corrections officers shall obtain interpretive services for offenders with known language or communication barriers when serving documents, and, if required, for the hearing.) (1) The department shall notify each offender on community custody of all court and department imposed conditions, requirements, and instructions and of the department's response to violation behavior.

(2) An offender alleged to have committed a low level violation will be provided notice of the alleged violation at the time the department's violation response is initiated and the offender will be provided an opportunity to respond.

(3) An offender alleged to have committed a high level violation has the right to a hearing prior to imposition of any sanction. The offender will receive notice of a pending hearing as follows:

(a) Written notice will be served upon the offender not less than twenty-four hours prior to the hearing. The offender may waive the right to such notice.

(b) Written notice to the offender will include, but is not limited to:

(i) The offender's rights, including rights specified in WAC 137-104-060 and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(ii) A copy of the judgment and sentence and the imposed conditions;

(iii) The alleged violation; and

(iv) The supporting evidence relating to the violations that will be introduced and relied upon by the department at the hearing.

(c) The alleged violations may be amended and new allegations added at any time prior to the hearing, provided the offender receives written notice of such new or amended allegations and all other supporting evidence at least twenty-four

hours prior to the hearing. The offender may waive the right to such notice.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-050 Hearing procedures. (1) ~~((Offenders accused of violating any of the conditions or requirements of community custody will be entitled to a hearing, prior to the imposition of sanctions by the department.~~

~~((2)))~~ The hearing shall be conducted by a hearing officer in the department's hearing unit, and shall be considered as an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

~~((3)))~~ (2) Hearings for community custody offenders, who are being held in total confinement prior to a hearing, shall be conducted within five working days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

~~((4))~~ Hearings for community custody offenders who are not being held in total confinement shall be conducted within fifteen calendar days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(5) If an offender is arrested and detained, without a warrant, for violation of conditions of supervision, a probable cause determination will be made by a hearing officer within three working days of the initial detention.

(6) Prior to the commencement of a hearing, the hearing officer shall verify that proper notice of the hearing has been given and that the offender was properly served with the notice of allegations, hearing and rights, and waiver form, given a copy of the report of alleged violations, and provided with all supporting documentary evidence.

(7) The hearing officer, if requested by the offender or the community corrections officer, shall conduct an administrative review of the violation report and any additional information submitted to determine whether there is reason to allow the offender to be conditionally released pending the violation hearing. Such administrative review will be conducted within twenty-four hours of the request for conditional release. Such release must be recommended by the reviewing hearing officer and authorized by the hearings program manager or his or her designee.

(8) A hearing shall be held in all instances when an offender is served with a notice of allegations, hearing and rights, and waiver form.

(9) Community custody hearings shall be electronically recorded on audio cassette tape and the hearing tape shall be retained by the department for twelve months. An offender, who is the subject of the hearing, may request a copy of the tape recording of that hearing by submitting a request in writing along with a blank tape.

(10) The offender may call witnesses to testify on his/her behalf at the hearing. The hearing officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

~~((4)))~~ (3) The hearing officer will:

(a) Administer oaths and affirmations;

(b) Ensure the hearing is electronically recorded;

- (c) Prohibit and disclose ex parte communications;
- (d) Verify the offender has received proper notice;
- (e) Verify jurisdiction and foundation;
- (f) Weigh the credibility of witnesses;
- (g) Receive relevant evidence including hearsay evidence;
- (h) Render or defer a decision;
- (i) Specify on the record the basis for the findings and decisions;
- (j) Provide a written hearing and decision summary to the parties; and
- (k) Take any other actions necessary as authorized by the department policy, these rules, and applicable laws.
- (4) The parties may call witnesses to testify at the hearing.
- (a) The hearing officer may exclude witnesses or limit the scope of testimony to matters relevant to the allegations and/or disposition.
- (b) Witnesses may be excluded and testimony may be limited to maintain the safety and security of the facility, offender, staff, or others.
- (c) Witnesses may testify outside the presence of the offender when there is substantial likelihood that the witness will suffer significant psychological or emotional trauma if the witness testifies in the presence of the offender, or when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender. The hearing officer ~~((shall enter findings in the record, as to the necessity of such testimony, and))~~ will provide the offender an opportunity to submit questions to be asked of the witness.
- ~~((12))~~ (d) The hearing officer will state the basis for limiting testimony or excluding witnesses on the record.
- (5) Community custody violation hearings shall be open to the public unless the hearing officer, for a specifically stated reason, closes the hearing in whole or in part.
- ~~((13) At the hearing, the community corrections officer)~~ (6) The department has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations for disposition.
- ~~((14))~~ (7) The department has the obligation of proving each of the ~~((allegations of))~~ alleged violations by a preponderance of the evidence.
- ~~((15) The hearing officer shall:~~
- (a) Administer oaths and affirmation;
- (b) Issue warrants, as necessary;
- (c) Weigh the credibility of the witnesses;
- (d) Rule on all procedural matters, objections and motions;
- (e) Rule on offers of proof, and receive relevant evidence including hearsay evidence;
- (f) Question witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter;
- (g) Render or defer a decision; and
- (h) Take any other actions necessary and authorized by these rules and law.
- ~~((16) The)~~ (8) Hearing officers may ~~((grant a request for a continuance of))~~ continue the hearing ~~((as long as such con-~~

~~tinuation is granted))~~ for good cause ~~((and))~~ if doing so does not unduly delay the hearing.

(9) Notice per WAC 137-104-040 is not required except the offender will be notified of the date and location of the continued hearing and will be provided any additional evidence supporting the allegations not less than twenty-four hours prior to the hearing unless the offender waives the right to such notice.

NEW SECTION

WAC 137-104-051 Negotiated sanction review. (1)

An offender alleged to have committed a high level violation may waive the hearing and recommend a sanction that is negotiated with the department.

(2) The negotiated sanction shall be reviewed by a hearing officer in the department's hearing unit. A negotiated sanction review shall be considered an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(3) The hearing officer will determine whether:

(a) The offender knowingly and voluntarily admits guilt to all allegations;

(b) The offender knowingly and voluntarily waives his or her right to a hearing and appeal; and

(c) The recommended sanction is reasonable and within the parameters of department policy.

(4) The hearing officer may reject the negotiated sanction and set the matter over to a hearing.

(5) The negotiated sanction review will be recorded and documented in writing.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-060 Rights specified. ~~((The offender has the right to))~~ (1) An offender subject to a department hearing has rights as specified in RCW 9.94A.737 and the right to:

~~((1))~~ (a) Receive written notice ~~((of the alleged violations of the conditions/requirements of supervision.~~

~~(2))~~ in accordance with WAC 137-104-040, including the opportunity to examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.

(b) Have an electronically recorded, community custody hearing conducted within five ~~((working))~~ business days of ~~((service of the notice of allegations, hearing and rights, and waiver form))~~ written notice; however, if the offender has not been placed in confinement, the hearing will be conducted within fifteen ~~((calendar))~~ business days of ~~((service of the))~~ written notice in accordance with RCW 9.9A.737.

~~((3) Have)~~ (c) A neutral and detached hearing officer conduct the hearing.

~~((4) Examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.~~

~~(5))~~ (d) Admit to any or all of the allegations, which may result in limiting the scope of the hearing.

~~((6) Be present during the fact-finding and disposition phases of the hearing. If the offender waives his/her right to~~

be present at the hearing, the department may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender.

~~(7))~~ (e) Be present during the hearing. An offender may waive the right to be present at the hearing or because of disruptive behavior, an offender may be removed from the hearing at the hearing officer's discretion; in both cases, the department will conduct the hearing in the offender's absence and may impose sanctions.

(f) Present the case to the hearing officer. If there is a language or communication barrier, the hearing officer may ~~((appoint someone))~~ continue the hearing until a qualified individual is identified to interpret or otherwise assist. However, no other person may provide representation in presenting the case. There is no right to an attorney or counsel.

~~(8))~~ in person or by means of an approved language line.

(g) Request counsel as established by department policy. Counsel may be provided if the hearing officer determines that counsel is necessary due to the complexity of the case or the offender's ability to represent himself or herself.

(h) Cross-examine witnesses ~~((appearing and))~~ testifying at the hearing.

~~((9))~~ (i) Testify during the hearing or ~~((to))~~ remain silent. Silence will not be held against the offender.

~~((10))~~ (j) Have witnesses provide written or oral testimony on ~~(his/her behalf, either in person or in a witnessed statement/affidavit; provided, however:~~

~~(a) In an in-custody hearing, outside witnesses may be excluded due to institutional concerns; or~~

~~(b) The hearing officer may exclude persons from the hearing upon a finding of good cause; or~~

~~(c) The hearing officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the offender's presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. In either event, the offender may submit a list of questions to ask a witness. Testimony may be limited to evidence relevant to the issues under consideration.~~

~~(11))~~ the offender's behalf, unless the scope of testimony is limited or the witness is excluded by the hearing Officer under WAC 137-104-050.

(k) Request a continuance of the hearing for good cause as per department policy.

(l) Receive a written hearing and decision summary including the evidence presented, ~~((a))~~ the finding of guilty or not guilty, ~~((and))~~ the reasons to support the findings of guilt, and the sanction imposed immediately following the hearing or, in the event of a deferred decision, within two ~~((working days.~~

~~(12) Receive a copy of the full department hearing report.~~

~~(13) Obtain a copy of the audio recording of the hearing, provided, the offender provides a blank audio cassette tape to be used for this purpose.~~

~~(14) Appeal to the regional appeals panel, in writing, within seven calendar days of receipt of the hearing and decision summary form. The offender may also file a personal restraint petition to appeal the department's final decision through the Washington state court of appeals.~~

~~(15))~~ business days. Offenders may waive the two business days' requirement.

(m) Obtain a copy of the electronic recording of the hearing upon written request.

(n) Appeal the hearing officer's decision pursuant to WAC 137-104-080.

(o) File a personal restraint petition.

(p) Waive any or all of the above rights in this section; and

(q) Waive the hearing and recommend a negotiated sanction.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-080 Appeals. (1) The offender may, within seven calendar days, appeal the ~~((decision of the hearing officer within seven calendar days to the appeals panel. The request for review should be submitted in writing and list specific concerns.~~

(2) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to the:

~~(a) Crime of conviction;~~

~~(b) Violation committed;~~

~~(c) Offender's risk of reoffending; or~~

~~(d) Safety of the community.~~

~~(3))~~ findings and imposed sanctions to an appeals panel. The offender's appeal must be submitted in writing.

(2) The appeals panel shall affirm, reverse, modify, vacate, or remand the decision based on its findings.

(3) If a majority of the panel finds that the sanction was not reasonable, relative to the crime of conviction, the violation committed, the offender's risk of reoffending, or the safety of the community, then the appeals panel shall reverse, vacate, remand or modify the decision.

(4) The appeals panel will also examine evidence presented at the hearing ~~((and reverse)).~~ If a majority of the panel finds that any finding of a violation was based solely on ~~((unconfirmed or unconfirmable allegations))~~ allegations that were not, or could not be confirmed, then the appeals panel shall reverse, vacate, remand or modify the decision.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-104-070 Determination of competency.

**WSR 19-15-156
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

[Filed July 24, 2019, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-041.

Title of Rule and Other Identifying Information: WAC 110-16-0010 Provider approval, 110-16-0015 Provider responsibilities, 110-16-0030 Health and safety activities, and 110-16-0035 Health and safety practices.

Hearing Location(s): On August 27, 2019, at 1:00 p.m., at 1110 Jefferson Street S.E., Baker Conference Room, Olympia, WA.

Date of Intended Adoption: August 28, 2019.

Submit Written Comments to: Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at <https://dcyf.wa.gov/policy-laws-rules/rule-making/participate/online>.

Assistance for Persons with Disabilities: Contact the department of children, youth, and families (DCYF) rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For family, friend[s], and neighbor (FFN) child care: Proposed amendments comply with new child care and development fund requirements for receipt of grant monies embodied in the 2014 Child Care and Development Block Grant Act reauthorization and supporting rules. Specifically, the rules fulfill DCYF's requirement to specify the number of children an FFN provider may care for at one time (capacity), and to revise and clarify health and safety standards regarding prevention of shaken baby syndrome, abusive head trauma, and child maltreatment. The proposed rules also clarify that child care must occur in Washington state. Finally, the proposed rules contain nonsubstantive edits to highlight that the provider approval process includes submitting a nonexpired, government issued photo identification and meeting the background check requirement as well as the character, suitability, and competence required by chapter 110-06 WAC.

Reasons Supporting Proposal: Compliance with the child care and development fund requirements is necessary for continued receipt of 2014 child care and development block grant monies that are used to fund the working connections and seasonal child care programs. Requiring child care to be provided within Washington state is necessary since DCYF has no authority to regulate out-of-state child care providers. Delineating the criteria required for FFN provider approval is intended to address the uncertainty about requirements expressed by potential providers since WAC 110-16-0010 was adopted in 2018.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065; chapter 43.216 RCW.

Statute Being Implemented: Chapter 43.216 RCW.

Rule is necessary because of federal law, 42 U.S.C. 9858 et seq.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule making preserves federal funding appropriations to Washington state.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Jaramillo, Olympia, Washington, 360-725-4431; Implementation and Enforcement: DCYF, statewide.

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. DCYF is not among the agencies required to comply with RCW 34.05.328 (5)(a)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.061 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: 42 U.S.C. 9858 et seq. and 45 C.F.R. Part 98. Not adopting the proposed amendments jeopardizes the federal funding appropriations to Washington state that sustain the working connections and seasonal child care programs.

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

July 24, 2019

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0010 Provider approval. (1) To be approved as a family, friend, and neighbor (FFN) in-home/relative provider for the WCCC program, the individual must:

- (a) Be eighteen years of age or older;
- (b) Complete the approval process that will include, but not be limited to, providing:
 - (i) Legal name, current street address, telephone number, and email address;
 - (ii) Documents required to establish that the individual meets legal employment eligibility requirements that may include, but are not limited to:
 - (A) A legible copy of the individual's valid Social Security card; and
 - (B) A legible copy of the individual's (~~valid~~) nonexpired government issued photo identification, such as a (~~current~~) driver's license, Washington state identification, or passport.
- (c) Meet all applicable WCCC subsidy (~~and background check~~) requirements of chapter ~~(*)~~ 110-15 (~~and 110-06~~) WAC;
- (d) Have the character, suitability, and competence required by chapter 110-06 WAC to meet the needs of children in care.

(2) An individual will not be approved to receive WCCC subsidy payment as a provider for an eligible child in his or her care if the individual is:

- (a) The child's biological or adoptive parent, step-parent, or the parent's live-in partner;
- (b) The child's legal guardian or the guardian's spouse or live-in partner;

(c) An adult acting in loco parentis or that adult's spouse or live-in partner;

(d) An ~~((individual with a revoked child care license; or))~~ adult sibling who lives in the same household as the children needing care;

(e) Living outside of Washington state and wants to provide care in his or her home;

(f) Disqualified based on the requirements contained in chapter 110-06 WAC; or

(g) Receiving temporary assistance for needy families (TANF) benefits on behalf of the eligible child.

(3) Providers are not eligible to receive WCCC benefits for their own children for the same hours for which they receive payment for child care they provide for other WCCC-eligible children.

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0015 Provider responsibilities. (1) The provider must:

(a) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including health, safety, physical, nutritional, emotional, cognitive, and social needs;

(b) Report any legal name, address, or telephone number changes to DCYF within ten days;

(c) Comply with the requirements contained in this chapter and the applicable requirements in chapters 110-06 and 110-15 WAC;

(d) Allow parents access to their own children at all times while in care; and

(e) Have access to a telephone with 911 emergency calling services and capability for both incoming and outgoing calls during all times children are in care.

(2) The provider must not submit an invoice for more than six children for the same hours of care.

(3) The provider must not care for more than six children, including their own children, at any one time.

(4) Care must be provided in the following locations:

(a) Providers related to the child by marriage, blood relationship, or court decree and who are grandparents, great-grandparents, siblings (if living in a separate residence), aunts, or uncles, must choose to be approved to provide care in either the provider's home or the child's home, with the exception that providers residing with a person disqualified under chapter 110-06 WAC must provide care in the child's home.

(b) Providers related to the child by marriage, blood, or court decree, but not listed in (a) of this subsection, must choose to be approved to provide care in either the provider's home or the child's home, with the exception that providers residing with a person disqualified under chapter 110-06 WAC must provide care in the child's home.

(c) Providers not related to the child, such as friends or neighbors must provide care in the child's home.

~~((4))~~ (5) Providers must comply with health and safety activities as follows:

(a) Providers related to the child as described in subsection ~~((3))~~ (4)(b) of this section, must participate in a techni-

cal assistance phone call with the department within ninety days of the subsidy payment begin date and annually thereafter;

(b) Providers not related to the child, as described in subsection ~~((3))~~ (4)(c) of this section:

(i) Must complete the department-approved training required in WAC 110-16-0025; and

(ii) Must have an annual technical assistance visit in the child's home.

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0030 Health and safety activities. (1) Providers not related to the child as described in WAC 110-16-0015 ~~((3))~~ (4)(c), must comply with the following health and safety activity requirements:

(a) Complete the Parent and FFN Provider Health and Safety Agreement; and

(b) Participate in an annual, scheduled visit in the child's home. If necessary, as determined by the department, follow-up visits may occur on a more frequent basis.

(2) The Parent and FFN Provider Health and Safety Agreement must:

(a) Be signed by the provider and parent(s) and verify that the parent(s) and provider discussed and reviewed all of the topics and subject matter items contained in the agreement. The subject matter items include, but are not limited to ~~((:))~~; Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment; emergency contacts ~~((:))~~; fire and emergency prevention ~~((:))~~; knowledge and treatment of children's illnesses and allergies ~~((:))~~; developmental and special needs ~~((:))~~; medication administration ~~((:))~~; safe transportation ~~((:))~~; child immunizations ~~((:))~~; and safe evacuation; and

(b) Be received by the department within forty-five days of completion of the training requirements in WAC 110-16-0025 (2)(a) or verification of the training exemption in WAC 110-16-0025 (2)(b).

(3) The purpose of the annual, scheduled visit in the child's home is to:

(a) Provide technical assistance to the provider regarding the health and safety requirements described in this chapter;

(b) Observe the provider's interactions with the child, and discuss health and safety practices;

(c) Provide written information and local resources about child development to include the major domains of cognitive, social, emotional, physical development, and approaches to learning; and

(d) Provide regional contact information for FFN child care services and resources.

(4) If the department is not able to successfully complete a scheduled visit with the provider in the child's home after three attempts, the provider will be deemed not in compliance with the requirements of this chapter.

(5) At the annual, scheduled visit, the provider must show:

(a) Proof of identity;

(b) Proof of current certification for first aid and cardiopulmonary resuscitation (CPR) in the form of a card, certificate, or instructor letter;

(c) Proof of vaccination against or acquired immunity for vaccine-preventable diseases for all children in care, if the provider's children are on-site at any time with the eligible children. Proof can include:

(i) A current and complete department of health certificate of immunization status (CIS) or certificate of exemption (COE) or other department of health approved form; or

(ii) A current immunization record from the Washington state immunization information system (WA IIS).

(d) Written permission from the parent to:

(i) Allow children to use a swimming pool;

(ii) Administer medication for treatment of illnesses and allergies of the children in care;

(iii) Provide for and accommodate developmental and special needs; and

(iv) Provide transportation for care, activities, and school when applicable.

(e) The written home evacuation plan required in WAC 110-16-0035 (4)(c).

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0035 Health and safety practices.

~~((1))~~ Providers not related to the child, as described in WAC 110-16-0015 ~~((3))~~ (4)(c), must comply with the following health and safety activity practices ~~((according to the))~~ training as described in WAC 110-16-0025 and required by the department including, but not limited to, the following health and safety ((training)) practices:

~~((a))~~ (1) The prevention and control of infectious diseases;

~~((b))~~ (2) The prevention of sudden infant death syndrome and safe sleep practices, including sudden infant death syndrome/sudden unexpected infant death syndrome risk reduction; ~~and~~

~~((c))~~ (3) The prevention of shaken baby syndrome, abusive head trauma, and child maltreatment; and

(4) The recognition and reporting of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

~~((2))~~ (5) **Medication administration.** ~~((Providers not related to the child, as described in WAC 110-16-0015 (3)(e), must comply with the following medication administration requirements:))~~

(a) A child's parent, or an appointed designee, must provide training to the provider for special medical procedures that the provider may have to administer to the child. This training must be documented and signed by the provider and parent;

(b) The provider must not give medication to any child without written and signed consent from that child's parent or health care provider. The medication must be given according to the directions on the medication label using appropriately cleaned and sanitized medication measuring devices;

(c) The provider must not give or allow others to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a health care professional; and

(d) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements.

~~((3))~~ (6) **Indoor building and physical premises safety.** ~~((Providers not related to the child, as described in WAC 110-16-0015 (3)(e), must comply with the following indoor building and physical premises safety requirements:))~~

(a) The provider must visually scan indoor areas to identify potential child safety hazards and discuss removal or reduction of identified hazards with the parent. If it is not possible for the provider to immediately correct or make a hazard completely inaccessible to a child, the provider must supervise the child to avoid injury from such identified hazard. Child safety hazards include, but are not limited to:

(i) Tobacco and cannabis products and containers holding tobacco and cannabis products or ashes;

(ii) Firearms, guns, weapons, and ammunition;

(iii) Any equipment, material, or objects that may pose a risk of choking, aspiration, or ingestion. For purposes of this section, equipment, material, or objects with a diameter or overall dimension of one and three-quarter inch or less are considered items that may pose a risk of choking, aspiration, or ingestion;

(iv) Straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck that are not being used for a supervised activity;

(v) Poisons, chemicals, toxins, dangerous substances or any product labeled "Keep out of reach of children," including, but not limited to, fuel, lighter fluid, solvents, fertilizer, ice melt product, pool chemicals, pesticides, or insecticides, cleansers and detergents, air freshener or aerosols, sanitizing products, and disinfectants;

(vi) Personal grooming, cosmetics, and hygiene products including, but not limited to, nail polish remover, lotions, creams, toothpaste, powder, shampoo, conditioners, hair gels or hair sprays, bubble bath, or bath additives;

(vii) Alcohol, including closed and open containers;

(viii) Plastic bags and other suffocation hazards;

(ix) Equipment, materials, or products that may be hot enough to injure a child;

(x) Freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers;

(xi) Uneven walkways, damaged flooring or carpeting, or other tripping hazards;

(xii) Large objects capable of tipping or falling over, such as televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units;

(xiii) Indoor temperatures less than sixty-eight degrees Fahrenheit or greater than eighty-two degrees Fahrenheit;

(xiv) Water accessible to children that may be hotter than one hundred twenty degrees Fahrenheit (the provider should always feel hot water before using on or for a child);

(xv) Windows and stairs accessible to children; and

(xvi) Electrical outlets, power strips, exposed wires, and electrical/extension cords.

(b) During care hours, providers must not themselves, and must not allow others who may be in the presence of the children to:

(i) Possess or use illegal drugs;

(ii) Consume or use alcohol or cannabis products in any form;

(iii) Be under the influence of alcohol, cannabis products in any form, illegal drugs, or misused prescription drugs; and

(iv) Smoke or vape in the home, vehicle, or in close proximity to a child.

~~((4))~~ **(7) Outdoor building and physical premises safety.** The provider must visually scan outdoor play areas to identify potential child safety hazards and discuss removal or reduction of identified hazards with the parent. If it is not possible for the provider to immediately correct or make a hazard completely inaccessible to a child, the provider must supervise the child to avoid injury. Outdoor hazards include, but are not limited to:

(a) Outdoor play area or equipment that is not clean, not in good condition, or not maintained or safe for a child of a certain age to use;

(b) Bouncing equipment including, but not limited to, trampolines, rebounders and inflatable equipment. This requirement does not apply to bounce balls designed to be used by individual children;

(c) Toxic plants or plants with poisonous leaves such as foxglove, morning glory, tomato, potato, rhubarb, or poison ivy;

(d) Extreme weather conditions such as:

(i) Heat in excess of one hundred degrees Fahrenheit;

(ii) Cold below twenty degrees Fahrenheit;

(iii) Lightning storm, tornado, hurricane or flooding; and

(iv) Air quality warnings by public health or other authorities.

(e) Bodies of water such as:

(i) Swimming pools when not being used, portable wading pools, hot tubs, spas, and jet tubs;

(ii) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools, or similar bodies of water; and

(iii) Uncovered wells, septic tanks, below grade storage tanks, farm manure ponds, or other similar hazards.

(f) Streets, alleyways, parking lots or garages.

~~((5))~~ **(8) Emergency preparedness and response planning.** ~~((Providers not related to the child, as described in WAC 110-16-0015 (3)(e), must comply with the following emergency preparedness and response planning requirements:))~~

(a) The provider must visually scan indoor and outdoor areas to identify potential fire or burn hazards and discuss the removal or reduction of identified hazards with the parent. If it is not possible for the provider to immediately correct or make identified hazards completely inaccessible to a child, the provider must supervise the child to avoid injury from such identified hazards. Fire or burn hazards include, but are not limited to:

(i) Appliances and any heating device that has a hot surface when in use or still hot after use;

(ii) Open flame devices, candles, matches, and lighters. Open flame devices, candles, matches, and lighters must not be used during care hours; and

(iii) The lack of, or nonworking smoke detectors, fire extinguishers, or other fire prevention equipment.

(b) If there is a fire in the home during care hours, the provider's first responsibility is to evacuate the children in care to a safe gathering spot outside the home and then call 911;

(c) The provider and parent must have an agreed upon written home evacuation plan in the event of fire or an emergency or other disaster. The plan must be updated as needed and include, at a minimum:

(i) A floor plan that shows emergency exit pathways, doors, and windows;

(ii) A description for how the provider will evacuate all of the children, especially those who cannot walk;

(iii) A description for how the provider will account for all of the children in the home;

(iv) A designated, safe gathering spot or alternative short-term location for the children and provider pending arrival of the fire department, emergency response, or the parent;

(v) A description of what to take, such as a first aid kit, medications, water, and food; and

(vi) A description for how parents will be contacted after the emergency is over and arrange for pick-up of children, if needed.

(d) To be properly prepared for a home evacuation or lockdown, the provider must be able to easily access emergency items including, but not limited to:

(i) A first aid kit;

(ii) A working flashlight available for use as an emergency light source and extra batteries if the flashlight is powered by batteries;

(iii) A working telephone; and

(iv) Food, water, and a three-day supply of medication required by individual children.

(e) The provider must practice emergency and home evacuation drills with the children as follows:

(i) Earthquake and home evacuation drills once every six calendar months; and

(ii) A lockdown drill annually.

~~((6))~~ **(9) Child transportation.** ~~((Providers not related to the child, as described in WAC 110-16-0015 (3)(e), must comply with the following child transportation requirements: When transporting children, the provider must:))~~

(a) Comply with RCW 46.61.687 and other applicable laws that pertain to child restraints and car seats appropriate for the size and age of each child in care;

(b) Drive only with a valid driver's license;

(c) Have in effect a current motor vehicle insurance policy that provides coverage for the driver, the vehicle, and all other occupants;

(d) Ensure that children are accounted for when entering and exiting a vehicle for transport to and from any destination; and

(e) Never leave the children by themselves.

~~((7))~~ **(10) Supervision of children.** ~~((Providers not related to the child, as described in WAC 110-16-0015 (3)(e), must comply with the following supervision requirements:))~~

(a) The provider must supervise children during care hours. Supervising children requires the provider to engage in specific actions including, but not limited to:

(i) Scanning the environment, looking and listening for both verbal and nonverbal cues to anticipate problems and planning accordingly;

(ii) Positioning oneself to supervise areas accessible to children; and

(iii) Considering the following when deciding whether increased supervision is needed:

(A) Ages of children;

(B) Individual differences and abilities of children;

(C) Layout of the home and play areas; and

(D) Risks associated with the activities children are engaged in.

(b) The provider must provide increased supervision when the children:

(i) Interact with pets or animals;

(ii) Engage in water or sand play;

(iii) Play in an area in close proximity to a body of water;

(iv) Use a route to access an outdoor play area when the area is not next to the home;

(v) Engage in activities in the kitchen;

(vi) Ride on public transportation;

(vii) Engage in outdoor play; and

(viii) Participate in field trips.

(c) The provider must ensure no infant or child is left unattended during:

(i) Diapering;

(ii) Bottle feeding; or

(iii) Tummy time.

(d) The provider must not allow any person other than a child's parent or authorized individual to have unsupervised access to a child during care hours. For the purpose of this section, individuals authorized to have unsupervised access include:

(i) A government representative including emergency responders who have specific and verifiable authority for access; and

(ii) A person, such as a family member, family friend, or the child's therapist or health care provider, authorized in writing or over the telephone by a child's parent.