WSR 19-21-005
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed October 3, 2019, 7:30 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1) .

Title of Rule and Other Identifying Information: SWCAA 491-020 Definitions, this is an existing section that contains the definition of terms in SWCAA 491.

SWCAA 491-030 Registration, this is an existing section requiring gasoline loading terminals, bulk gasoline plants and gasoline dispensing facilities subject to the provisions of SWCAA 491-040 (2) through (4) to register annually with the Southwest Clean Air Agency (SWCAA).

SWCAA 491-040 Gasoline Vapor Control Requirements, this is an existing section containing gasoline vapor control requirements applicable to gasoline storage tanks, gasoline loading terminals, bulk gasoline plants and transport tanks, and gasoline dispensing facilities.

SWCAA 491-050 Failures, Certification, Testing and Recordkeeping, this is an existing section containing operation, certification, testing and recordkeeping requirements applicable to all gasoline transport tanks equipped for gasoline vapor collection and all vapor collection systems at gasoline loading terminals and bulk gasoline plants.

Hearing Location(s): On December 4, 2019, at 6:00 p.m., at the Office of SWCAA, 11815 N.E. 99th Street, Vancouver, WA 98682.

Date of Intended Adoption: January 2, 2020.

Submit Written Comments to: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email jerry@swcleanair.org, fax 360-576-0925, by November 22, 2019.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 x110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by November 18, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA proposes to adopt amendments to SWCAA 491 concerning gasoline dispensing facilities (GDF). These amendments would:

SWCAA 491-020 Definitions, the proposed rule changes add definitions for enhanced conventional (ECO) nozzles, low permeation hoses, and onboard refueling vapor recovery.

SWCAA 491-030 Registration, the proposed rule changes correct rule references that will no longer be valid as a result of proposed changes to SWCAA 491-040.

SWCAA 491-040 Gasoline Vapor Control Requirements, the proposed rule changes:

- Correct an incorrect emission standard applicable to vapor control systems at gasoline loading terminals;
- Remove a requirement that two-point Stage I fittings be used with vacuum assist type Stage II systems;
- Add pressure and leak rate standards for pressure/vacuum valves;
- Add a requirement to install ECO nozzles by January 1, 2023;
- Add a requirement that low permeation hoses be installed at higher volume GDF, without balance type Stage II vapor recovery equipment, by no later than January 1, 2023;
- Require annual testing of Stage I vapor recovery systems;
- Allow the use of an approved continuous pressure monitoring system in lieu of annual Stage I vapor recovery system testing;
- Add a requirement that spill containers be maintained free of liquid and solid materials;
- Add a requirement that all gasoline dispenser hoses be equipped with emergency breakaway devices;
- Add a requirement that new or upgraded gasoline storage tanks be equipped with Stage I enhanced vapor recovery equipment;
- Remove a requirement that GDF install Stage II vapor recovery equipment;
- Allow removal from service of Stage II vapor recovery equipment compatible with onboard refueling vapor recovery (ORVR) on or after January 1, 2023;
- Allow removal from service of Stage II vapor recovery equipment incompatible with ORVR on or after January 3, 2020;
- Require removal from service of Stage II vapor recovery equipment incompatible with ORVR no later than January 1, 2023;
- Clarify construction approval and permitting requirements;
- Correct an outdated fee reference;
- Remove the applicability threshold for low flow nozzles to align SWCAA rules with federal rules; and
- Correct rule references that will no longer be valid as a result of proposed changes to SWCAA 491-040.

SWCAA 491-050 Failures, Certification, Testing and Recordkeeping, the proposed rule changes correct rule references that will no longer be valid as a result of proposed changes to SWCAA 491-040.

Reasons Supporting Proposal: ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998 and beginning in 2001 for light-duty trucks and most heavy-duty gasoline-powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks and heavy-duty vehicles since 2006.

During the phase-in of ORVR, Stage II vapor recovery systems required at higher volume gasoline dispensing facilities have provided volatile organic compound emission reductions in ozone nonattainment areas and certain attainment areas. On May 16, 2012, the Environmental Protection Agency (EPA) determined that ORVR was widespread nationwide. At that time, more than seventy-five percent of gasoline refueling nationwide occurred with ORVR-equipped vehicles and Stage II vapor recovery systems were becoming largely redundant and achieving an ever-declining emission reduction benefit as more ORVR-equipped vehicles continue to enter the fleet. In fact, in areas where certain types of vacuum-assist Stage II vapor recovery systems are used, an incompatibility between ORVR and some configurations of this Stage II vapor recovery hardware may ulti-

mately result in area-wide emission increases by as early as 2022. EPA's determination allows any state or local agency currently implementing Stage II vapor recovery programs to eventually phase out those programs.

The proposed rules would update SWCAA rules to require removal of Stage II vapor recovery systems that are incompatible with ORVR starting in 2020, which will ensure that any increase in emissions due to this incompatibility will be minimized. The proposed rules would also update SWCAA rules to allow removal of compatible Stage II vapor recovery systems starting in 2023.

SWCAA's current rules require Stage II vapor recovery systems in Clark County at all facilities dispensing six hundred thousand gallons in a calendar year or greater; in Cowlitz County at all facilities dispensing 1.2 million gallons in a calendar year or greater; and in Lewis, Skamania and Wahkiakum counties at facilities that exceed certain throughput thresholds and distances to the facility's property line. SWCAA's current estimate is that eighty-four percent of refueling in its jurisdiction is into ORVR-equipped vehicles. Therefore, SWCAA has determined that allowing GDF to remove their Stage II vapor recovery systems would not result in emission rates in excess of the emission rates originally intended when the Stage II vapor recovery requirement was established. However, the removal of Stage II vapor recovery systems could result in minor increases in emissions at some stations. To minimize any increases in emissions due the removal of Stage II vapor recovery systems, the proposed rules would require GDF to install low drip nozzles and larger volume GDF to install low permeation hoses.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x122; and Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x130.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions, if necessary: Pursuant to RCW 70.94.141(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 2, 2019
Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-067 filed 2/15/01, effective 3/18/01)

SWCAA 491-020 Definitions

The definitions of terms contained in SWCAA 400 are by this reference incorporated into this regulation. Unless a different meaning is clearly required by context, the following words and phrases, as used in this regulation, shall have the following meanings:

(1) "Bottom loading" means the filling of a tank through a line entering the bottom of the tank.

(2) "Bulk gasoline plant" means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks.

(3) "Bunkering" means, for purpose of this rule, refueling a vessel with a fuel product where the intended use of that gasoline or fuel product is for combustion in the onboard engine of the marine vessel.

(4) "Canister capture rate" means canister effectiveness times the percent of light duty vehicles that have onboard vapor recovery systems.

(5) "Canister effectiveness" means the percent of refueling vapors recovered by a representative onboard vapor recovery system.

(6) "Centroid" means the geometric center of a gas pump or a bank of gas pumps or, if a station has more than one bank of pumps, the geometric center of each bank of pumps.

(7) "Certified vapor recovery system" means a vapor recovery system that has been certified by the California Air Resources Board (CARB). Only Stage II vapor recovery systems with a single coaxial hose can be certified. SWCAA may certify vapor recovery systems in addition to those certified by the California Air Resources Board as of the effective date of the regulation.

(8) "Enhanced Conventional (ECO) Nozzle" means a nozzle that is used to dispense gasoline and complies with the California Air Resources Board performance standards in CP-207.

((~~(8)~~)) (9) "Gas freed" means a marine vessel's cargo tank has been certified by a Marine Chemist as "Safe for Workers" according to the requirements outlined in the National Fire Protection Association Rule 306.

((~~(9)~~)) (10) "Gasoline" means a petroleum distillate that is a liquid at standard conditions and has a true vapor pressure greater than four pounds per square inch absolute (4.0 psia) at twenty degrees C (20°C), and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than four pounds per square inch absolute at twenty degrees C (20°C) shall be considered "gasoline" for purpose of this regulation.

((~~(10)~~)) (11) "Gasoline dispensing facility" means any site dispensing gasoline into motor vehicle fuel tanks from stationary storage tanks (above ground or underground).

(((~~(11)~~))) (12) "Gasoline loading terminal" means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks.

(((~~(12)~~))) (13) "Leak free" means a liquid leak of less than four drops per minute.

(((~~(13)~~))) (14) "Lightering" means the transfer of fuel product into a cargo tank from one marine tank vessel to another.

(((~~(14)~~))) (15) "Loading event" means the loading or lightering of gasoline into a marine tank vessel's cargo tank, or the loading of any product into a marine tank vessel's cargo tank where the prior cargo was gasoline. The event begins with the connection of a marine tank vessel to a storage or cargo tank by means of piping or hoses for the transfer of a fuel product from the storage or cargo tank(s) into the receiving marine tank vessel. The event ends with disconnection of the pipes and/or hoses upon completion of the loading process.

(16) "Low Permeation Hose" means a hose that is used to dispense gasoline and complies with the permeation performance standard as determined by UL 330 (seventh edition).

(((~~(15)~~))) (17) "Marine tank vessel" means any marine vessel constructed or converted to carry liquid bulk cargo that transports gasoline.

(((~~(16)~~))) (18) "Marine terminal" means any facility or structure used to load or unload any fuel product cargo into or from marine tank vessels.

(((~~(17)~~))) (19) "Marine vessel" means any tugboat, tanker, freighter, passenger ship, barge or other boat, ship or watercraft.

(((~~(18)~~))) (20) "Modified" means any physical change in equipment, or change in the method of operation, of a gasoline dispensing facility, terminal, or loading or unloading facility, that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modified shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section. Section 7411 exempts changes in gasoline throughput not resulting directly from a physical change.

(((~~(19)~~))) (21) "NAAQS" means National Ambient Air Quality Standard.

(22) "ORVR" refers to the Onboard Refueling Vapor Recovery system incorporated into the design of a vehicle that captures the gasoline vapors displaced from the vehicle fuel tank during refueling.

(((~~(20)~~))) (23) "Ozone contributing county" means a county in which the emissions have contributed to the formation of ozone in any county or area where violation of federal ozone standards have been measured, and includes: Cowlitz, Island, Kitsap, Lewis, Skagit, Thurston, Wahkiakum, and Whatcom counties.

(((~~(21)~~))) (24) "Permanent residence" means a single-family or multi-family dwelling or any other facility designed for use as permanent housing.

(((~~(22)~~))) (25) "SWCAA" means the Southwest Clean Air Agency.

(((~~(23)~~))) (26) "Stage I" means gasoline vapor recovery during all gasoline marketing transfer operations except motor vehicle refueling.

(((~~(24)~~))) (27) "Stage II" means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.

(((~~(25)~~))) (28) "Submerged fill line" means any discharge pipe or nozzle which meets either of the following conditions:

- Where the tank is filled from the top, the end of (upper cut of the bevel on) the discharge pipe or nozzle must be totally submerged when the liquid level is six inches from the bottom of the tank, or;

- Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is eighteen inches from the bottom of the tank.

(((~~(26)~~))) (29) "Submerged loading" means the filling of a tank with a submerged fill line.

(((~~(27)~~))) (30) "Suitable cover" means a door, hatch, cover, lid, pipe cap, pipe blind, valve, or similar device that prevents the accidental spilling or emitting of gasoline. Pressure relief valves, aspirator vents, or other devices specifically required for safety and fire protection are not included.

(((~~(28)~~))) (31) "Throughput" means the amount of material passing through a facility.

(((~~(29)~~))) (32) "Top off" means to attempt to dispense gasoline to a motor vehicle fuel tank after a vapor recovery dispensing nozzle has shut off automatically.

(((~~(30)~~))) (33) "Transport tank" means a container used for shipping gasoline over roadways.

(((~~(31)~~))) (34) "True vapor pressure" means the equilibrium partial pressure of a petroleum liquid as determined by methods described in American Petroleum Institute (API) Bulletin 2517, 1980.

(((~~(32)~~))) (35) "Upgraded" means the modification of a gasoline storage tank, including tank installation or replacement, or piping to add cathodic protection, tank lining or spill and overfill protection that involved removal of ground or ground cover above a portion of the product piping.

(((~~(33)~~))) (36) "Vapor balance system" means a system consisting of the transport tank, gasoline vapor transfer lines, storage tank, and all tank vents designed to route displaced gasoline vapors from a tank being filled with liquid gasoline.

(((~~(34)~~))) (37) "Vapor collection system" means a closed system to conduct vapors displaced from a tank being filled into the tank being emptied, a vapor holding tank, or a vapor control system.

(((~~(35)~~))) (38) "Vapor control system" means a system designed and operated to reduce or limit the emission of gasoline vapors emission into the ambient air.

(((~~(36)~~))) (39) "Vapor-mounted seal" means a primary seal mounted continuously around the circumference of the tank so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

(((~~(37)~~))) (40) "Vapor tight" means a leak of less than one hundred percent of the lower explosive limit on a combustible gas detector measured at a distance of one inch from the source or no visible evidence of air entrainment in the sight glasses of liquid delivery hoses.

(((~~(38)~~))) (41) "WDOE" or "Ecology" means the Washington Department of Ecology.

(((~~(39)~~))) (42) "Western Washington counties" means the following counties: Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

AMENDATORY SECTION (Amending WSR 17-11-080 filed 5/18/17, effective 6/18/17)

SWCAA 491-030 Registration

(1) The owner or operator of a gasoline loading terminal, bulk gasoline plant, or gasoline dispensing facility subject to the provisions of SWCAA 491-040 (2) through (((~~(5)~~))) (4) shall register the facility annually with SWCAA. Facilities subject to registration under this section shall be assessed fees as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(2) Administration of the registration program shall be consistent with the Registration Program requirements of SWCAA 400-100.

(3) SWCAA will provide a written verification of registration to owners or operators of facilities subject to the provisions of SWCAA 491-040 (2) through (((~~(6)~~))) (4). Such verification shall be available for inspection by SWCAA personnel during normal business hours.

(4) The owner or operator of a gasoline loading terminal or a gasoline dispensing facility (non-major source) shall maintain total annual gasoline throughput records for the most recent three calendar years. Such records shall be available for inspection by SWCAA personnel during normal business hours.

AMENDATORY SECTION (Amending WSR 01-05-067 filed 2/15/01, effective 3/18/01)

SWCAA 491-040 Gasoline Vapor Control Requirements

(1) **Fixed-roof gasoline storage tanks.**

(a) All fixed-roof gasoline storage tanks having a nominal storage capacity greater than forty thousand (40,000) gallons shall comply with one of the following:

(i) Meet the equipment specifications and maintenance requirements of the federal standards of performance for new stationary sources - Storage Vessels for Petroleum Liquids (40 CFR 60, subparts K, Ka and Kb).

(ii) Be retrofitted with a floating roof or internal floating cover using a metallic seal or a nonmetallic resilient seal at least meeting the equipment specifications of the federal standards referred to in (a)(i) of this subsection or its equivalent.

(iii) Be fitted with a floating roof or internal floating cover meeting the manufacturer's equipment specifications in effect when it was installed.

(b) All seals used in (a)(ii) and (iii) of this subsection are to be maintained in good operating condition and the seal fabric shall contain no visible holes, tears, or other openings consistent with 40 CFR 60 subparts Ka and Kb.

(c) All openings not related to safety are to be sealed with suitable closures.

(d) Tanks used for the storage of gasoline in bulk gasoline plants and equipped with vapor balance systems as required in subsection (3)(b) of this section shall be exempt from the requirements of subsection (1) of this section.

(e) All fixed roof gasoline storage tanks subject to this section shall comply no later than December 31, 1993 or at the time that the throughput is exceeded.

(2) **Gasoline loading terminals.**

(a) This section shall apply to all gasoline loading terminals with an average annual gasoline throughput greater than 7.2 million gallons on a calendar basis and shall comply no later than December 31, 1993 or when the throughput is exceeded.

(b) Facilities loading gasoline into any transport tank shall be equipped with a vapor control system (VCS) as described in (c) of this subsection and comply with the following conditions:

(i) The loading facility shall employ submerged or bottom loading for all transport tanks.

(ii) The VCS shall be connected during the entire loading of all transport tanks.

(iii) The loading of all transport tanks shall be performed such that the transfer is at all times vapor tight. Emissions from pressure relief valves shall not be included in the controlled emissions when the back pressure in the VRS collection lines is lower than the relief pressure setting of the transport tank's relief valves.

(iv) All loading lines and vapor lines shall be equipped to close automatically when disconnected. The point of closure shall be on the tank side of any hose or intermediate connecting line.

(c) The VCS shall be designed and built according to accepted industrial practices and meet the following conditions:

(i) The VCS shall not allow organic vapors emitted to the ambient air to exceed thirty-five milligrams per liter (35 mg/l) (((~~three hundred twenty-two milligrams per gallon or 322 mg/gal~~))) of gasoline loaded.

(ii) The VCS shall be equipped with a device to monitor the system while the VCS is in operation.

(iii) The back pressure in the VCS collection lines shall not exceed the transport tank's pressure relief settings.

(3) **Bulk gasoline plants and transport tanks.**

(a) This section shall apply to all bulk gasoline plants with an average annual gasoline throughput greater than 7.2 million gallons on a calendar basis and shall comply no later than December 31, 1993, or when the throughput is exceeded, and gasoline transport tanks.

(b) Deliveries to bulk gasoline plant storage tanks.

(i) The owner or operator of a bulk gasoline plant shall not permit the loading of gasoline into a storage tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated properly. The vapor balance system shall prevent at least ninety percent of the displaced gasoline vapors from entering the ambient air. A vapor balance system that is designed, built, and operated according to accepted industrial practices will satisfy this requirement.

(ii) Storage tank requirements. All storage tanks with a nominal capacity greater than five hundred fifty (550) gallons

and used for the storage of gasoline shall comply with the following conditions:

(A) Each storage tank shall be equipped with a submerged fill line.

(B) Each storage tank shall be equipped for vapor balancing of gasoline vapors with transport tanks during gasoline transfer operations.

(C) The vapor line fittings on the storage tank side of break points with the transport tank vapor connection pipe or hose shall be equipped to close automatically when disconnected.

(D) The pressure relief valves on storage tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety but in no case greater than ninety percent of the tank's safe working pressure.

(iii) Transport tank requirements. All transport tanks transferring gasoline to storage tanks in a bulk gasoline plant shall comply with the following conditions:

(A) The transport tank shall be equipped with the proper attachment fittings to make vapor tight connections for vapor balancing with storage tanks.

(B) The vapor line fittings on the transport tank side of break points with the storage tank connection pipe or hose shall be equipped to close automatically when disconnected.

(C) The pressure relief valves on transport tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.

(c) Gasoline transfer operations.

(i) No owner or operator of a bulk gasoline plant or transport tank shall allow the transfer of gasoline between a stationary storage tank and a transport tank except when the following conditions exist:

(A) The transport tanks are being submerged filled or bottom loaded.

(B) The loading of all transport tanks, except those exempted under (c)(ii) of this subsection are being performed using a vapor balance system.

(C) The transport tanks are equipped to balance vapors and maintained in a leak tight condition in accordance with subsection (((~~(6)~~)) (5) of this section.

(D) The vapor return lines are connected between the transport tank and the stationary storage tank and the vapor balance system is operated properly.

(ii) Transport tanks used for gasoline that meet all of the following conditions shall be exempt from the requirement to be equipped with any attachment fitting for vapor balance lines if:

(A) The transport tank is used exclusively for the delivery of gasoline into storage tanks of a facility exempt from the vapor balance requirements of subsection (4) of this section; and

(B) The transport tank has a total nominal capacity less than four thousand gallons and is constructed so that it would require the installation of four or more separate vapor balance fittings.

(4) **Gasoline dispensing facilities (((~~Stage I~~))).**

(a) This section shall apply to the delivery of gasoline to gasoline dispensing facilities with an annual gasoline throughput greater than three hundred sixty thousand gallons in Cowlitz, Lewis, Skamania and Wahkiakum Counties. For Clark County, this section applies to gasoline dispensing facilities with greater than 200,000 gallons annual throughput on a calendar year basis. All facilities subject to this section shall comply when the throughput is exceeded.

(b) All gasoline storage tanks of the facilities defined in (a) of this subsection shall be equipped with submerged or bottom fill lines and fittings to vapor balance gasoline vapors with the delivery transport tank.

(c) Gasoline storage tanks with offset fill lines shall be exempt from the requirement of (b) of this subsection if installed prior to January 1, 1979.

(d) The owner or operator of a gasoline dispensing facility shall not permit the loading of gasoline into a storage tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated satisfactorily. In addition, no owner or operator of a transport tank shall load gasoline into a storage tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated satisfactorily.

(e) All gasoline dispensing facilities subject to this section shall be equipped with CARB or SWCAA certified Stage I vapor recovery fittings or equipment.

(((~~(f) Only two-point Stage I fittings shall be used with vacuum assist type Stage II systems. Coaxial Stage I fittings may continue to be used for balance type Stage II systems and systems without Stage II gasoline vapor recovery controls.~~))

(f) All new or upgraded gasoline storage tanks subject to this section shall be equipped with CARB certified Stage I Enhanced Vapor Recovery equipment or an equivalent approved by SWCAA.

(g) All Stage I gasoline vapor recovery equipment shall be maintained in proper working order at all times. All Stage I gasoline vapor recovery equipment shall be maintained in accordance with the CARB Executive Order(s) certifying the equipment or system. Whenever a Stage I gasoline vapor recovery system or component is determined to be defective or not operating properly, the owner or operator shall immediately take the system out of service until repairs are made. Systems shall not be returned to service until the defective system is operating properly.

(h) Any alteration of the equipment, parts, design, or operation of the Stage I gasoline vapor recovery system as certified by CARB is prohibited, and shall not be performed without submittal of an ((~~Notice of Construction~~)) Air Discharge Permit application and prior approval from SWCAA.

(i) All new gasoline dispensing facilities shall have a tank tightness test performed at the time of installation to ensure proper connection and absence of leaks ((~~refer to WDOE publication 91-43 "Tank Owner/Operator's Guide to Tightness Testing"~~)). Results of the testing shall be submitted to SWCAA within 14 calendar days of testing.

(j) Until January 1, 2023, ((~~P~~)) pressure/vacuum valves shall be installed as required by the CARB Executive Order that certified the particular Stage I or Stage II vapor recovery system or equipment. Relief set points shall be as provided in the applicable CARB Executive Order and local fire ordinances.

(k) Effective January 1, 2023, pressure/vacuum valves shall be installed on all gasoline storage tanks. Pressure/vac-

uum valve(s) shall be installed and maintained with a positive pressure setting of 2.5 - 6.0 inches water column, and a negative pressure setting of 6.0 - 10.0 inches water column. The leak rate of each pressure/vacuum valve, including connections, shall not exceed 0.05 cubic foot per hour at a pressure of 2.0 inches water column and 0.21 cubic foot per hour at a vacuum of 4 inches water column. The total leak rate for all pressure/vacuum valves, including connections, shall not exceed 0.17 cubic foot per hour at a pressure of 2.0 inches water column and 0.63 cubic foot per hour at a vacuum of 4 inches water column.

(l) All gasoline dispensing nozzles at a facility not in Stage II vapor recovery service shall be Enhanced Conventional Nozzles by no later than January 1, 2023.

(m) All gasoline dispensing hoses that carry liquid fuel against the outermost hose wall at a gasoline dispensing facility with greater than 1,400,000 gallons annual gasoline throughput on a calendar year basis shall permeate no more than 10.0 grams per square meter per day, as determined by Underwriters Laboratories' Standard 330, by no later than January 1, 2023.

(n) Effective January 1, 2023 the testing listed in Table 1 shall be conducted and passed for each Stage I vapor recovery system. For new Stage I systems, initial testing shall be conducted and passed prior to placing new systems into service. For existing systems that have not yet conducted initial testing, initial testing shall be completed before January 1, 2023. The results of all testing shall be reported to SWCAA within 14 days of test completion.

Table 1 - Stage I Vapor Recovery System Testing

Test	Frequency[1]
CARB Test Procedure 201.3 (TP-201.3) "Determination of 2 Inch w.c. Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities"	Annually
CARB Test Procedure 201.1B (TP-201.1B) "Static Torque of Rotatable Phase I Adaptors"	Annually[2]
Depending on the system configuration, either Test Procedure 201.1C (TP-201.1C) "Leak Rate of Drop Tube/Drain Valve Assembly" or Test Procedure 201.1D (TP-201.1D) "Leak Rate of Drop Tube Overfill Prevention Devices and Spill Container Drain Valves."	Annually[3]
CARB Test Procedure 201.1E (TP-201.1E) "Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves" adopted October 8, 2003	Every 3 calendar years

1 All tests shall be conducted at the frequency indicated in Table 1 no later than the end of the calendar month during which the initial test was conducted unless otherwise approved by SWCAA.

2 Only applicable to EVR system with rotatable adaptors.

3 Only applicable to EVR system with drop tube/drain valve assembly, overfill prevention devices, and/or spill container drain valves.

(o) In lieu of (n) of this subsection, SWCAA may approve a continuous pressure monitoring system that is installed and maintained in accordance with CARB Vapor Recovery Test Procedures CP-201 and TP-201.7 and manufacturer instructions. An Air Discharge Permit application is required if requesting SWCAA approval of a continuous pressure monitoring system.

(p) Spill containers shall be maintained free of liquid and solid materials.

(q) Dispenser hoses shall be equipped with a CARB or SWCAA approved emergency breakaway device designed to retain liquid on both sides of a breakaway point. When hoses are attached to a hose-retrieving mechanism, the emergency breakaway device shall be located between the hose nozzle and the point of attachment of the host retrieval mechanism to the hose.

~~(((5) **Gasoline dispensing facilities (Stage II).**~~))

~~(((a) This section shall apply to the refueling of motor vehicles for the general public from stationary tanks at all gasoline-dispensing facilities as follows:~~))

~~(((1) For Clark County, all facilities dispensing 600,000 gallons in a calendar year or greater;~~))

~~(((2) For Cowlitz County, all facilities dispensing 1.2 million gallons in a calendar year or greater;~~))

~~(((3) For Lewis, Skamania and Wahkiakum Counties, Stage II vapor control equipment is not required unless the facility exceeds the throughput and distance requirements below:~~))

~~Gallons Throughput (millions)~~	~~Distance to Property Line (meters)~~
~~1.5~~	~~20~~
~~2.0~~	~~25~~
~~2.5~~	~~28~~
~~3.0~~	~~32~~
~~3.5~~	~~35~~
~~4.0~~	~~38~~
~~5.0~~	~~43~~
~~6.0~~	~~49~~
~~8.0~~	~~58~~
~~10.0~~	~~66~~
~~12.0~~	~~75~~
~~16.0~~	~~90~~
~~20.0~~	~~103~~
~~25.0~~	~~118~~

~~(((i) When the throughput is not shown in the chart, interpolate to get the distance for that throughput.~~))

~~(((ii) The allowable distance shall be measured from the centroid of the pumps to the nearest point on the property line of the nearest lot on which a permanent residence is located. However, if the permanent residence is located at least twice the allowable distance from the centroid of the pumps, the requirements of (3) of this subsection shall not apply.~~))

~~(((b) Stage II vapor control equipment may be removed from any gasoline dispensing facility located in Lewis, Wahkiakum or Skamania County as in (a) above, or from any facility in Cowlitz County dispensing less than 1.2 million gallons annually, by submittal of a complete Notice of Construction and receipt of an Order of Approval, provided that the requirements of subsection (a) above are met.~~))

(((~~(c)(i) Beginning on July 1, 2001, and each year thereafter, the Department of Ecology will publish the canister capture rate for use with this rule.~~)))

(((~~(ii) When the canister capture rate reaches 15% and there are no major exceptions, waivers, or other adjustments to the EPA onboard canister regulations or program implementation, the Department of Ecology will revise the state rules and incorporate the effect of canisters.~~)))

(r) New gasoline dispensing facilities, or existing gasoline dispensing facilities without Stage II vapor recovery, are not required to install Stage II vapor recovery equipment. Owners or operators of new or existing facilities that wish to install Stage II vapor recovery systems may request to install ORVR-compatible Stage II vapor recovery systems by submittal of an Air Discharge Permit in accordance with SWCAA 400-109.

(s) Stage II vapor recovery equipment compatible with ORVR may be removed from service on or after January 1, 2023. An Air Discharge Permit application must be submitted in accordance with SWCAA 400-109 for approval to remove the Stage II vapor recovery equipment from service.

(t) Stage II vapor recovery equipment not compatible with ORVR may be removed from service on or after the effective date of this rule and must be removed from service no later than January 1, 2023. An Air Discharge Permit application must be submitted in accordance with SWCAA 400-109 for approval to remove the Stage II vapor recovery equipment from service.

(((~~(d)~~))) (u) The owner or operator of a new or modified gasoline dispensing facility shall file ((~~a Notice of Construction~~)) an Air Discharge Permit application as provided in SWCAA 400-109 ((~~110~~)), and obtain an ((~~Order of Approval~~)) Air Discharge Permit prior to commencing construction or modification.

(((~~(e) The owner or operator of any gasoline dispensing facility may elect to submit a site-specific analysis of the requirement for a Stage II vapor recovery system under (a) of this subsection and request the Department of Ecology to evaluate it subject to the fees described in (f) of this subsection. The Department of Ecology will review and evaluate a second tier analysis described under WAC 173-460-090 within 45 days of determining that the analysis submitted is complete and no additional information is needed. The requirements for gasoline vapor control shall be determined as a result of that process.~~)))

(((~~(f)~~))) (v) The fee for new source review of a gasoline dispensing facility under this section shall be the same as the fee under SWCAA's consolidated fee schedule ((~~400-110 except, if a site-specific review is elected under (e) of this subsection, the fee shall be as provided under WAC 173-400-116 (3)(c) for a tier two analysis~~)).

(((~~(g) All gasoline dispensing facilities subject to this section shall be equipped with a CARB or SWCAA certified Stage II vapor recovery system.~~)))

(((~~(h) The owner or operator of a gasoline dispensing facility subject to this section shall not transfer or allow the transfer of gasoline from stationary tanks into motor vehicle fuel tanks unless a certified Stage II vapor recovery system is used.~~)))

(((~~(i)~~))) (w) All Stage II vapor recovery equipment shall be installed in accordance with the system's certification requirements and shall be maintained to be leak free, vapor tight, and in good working order.

(((~~(j)~~))) (x) Whenever a Stage II vapor recovery system component is determined to be defective, the owner or operator shall take the system out of service until it has been repaired, replaced, or adjusted, as necessary.

(((~~(k) The owner or operator of each gasoline dispensing facility utilizing a Stage II system shall conspicuously post operating instructions for the system in the gasoline dispensing area. The instructions shall clearly describe how to fuel vehicles correctly using the vapor recovery nozzles and include a warning against topping off. Additionally, the instructions shall include a prominent display of SWCAA's or Department of Ecology's toll free telephone number (800-633-0709 or 800-272-3780) for complaints regarding the operation and condition of the vapor recovery system.~~)))

(((~~(l)~~))) (y) Every retailer and wholesale purchaser-consumer (gasoline dispensing facility) ((~~handling over 10,000 gallons per month~~)) shall equip each pump from which gasoline or methanol is introduced into motor vehicles with a nozzle that dispenses fuel at a flowrate not to exceed 10 gallons per minute as provided in 40 CFR 80.22(j) ((~~Subpart B~~)).

(((~~(m)~~))) (z) All new or upgraded facilities with Stage II gasoline vapor recovery controls shall conduct a performance test upon installation prior to placing in service. For balance type systems, the owner/operator shall conduct and pass a back pressure/blockage test. ((~~For vacuum assist systems, the owner/operator shall conduct and pass performance testing every 12 months.~~)) Results of all testing shall be submitted to SWCAA within 14 calendar days of test completion.

(((~~(n) Pressure/vacuum valves shall be installed as required by the CARB Executive Order that certified the particular Stage I or Stage II vapor recovery system or equipment. Relief set points shall be as provided in the applicable CARB Executive Order and local fire ordinances.~~)))

(((~~(6)~~))) (5) **Loading or Unloading Gasoline into Marine Tank Vessels**

(a) Applicability. This rule applies to loading events at any location within the Vancouver ozone air quality maintenance area when gasoline is placed into a marine tank vessel cargo tank; or when any liquid is placed into a marine tank vessel cargo tank that had previously held gasoline. The owner or operator of each marine terminal and marine tank vessel is responsible for and must comply with this rule. All facilities shall be in compliance no later than June 1, 2001.

(b) Exemptions. The following activities are exempt from the marine vapor control emission limits of this rule:

(i) Marine vessel bunkering (refueling);

(ii) Lightering when neither vessel is berthed at a marine terminal dock,

(iii) Loading when both of the following conditions are met: The vessel has been gas freed (regardless of the prior cargo), and ~~W~~when loading any products other than gasoline.

(c) Vapor Collection System. The owner or operator of a marine terminal subject to this rule must equip each loading berth with a vapor collection system that is designed to collect all displaced VOC vapors during the loading of marine tank vessels. The owner or operator of a marine tank vessel

subject to this rule must equip each marine tank vessel with a vapor collection system that is designed to collect all displaced VOC vapors during the loading of marine tank vessels. The collection system must be designed such that all displaced VOC vapors collected during any loading event are vented only to the control device.

(d) Marine Vapor Control Emission Limits. Vapors that are displaced and collected during marine tank vessel loading events must meet one of the following:

(i) Vapors must be reduced from the uncontrolled condition by at least 95 percent by weight, as determined by EPA Method 25 or other methods approved in writing by SWCAA, or

(ii) Vapor emissions shall not exceed 5.7 grams per cubic meter (2 pounds per 1000 barrels) of liquid loaded.

(e) Operating Practice and Maintenance.

(i) All hatches, pressure relief valves, connections, gauging ports and vents associated with the loading of fuel product into marine tank vessels must be maintained to be leak free and vapor tight.

(ii) The owner or operator of any marine tank vessel must certify to SWCAA that the vessel is leak free, vapor tight, and in good working order based on an annual inspection using EPA Method 21 or other methods approved in writing by SWCAA.

(iii) Gaseous leaks must be detected using EPA Method 21 or other methods approved in writing by SWCAA.

(iv) Loading must cease any time gas or liquid leaks are detected. Loading may continue only after leaks are repaired or if documentation is provided to SWCAA that the repair of leaking components is technically infeasible without drydocking the vessel or cannot otherwise be undertaken safely. Subsequent loading events involving the leaking components are prohibited until the leak is repaired. Any liquid or gaseous leak detected by SWCAA staff is a violation of this rule.

(f) Monitoring and Record((~~K~~))keeping.

Marine terminal operators must maintain operating records for at least five years of each loading event at their terminal. Marine tank vessel owners and operators are responsible for maintaining operating records for at least five years for all loading events involving each of their vessels. Records must be made available to SWCAA upon request. These records must include but are not limited to:

(i) The location of each loading event.

(ii) The date of arrival and departure of the vessel.

(iii) The name, registry and legal owner of each marine tank vessel participating in the loading event.

(iv) The type and amount of fuel product loaded into the marine tank vessel.

(v) The prior cargo carried by the marine tank vessel. If the marine tank vessel has been gas freed, then the prior cargo can be recorded as gas freed.

(vi) The description of any gaseous or liquid leak, date and time of leak detection, leak repair action taken and screening level after completion of the leak repair.

(g) Lightering exempted from controls by subsection ((~~6~~))(5)(b) of this rule must be curtailed from 2:00 AM until 2:00 PM when SWCAA declares a Clean Air Action (CAA) day. If SWCAA declares a second CAA day before 2:00 PM of the first curtailment period, then such uncontrolled lightering must be curtailed for an additional 24 hours until 2:00 PM on the second day. If a third CAA day in a row is declared, then uncontrolled lightering is permissible for a 12 hour period starting at 2 PM on the second CAA day and ending at 2 AM on the third CAA day. Uncontrolled lightering must be curtailed from 2 AM until 2 PM on the third CAA day. If SWCAA continues to declare CAA days consecutively after the third day, the curtailment and loading pattern used for the third CAA day will apply.

(h) Safety/Emergency Operations. Nothing in this rule is intended to:

(i) Require any act or omission that would be in violation of any regulation or other requirement of the United States Coast Guard; or

(ii) Prevent any act that is necessary to secure the safety of a vessel or the safety of passengers or crew.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-067 filed 2/15/01, effective 3/18/01)

SWCAA 491-050 Failures, Certification, Testing and Recordkeeping

This section shall apply to all gasoline transport tanks equipped for gasoline vapor collection and all vapor collection systems at gasoline loading terminals, and bulk gasoline plants as described in subsections (2) and (3) of SWCAA 491-040.

(1) Failures.

During the months of May, June, July, August, and September any failure of a vapor collection system at a bulk gasoline plant or gasoline loading terminal to comply with this section requires the immediate discontinuation of gasoline transfer operations for the failed part of the system. Other transfer points that can continue to operate in compliance may be used. The loading or unloading of the transport tank connected to the failed part of the vapor collection system may be completed during the other months of the year. Upon completion of loading or unloading of a transport tank connected at the time of the failure, gasoline transfer operations shall be discontinued for the failed part of the system.

(2) Certification.

(a) The owner or operator of a gasoline loading terminal or bulk gasoline plant shall only allow the transfer of gasoline between the facility and a transport tank or a marine vessel if a current leak test certification for the transport tank is on file with the facility or a valid inspection sticker is displayed on the vehicle or marine vessel. Certification is required annually as provided in SWCAA 490-202 for transport tanks and SWCAA 491-040 ((~~(6)~~))(5)(e) for marine vessels.

(b) The owner or operator of a transport tank shall not make any connection to the tank or marine vessel for the purpose of loading or unloading gasoline, except in the case of an emergency, unless the gasoline transport tank or marine vessel has successfully completed the annual certification testing requirements in (3) of this subsection, and such certification is confirmed either by:

(i) Having on file with each gasoline loading or unloading facility at which gasoline is transferred a current leak test certification for the transport tank; or

(ii) For transport tanks (tanker trucks), displaying a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b which:

(A) Shows the date that the gasoline tank truck last passed the test required in (3) of this subsection;

(B) Shows the identification number of the gasoline tank truck tank; and

(C) Expires not more than one year from the date of the leak tight test.

(iii) For marine vessels, displaying a sticker/certification with the other Coast Guard required certifications (e.g. in the vessel ecology box, ship's bridge or tankerman's shack) which:

(A) Shows the date that the marine vessel last passed the test required in (3) of this subsection;

(B) Shows the identification number of the marine vessel; and

(C) Expires not more than one year from the date of the leak tight test.

(c) The owner or operator of a vapor collection system shall:

(i) Operate the vapor collection system and the gasoline loading equipment during all loadings and unloadings of transport tanks and marine vessels equipped for emission control such that:

(A) The tank pressure will not exceed a pressure of eighteen inches of water or a vacuum of six inches of water;

(B) The concentration of gasoline vapors is below the lower explosive limit (LEL, measured as propane) at all points a distance of one inch from potential leak sources; and

(C) There are no visible liquid leaks except for a liquid leak of less than four drops per minute at the product loading connection during delivery.

(D) Upon disconnecting transfer fittings, liquid leaks do not exceed ten milliliters (0.34 fluid ounces) per disconnect averaged over three disconnects.

(ii) Repair and retest a vapor collection system that exceeds the limits of (2)(c)(i) of this subsection within fifteen days.

(d) SWCAA may, at any time, monitor a gasoline transport tank, marine vessel and vapor collection system during loading or unloading operations by the procedure in (3) of this subsection to confirm continuing compliance with this section.

(3) Testing and monitoring.

(a) The owner or operator of a gasoline transport tank, marine vessel or vapor collection system shall, at his own expense, demonstrate compliance with (1) and (2) of this subsection, respectively. All tests shall be made by, or under the direction of, a person qualified to perform the tests and approved by WDOE or SWCAA.

(b) Testing to determine compliance with this section shall use procedures approved by SWCAA. See testing requirements in SWCAA 490 for transport tanks and section 491-040 ~~(((6)))~~(5)(e) for marine vessels.

(c) Monitoring to confirm continuing leak tight conditions shall use procedures approved by SWCAA.

(4) Recordkeeping.

(a) The owner or operator of a gasoline transport tank, marine vessel or vapor collection system shall maintain records of all certification tests and repairs for at least two years after the test or repair is completed.

(b) The records of certification tests required by this section shall, as a minimum, contain:

(i) The transport tank or marine vessel identification number;

(ii) The transport tank or marine vessel capacity;

(iii) The transport tank initial test pressure and the time of the reading;

(iv) The transport tank final test pressure and the time of the reading;

(v) The transport tank initial test vacuum and the time of the reading;

(vi) The transport tank final test vacuum and the time of the reading;

(vii) At the top of each report page the company name, date, and location of the tests on that page; and

(viii) Name and title of the person conducting the test.

(c) The owner or operator of a gasoline transport tank shall annually certify that the transport tank or marine vessel passed the required tests.

(d) Copies of all records required under this section shall immediately be made available to SWCAA, upon written request, at any reasonable time.

(5) Preventing evaporation. All persons shall take reasonable measures to prevent the spilling, discarding in sewers, storing in open containers, or handling of gasoline in a manner that will result in evaporation to the ambient air.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 19-21-010
PROPOSED RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed October 3, 2019, 4:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-024.

Title of Rule and Other Identifying Information: Juvenile rehabilitation (JR), WAC 110-730-0070 Residential disciplinary standards.

Hearing Location(s): On December 3, 2019, at 1:30 p.m., at Conference Room 3, Office Building 2, Service Level, 1115 Washington Street S.E., Olympia, WA.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: Department of Children, Youth, and Families (DCYF) Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, by December 5, 2019.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 2 of SSB 5815 (concerning individuals placed in minimum security status by DCYF), effective July 28, 2019, amended RCW 72.05.405: (1) To provide that the unlawful use or possession of a controlled substance or an alcoholic beverage while in a community facility are excluded from a list of serious infractions requiring mandatory return to an institution; and (2) to direct DCYF to adopt and implement rules based on empirically validated best practices to appropriately address offenses involving unlawful use or possession of a controlled substance and unlawful use or possession of alcohol committed by individuals placed in juvenile community facilities. The purpose of this proposal is to adopt and implement rules based on empirically validated best practices to appropriately address these offenses by individuals placed in juvenile community facilities.

An emergency rule filing (CR-103E) for section 2 of SSB 5815 was filed on July 26, 2019, as WSR 19-16-023, which ensured that the existing rule, WAC 110-730-0070, was in compliance with RCW 72.05.405, as amended by SSB 5815, by removing the "possession, use, or distribution of drugs or alcohol, or use of inhalants" from the definition of "serious violations" in subsection (1)(i) (requiring mandatory return to an institution under subsection (3)(a)), and inserting that language in subsection (2) in the definition of "other violations," which may, but does not require, transfer of a juvenile to a higher security facility (under subsection (3)(d)).

As required by section 2 of SSB 5815, DCYF has developed "empirically validated best practices," which are included in this proposed rule making. The development of empirically validated best practices included: (1) Developing a literature review to identify the best practices for responding to youth who use substances while in a community facility; and (2) developing community facility standards based on those best practices. This was not included in the emergency rule filing because of the additional time needed to complete the literature review and development of standards based on those best practices.

A copy of the literature review identifying best practices is available at https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/filings. Technical corrections are made to update program title and WAC references following the transfer of JR from the department of social and health services to DCYF and the decodification of chapter 388-170 WAC and its recodification to Title 110 WAC.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Section 2 of SSB 5815, codified as chapter 468, Laws of 2019 (effective July 28, 2019); chapters 43.216, 34.05 RCW.

Statute Being Implemented: Section 2 of SSB 5815, codified as chapter 468, Laws of 2019 (effective July 28, 2019).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This proposed rule making, which implements section 2 of SSB 5815, will be heard concurrently with the proposed rule making to implement section 1 of SSB 5815, which allows JR to increase the number of hours per day that individuals in community facilities may be in the community from twelve to up to sixteen hours per day.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen, 1115 Washington Street S.E., P.O. Box 45720, Olympia, WA 98504, 360-902-7504; Implementation: Daniel Schaub, 1115 Washington Street S.E., P.O. Box 45720, Olympia, WA 98504, 360-902-7752; and Enforcement: Kathleen Harvey, 1115 Washington Street S.E., P.O. Box 45720, Olympia, WA 98504, 360-902-8086.

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 listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

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

October 3, 2019
Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-730-0070 Residential disciplinary standards. (1) Serious violations by a juvenile include:

(a) Escape or attempted escape;

(b) Violence toward others with intent to harm and/or resulting in significant bodily injury;

(c) Involvement in or conviction of a criminal offense under investigation by law enforcement or awaiting adjudication for behavior that occurred during current placement;

(d) Extortion or blackmail that threatens the safety or security of the facility or community;

(e) Setting or causing an unauthorized fire with intent to harm self, others, or property, or with reckless disregard for the safety of others;

(f) Possession or manufacture of weapons or explosives, or tools intended to assist in escape;

(g) Interfering with staff or service providers in performing duties relating to the security ((~~and/or~~)), safety, or both, of the facility or community;

(h) Intentional property damage in excess of one thousand five hundred dollars;

(i) ((~~Possession, use, or distribution of drugs or alcohol, or use of inhalants;~~

~~(j)~~)) Rioting or inciting others to riot;

(((~~k~~))) (j) Refusal of urinalysis or search; or

(((~~l~~))) (k) Other behaviors which threaten the safety or security of the facility, its staff, or residents or the community.

(2) Other violations by a juvenile placed in a community facility or residential treatment and care program include:

(a) Unaccounted for time when a juvenile is away from the community facility or residential treatment and care program;

(b) Violation of conditions of authorized leave;

(c) Intimidation or coercion against any person;

(d) Misuse of medication such as hoarding medication or taking another person's medication;

(e) Self-mutilation, self tattooing, body piercing, or assisting others to do the same;

(f) Intentional destruction of property valued at less than fifteen hundred dollars;

(g) Fighting;

(h) Unauthorized withdrawal of funds with intent to commit other violations;

(i) Suspensions or expulsions from school or work;

(j) Violations of school, employment or volunteer work agreements related to custody and security concerns;

(k) Escape talk;

(l) Sexual contact or any other behavior, not defined as a serious violation, resulting in a referral to ((~~the department of licensing,~~)) child protective services((~~,~~)) or law enforcement; ((~~or~~))

(m) Lewd or disruptive behavior in the community; or

(n) Possession, use, or distribution of drugs or alcohol, or use of inhalants.

(3) Juveniles must be held accountable when there is reasonable cause to believe they have committed a violation.

(a) Whenever a juvenile placed in a community facility or residential treatment and care program commits a serious violation, the juvenile must be returned to an institution. The JRA program administrator who receives a service provider report of a serious violation must make arrangements to transfer the juvenile to an institution as soon as possible. Juveniles may be placed in a secure JRA or contracted facility pending transportation to an institution.

(b) Sanctions for serious violations committed by juveniles in an institution, and additional sanctions for serious violations committed by juveniles returned to an institution, must include one or more of the following:

(i) Loss of privileges for up to thirty days;

(ii) Loss of program level; or

(iii) Room confinement up to seventy-two hours.

(c) Sanctions for serious violations may also include, but are not limited to, one or more of the following:

(i) Change in release date;

(ii) Referral for prosecution;

(iii) Transfer to an intensive management unit;

(iv) Increase in security classification;

(v) Reprimand and loss of points;

(vi) Restitution; or

(vii) Community service.

(d) Sanctions for violations listed in WAC 388-730-0070(2) may include transfer to a higher security facility and must include one or more of the following:

(i) Loss or privileges;

(ii) Loss of program level;

(iii) Room confinement up to seventy-two hours;

(iv) Change in release date;

(v) Reprimand ((~~and/or~~));

(vi) Loss of points;

(((~~vi~~))) (vii) Additional restitution; or

(((~~vii~~))) (viii) Community service.

(e) Sanctions for possession, use, or distribution of drugs or alcohol, or use of inhalants may include any listed in (d) of this subsection and the following:

(i) Review substance use screening tool;

(ii) Review current substance use assessment or refer for a new assessment; and

(iii) Consultation for appropriate level of intervention, treatment, and community safety.

(4) When a sanction is imposed, the juvenile must also receive a counseling intervention to address the violation.

(5) If the proposed sanctions for any violation includes extending the juvenile's established release date, the juvenile must be entitled to:

(a) A notice of an administrative review to consider extension of the release date and a written statement of the incident;

(b) An opportunity to be heard before a neutral review chairperson;

(c) Present oral or written statements, and call witnesses unless testimony of a witness would be irrelevant, repetitive, unnecessary, or would disrupt the orderly administration of the facility;

(d) Imposition of the sanction only if the administrative review chairperson finds by a preponderance of the evidence that the serious violation did occur; and

(e) A written decision, stating the reasons for the decision, by the administrative review chairperson.

(6) Each superintendent, regional administrator and service provider must clearly post, or make readily available, the list of serious violations and possible sanctions in all living units.

(7) Each program administrator must adopt procedures for implementing the requirements of this section.

WSR 19-21-013
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed October 4, 2019, 7:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-080.

Title of Rule and Other Identifying Information: Fire sprinkler systems contractors.

Hearing Location(s): On November 26, 2019, at 9:30 - 10:30 a.m., at the Washington State Patrol, Helen Somers Building, 106 11th Street S.E., Room G015A, Olympia, WA 98507.

Date of Intended Adoption: November 27, 2019.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA

98507, email wsprules@wsp.wa.gov, by November 25, 2019.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, by November 25, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add the American Society of Sanitary Engineering 15010 Field Technician Certification as an alternative prerequisite certification for inspection and testing technician.

Reasons Supporting Proposal: Will keep this rule current with industry practices.

Statutory Authority for Adoption: RCW 18.270.900 and 18.160.030.

Statute Being Implemented: RCW 18.270.900 and 18.160.030.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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

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

October 4, 2019
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 17-10-031, filed 4/26/17, effective 5/27/17)

WAC 212-80-093 Certificate holder certification. (1) **How do I become a certificate holder?** The issuance of a certificate is dependent on employment with a licensed contractor. All applications for a certificate must be submitted with the fire protection sprinkler system contractor's license application. A certificate application will not be processed without the fire protection sprinkler system contractor's license application. All applications must be made on the forms provided by the director and include the required fees provided by WAC 212-80-098 and documentation for the required level of certification as provided by this section.

(a) **For Level 1 design certification,** the applicant must:

(i) Have satisfactorily passed with a final score of eighty percent or better an examination administered by the director, or present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved Level 2 certification in the field of water-based fire protection system layout; or

(ii) Be a Washington licensed professional engineer.

(b) **For Level 2 design certification,** the applicant must:

(i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 2 in the field of water-based fire protection systems layout; or

(ii) Be a Washington licensed professional engineer.

(c) **For Level 3 design certification,** the applicant must either:

(i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 3 in the field of water-based fire protection systems layout; or

(ii) Be a Washington licensed professional engineer.

(d) **For Level U certification,** the applicant must have satisfactorily passed with a final score of eighty percent or better an examination administered by the director.

(e) **For inspection and testing technician certification,** the applicant must:

(i) Possess a National Institute for Certification and Engineering Technologies Inspection, Testing and Maintenance Level 2 or Level 3 certification or American Society of Sanitary Engineers 15010 Field Technician Certification; and

(ii) Perform work consistent with the employing contractor's licensing level.

(f) **For journey-level sprinkler fitter certification,** the applicant must:

(i) Provide evidence on the forms provided by the director of at least eight thousand hours of trade related fire protection sprinkler system experience in installation and repair;

(ii) Not have more than three thousand hours of the required eight thousand hours of experience in residential sprinkler fitting; and

(iii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.

(g) **For residential sprinkler fitter certification,** the applicant must:

(i) Provide evidence on the forms provided by the director, of at least four thousand hours of trade related fire protection sprinkler system experience in installation, repair, and maintenance; and

(ii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.

(h) **For journey- or residential-level sprinkler fitter training certification,** except as provided by (g)(i) of this subsection, the applicant must:

(i) Provide evidence to the director, on the forms provided by the director, of trade related employment by a licensed contractor;

(ii) Remain employed by a licensed contractor to maintain trainee status; and

(iii) Only engage in the fire protection sprinkler system trade when under the supervision of a certified journey level or residential installer.

(i) **For a professional engineer** to act as a Level 1, 2, or 3 certificate of competency holder and be issued a stamp, the professional engineer must:

(i) Be licensed by the department of licensing;

(ii) Obtain a Level 1, Level 2, or Level 3 certificate;

(iii) Properly register with the department of licensing;

(iv) Complete the application process for certification provided by WAC 212-80-093;

(v) Pay fees provided by WAC 212-80-073;

(vi) Supply the director with proof that he or she holds a current, valid state of Washington registration as a professional engineer; and

(vii) Otherwise the professional engineer is exempt from certification when acting solely in a professional capacity as an engineer.

(2) Proof of competency to the satisfaction of the director is mandatory.

Certificate of Competency Holder Requirements				
Certificate of Competency Level	**Application Required**	**Certification or Exam Required**	**Stamp Issued**	**Type of work performed by Certificate Holder**
Level 1	Yes	NICET Level 2 or pass an exam (See WAC 212-80-093 (1)(a))	Yes	Designs NFPA 13D fire sprinkler systems or inspection, testing, maintenance (NFPA 25) for NFPA 13D
Level 2	Yes	NICET Level 2 (See WAC 212-80-093 (1)(b))	Yes	Designs NFPA 13D, 13R or certain NFPA 24 (Restricted to only certain NFPA 13R systems, see WAC 212-80-018 (1)(b)) fire sprinkler systems or inspection, testing, maintenance (NFPA 25) for NFPA 13D or 13R
Level 3	Yes	NICET Level 3 or 4 (See WAC 212-80-093 (1)(((~~(b)~~))) (c))	Yes	Designs NFPA 13, 13D, 13R or 24 fire sprinkler systems or inspection, testing, maintenance (NFPA 25) for NFPA 13, 13D or 13R
Level "U"	Yes	Pass an exam (See WAC 212-80-093 (1)(((~~(c)~~))) (d))	Yes	Supervises or performs the underground installation of fire sprinkler system piping
Inspection, Testing Technician (ITT) Employed by an Inspection & Testing Contractor	Yes	NICET Level 2 or ASSE 15010 (See WAC 212-80-093 (1)(((~~(d)~~))) (e))	No	Performs inspection or testing on NFPA 13R or 13, wet and dry pipe fire protection systems only
Inspection, Testing Technician (ITT) Employed by a Level 2 Contractor	Yes	NICET Level 2 or ASSE 15010 (See WAC 212-80-093 (1)(((~~(d)~~))) (e))	No	Performs inspection, testing and maintenance on NFPA 13R or 13, wet and dry pipe fire protection systems only
Inspection, Testing Technician (ITT) Employed by a Level 3 Contractor	Yes	NICET Level 2 or ASSE 15010 (See WAC 212-80-093 (1)(((~~(d)~~))) (e))	No	Same as ITT above and includes the testing of other fire protection systems such as preaction, deluge, foam, or fire pump
Journey Sprinkler Fitter	Yes	Pass an exam (See WAC 212-80-093 (1)(((~~(c)~~))) (f))	No	Installs and repairs NFPA 13D, 13R, or 13 fire sprinkler systems

Certificate of Competency Holder Requirements				
Certificate of Competency Level	**Application Required**	**Certification or Exam Required**	**Stamp Issued**	**Type of work performed by Certificate Holder**
Residential Sprinkler Fitter	Yes	Pass an exam (See WAC 212-80-093 (1)(((~~f~~))) (g))	No	Installs, repairs, and performs maintenance on fire sprinkler systems in residential occupancies
Professional Engineer (P.E.) Licensed in Washington State	Only if acting as a Level 1, 2 or 3 certificate of competency holder	Licensed with department of licensing	By DOL unless acting as a Level 1, 2, or 3 certificate of competency holder	Designs, evaluates or consults on fire protection fire sprinkler systems

(3) All information submitted by an applicant to the director to apply for a certificate must be true and accurate. If the director finds that information or documents submitted by an applicant is false, misleading, or has been altered in an effort to meet the requirements provided by this chapter, the finding will constitute a level 3 violation.

(4) A violation of this section that involves a contractor allowing an employee to engage in performing fire protection sprinkler system work:

(a) Without a license or certificate, or with a license or certificate that has been expired for one or more years is a level 3 violation.

(b) With a license or certificate that has been expired for more than ninety days and less than one year is a level 2 violation.

(c) With a license or certificate that has been expired less than ninety days is a level 1 violation.

(d) By engaging in the trade of fire sprinkler fitting without having a valid sprinkler fitter certificate of competency issued for the work being conducted is a level 3 violation.

(e) By a trainee sprinkler fitter engaging in the trade of fire sprinkler fitting without the direct supervision of a certified residential or journey sprinkler fitter is a level 3 violation.

(f) As a trainee without a trainee certificate but with the direct supervision of a certified residential or journey sprinkler fitter is a level 1 violation.

WSR 19-21-015
PROPOSED RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed October 4, 2019, 10:16 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: **Child protective services:** WAC 110-30-0010 What is the child protective services program?, 110-30-0020 What definitions apply to these rules?, 110-30-0080 What special requirements must CPS follow for Indian children?, 110-30-0100 When will CPS involve local community resources?, 110-30-0160 What limitations does the department have on the disclosure of case information?, 110-30-0170 What is the purpose of these rules?, 110-30-0210 What happens to unfounded CPS findings?, 110-30-0250 What happens after the alleged perpetrator requests CPS to review the founded CPS finding of child abuse or neglect?, 110-30-0280 What happens if CPS management staff does not change the founded CPS finding?, 110-30-0290 What laws and rules will control the administrative hearings held regarding the founded CPS findings?, 110-30-0360 What if the appellant or the department disagrees with the decision?, 110-30-0390 Services to individuals released from mental hospitals or in danger of requiring commitment to such institutions, and 110-30-0380 Family planning.

Adoption support: WAC 110-80-0030 What definitions apply to the adoption support program?, 110-80-0040 What are the eligibility criteria for the adoption support program?, 110-80-0100 What requirements apply to an application for ongoing adoption support?, 110-80-0210 What benefits are available to adoptive parents through the adoption support program?, 110-80-0250 If the adoptive parent requests residential placement services for their adopted child, what department requirements apply?, 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues?, and 110-80-0420 Will the department reimburse an adoptive parent for nonrecurring adoption expenses?

Indian child welfare service: WAC 110-110-0010 Foster care planning for Indian children—Definitions, 110-110-0030 Foster care for Indian children—Services, 110-110-0050 Adoptive planning for Indian children by department staff, 110-110-0060 Local Indian child welfare advisory committee—Purpose, 110-110-0070 Local Indian child welfare advisory committee—Membership, 110-110-0080 Local Indian child welfare advisory committee—Functions, 110-110-0090 Local Indian child welfare advisory committee—Meetings, and 110-110-0100 Local Indian child welfare advisory committee—Confidentiality.

Standards for health and safety reviews of the Washington State School for the Deaf: WAC 110-150-0020 What are the definitions for this chapter?, 110-150-0070 What health and safety standards and written policies will the monitors be looking for when conducting their health and safety reviews of the school?, 110-150-0080 What specific areas must be included in the comprehensive health and

safety review?, and 110-150-0140 What are the physical environment safety requirements for the residential facilities?

Hearing Location(s): On December 3, 2019, at 1:30 p.m., at Conference Room 3, Office Building 2, Service Level, 1115 Washington Street S.E., Olympia, WA.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: Department of Children, Youth, and Families (DCYF) Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at https:dcyf.wa.gov/PolicyProposalComment/Detail.aspx, by December 5, 2019.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Make technical corrections necessary following the decodification of Title 170 WAC and certain chapters of Title 388 WAC and their recodification to Title 110 WAC and repeal WAC 110-30-0380 (family planning). Changes include updated embedded RCW and WAC citations, agency name, and position titles.

Reasons Supporting Proposal: Effective July 1, 2018, DCYF assumed the programs and functions of the former department of social and health services children's administration and the department of early learning. The proposed amendments make necessary technical corrections to the rules transferred to DCYF. WAC 110-30-0380 is being repealed because the family planning services previously administered by children's administration are now offered through the apple health program administered by the state's health care authority.

Statutory Authority for Adoption: Chapter 6, Laws of 2017.

Statute Being Implemented: RCW 34.34.267, 74.15.030; and chapters 13.38, 74.13, and 43.216 RCW.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Anderson, 1110 Jefferson Street S.E., Olympia, WA 98504, 360-725-4670; 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. The proposed rules are exempt from a cost-benefit analysis by RCW 34.05.328 (5)(b)(iv).

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.

October 4, 2019
Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0010 What is the child protective services program? (1) Child protective services (CPS) means those services provided by the department of ((~~social and health services~~)) children, youth, and families designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports (RCW 26.44.020 (12) and ((~~(16)~~)) (17)).

(2) CPS may include the following:

(a) Investigation of reports of alleged child abuse or neglect.

(b) Assessment of risk of abuse or neglect to children.

(c) Provision of and/or referral to services to remedy conditions that endanger the health, safety, and welfare of children.

(d) Referral to law enforcement when there are allegations that a crime against a child (RCW 26.44.030(4) and 74.13.031(3)) might have been committed.

(e) ((~~Out-of-home~~)) Out-of-home placement and petitions to courts when necessary to ensure the safety of children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0020 What definitions apply to these rules? The following definitions apply to this chapter.

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child as defined in RCW 26.44.020 and this chapter.

"Administrative hearing" means a hearing held before an administrative law judge and conducted according to chapter 34.05 RCW and chapter ((~~388-02~~)) 110-03 WAC.

"Administrative law judge (ALJ)" is an impartial decision-maker who presides at an administrative hearing. The office of administrative hearings, which is a state agency but not part of ((~~DSHS~~)) DCYF, employs the ALJs.

"Alleged perpetrator" means the person identified in a CPS referral as being responsible for the alleged child abuse or neglect.

"Alternative response system" means a contracted provider in a local community that responds to accepted CPS referrals that are rated low or moderately low risk at the time of intake.

"Appellant" means a person who requests an administrative hearing to appeal a CPS finding.

"Child protection team (CPT)" means a multidisciplinary group of persons with at least four persons from professions that provide services to abused or neglected children and/or parents of such children. The CPT provides confidential case staffing and consultation to ((~~children's administration~~)) child welfare cases.

"Child protective services (CPS)" means the section of the ((~~children's administration responsible~~)) department of children, youth, and families for responding to allegations of child abuse or neglect.

((~~**"Children's administration (CA)"** means the cluster of programs within DSHS that is responsible for the provi-~~

~~sion of child protective, child welfare, foster care licensing, group care licensing, and other services to children and their families.~~))

"Child welfare programs (CWP)" means the division in DCYF that provides child protective, child welfare, and support services to children and their families.

"Department" or **((~~"DSHS"~~)) "DCYF"** means the Washington state department of ((~~social and health services~~)) children, youth, and families.

((~~**"Department of early learning (DEL)"** means the Washington state agency responsible for licensing child care homes and child care facilities.~~

~~**"Division of children and family services (DCFS)"** means the division of children's administration that provides child protective, child welfare, and support services to children and their families.~~

~~**"Division of licensed resources (DLR)"** means the division of children's administration responsible for licensing group care and foster care facilities, and responding to allegations of abuse or neglect in such facilities.~~))

"Finding" means the final decision made by a CPS ((~~social worker~~)) caseworker after an investigation regarding alleged child abuse or neglect.

"Founded" means the determination following an investigation by CPS that based on available information it is more likely than not that child abuse or neglect did occur.

"Inconclusive" means the determination following an investigation by CPS, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur. Beginning October 1, 2008, the department ((~~will~~)) no longer makes inconclusive findings, but ((~~shall~~)) retains such findings made prior to that date as provided in these rules.

"Licensing division (LD)" means the division in DCYF responsible for licensing group care and foster care facilities, and responding to allegations of abuse or neglect in such facilities.

"Mandated reporter" means a person required to report alleged child abuse or neglect as defined in RCW 26.44.030.

"Preponderance of evidence" means the evidence presented in a hearing indicates more likely than not child abuse or neglect did occur.

"Screened-out report" means a report of alleged child abuse or neglect that the department had determined does not rise to the level of credible report of abuse or neglect and is not referred for investigation.

"Unfounded" means the determination following an investigation by CPS that based on available information it is more likely than not that child abuse or neglect did not occur or there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0080 What special requirements must CPS follow for Indian children? (1) These special requirements apply to children defined as Indians in WAC ((~~388-70-091~~)) 110-110-0010.

(2) The ((~~DCFS social worker shall~~)) caseworker must document in case records efforts to keep Indian families together and to avoid separating the Indian child from ((~~his~~)) the child's parents, relatives, tribe or cultural heritage as per RCW 26.44.010 and WAC ((~~388-70-093~~)) 110-110-0010.

(3) In alleged child abuse and neglect situations, the ((~~DCFS social worker shall~~)) caseworker must document in case records, efforts to utilize staff and services particularly capable of meeting the special needs of Indian children and their families, in consultation with the child's tribe ((~~and/or~~)) or local Indian child welfare advisory committee per WAC ((~~388-70-600 through 388-70-640~~)) 110-110-0060 through 110-110-0100.

(4) The ((~~DCFS social worker shall~~)) caseworker will promptly advise the tribal council and the local Indian child welfare advisory committee that a child affiliated with the tribe is the victim of substantiated child abuse or neglect. The provisions of RCW 26.44.070, WAC ((~~377-70-640~~)) 110-110-0100, limiting who has access to confidential information, ((~~shall~~)) must be followed in all cases.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0100 When will CPS involve local community resources? (1) CPS may use local community resources to respond to reports of abuse or neglect when the department's assessment of risk determines that a community response is in the best interest of the child and family.

(2) CPS may involve local community resources in the planning and provision of services to help remedy conditions that contribute to the abuse or neglect of children.

(3) CPS must have community based child protective teams (CPT) available for staffing and consultation regarding cases of child abuse or neglect. CPS must present cases for staffing with the CPT in accordance with executive order 95-04 and department procedures.

(4) There are special requirements for staffing Indian children cases with the local Indian child welfare advisory committee (WAC ((~~388-70-600~~)) 110-110-0060).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0160 What limitations does the department have on the disclosure of case information? Information obtained by CPS is confidential pursuant to federal and state law. The department may only disclose case record information as permitted by applicable statutes and the provisions of chapter ((~~388-01~~)) 110-01 WAC.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0170 What is the purpose of these rules? The purpose of these rules is to describe:

(1) The procedures for notifying the alleged perpetrator of any findings made by a CPS ((~~social worker~~)) caseworker in an investigation of suspected child abuse or neglect; and

(2) The process for challenging a founded CPS finding of child abuse or neglect (RCW 26.44.100 and 26.44.125).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0210 What happens to unfounded CPS findings? (1) Beginning October 1, 2008, the department will no longer make inconclusive findings, but ((~~shall~~)) will retain and destroy such findings made prior to that date as provided in these rules.

(2) An unfounded, screened-out, or inconclusive allegation of child abuse or neglect may not be disclosed to a child placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

(3) At the end of three years from the receipt of a screened-out report that alleged child abuse or neglect, the department must destroy its records relating to that report.

(4) At the end of six years from the date of the completion of an investigation of a report of child abuse or neglect, the department must destroy records relating to unfounded or inconclusive reports, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before records are destroyed.

(5) The department ((~~shall~~)) must retain records relating to founded reports of child abuse and neglect as required by ((~~DSHS~~)) DCYF records retention policies. If dependency is established under chapter 13.34 RCW as to a child who is subject of a report of child abuse or neglect, all records relating to the child or the child's parent, guardian, or legal custodian, including any screened-out, unfounded or inconclusive reports not destroyed prior to the establishment of dependency or received after dependency was established, ((~~shall~~)) will be retained as required by ((~~DSHS~~)) DCYF records retention policies regarding dependency records.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0250 What happens after the alleged perpetrator requests CPS to review the founded CPS finding of child abuse or neglect? (1) CPS management level staff or their designees who were not involved in the decision making process will review the founded CPS finding of child abuse or neglect. The management staff will consider the following information:

(a) CPS records;

(b) CPS summary reports; and

(c) Any written information the alleged perpetrator may have submitted regarding the founded CPS finding of abuse ((~~and/or~~)) or neglect.

(2) Management staff may also meet with the CPS ((~~social worker and/or~~)) caseworker or CPS supervisor to discuss the ((~~investigation/finding~~)) investigation finding. After review of all this information, management staff decides if the founded CPS finding is correct or if it should be changed.

(3) Management staff must complete their review of the founded CPS finding within thirty calendar days from the date CPS received the written request for review.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0280 What happens if CPS management ((~~staff~~)) does not change the founded CPS finding? (1) If CPS management ((~~staff~~)) does not change the founded CPS finding, the alleged perpetrator has the right to further challenge that finding by requesting an administrative hearing.

(2) The request for a hearing must be in writing and sent to the office of administrative hearings. WAC ((~~388-02-0025~~)) 110-03-0070 lists the current address.

(3) The office of administrative hearings must receive the written request for a hearing within thirty days from the date that the person requesting the hearing receives the CPS management review decision.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0290 What laws and rules will control the administrative hearings held regarding the founded CPS findings? Chapter 34.05 RCW, RCW 26.44.100 and 26.44.125, chapter ((~~388-02~~)) 110-03 WAC, and the provisions of this chapter govern any administrative hearing regarding a founded CPS finding. In the event of a conflict between the provisions of this chapter and chapter ((~~388-02~~)) 110-03 WAC, the provisions of this chapter must prevail.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0360 What if the appellant or the department disagrees with the decision? If the appellant or the department disagrees with the ALJ's decision, either party may challenge this decision according to the procedures contained in chapter 34.05 RCW and chapter ((~~388-02~~)) 110-03 WAC.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0390 Services to individuals released from mental hospitals or in danger of requiring commitment to such institutions. (1) These services are those services necessary to enable eligible individuals age 65 or over to remain in the community in lieu of care in a mental hospital, or upon release from a mental hospital, to return to and live in the community. Services may also be provided to recipients of AFDC who are being released from mental institutions.

(2) Necessary adult services ((~~shall~~)) will be provided to beneficiaries of SSI, recipients of Title XIX, and other individuals whose income does not exceed the standard in WAC 388-15-020 who:

(a) Are released from a mental hospital((~~,~~)); or

(b) Need alternate care to continue to live in the community.

(3) Services provided to accomplish the objective to assist the recipient to maintain or be restored to the greatest possible degree of independent functioning and self help

((~~shall be~~)) are any appropriate adult services described in WAC ((~~388-15-100 through 388-15-400~~)) 110-30-0270 through 110-30-0390.

(4) Services ((~~to be~~)) provided to accomplish this objective for recipients of AFDC age ((~~21~~)) twenty-one or under being released from mental institutions ((~~shall be~~)) are any appropriate family or children's service described in WAC ((~~388-15-100 through 388-15-400~~)) 110-30-0370 through 110-30-0390.

(5) See also chapter ((~~388-95~~)) 182-513 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-30-0380 Family planning.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0030 What definitions apply to the adoption support program? The following definitions apply to this chapter:

"Adoption" means the granting of an adoption decree consistent with chapter 26.33 RCW.

"Adoption support agreement" means a written contract between the adoptive ((~~parent(s)~~)) parents and the department that identifies the specific benefits available to the adoptive ((~~parent(s)~~)) parents and other terms and conditions of the agreement.

"Adoption support cash payment" means negotiated monthly cash payments paid pursuant to an adoption support agreement between the adoptive ((~~parent(s)~~)) parents and the department.

"Applicant" means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

"Child placing agency" means a private nonprofit agency licensed by the department under chapter 74.15 RCW to place children for adoption or foster care.

"Department" means the department of ((~~social and health services~~)) children, youth, and families.

"Extenuating circumstances" means a finding by an administrative law judge or a review judge that one or more qualifying conditions or events occurred that erroneously prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

"Medical services" means services covered by ((~~medicaidand~~)) medicaid and administered by the health care authority.

"Negotiation" means the process of working toward an agreement between the department and the adoptive parent on the terms of the adoption support agreement.

"Nonrecurring costs" means reasonable, necessary, and direct expenses related to the cost of finalizing the adoption of a special needs child.

"Placing agency" means the public or private nonprofit agency that has the legal authority to place the child for adoption.

"Program" means the department's adoption support program.

"Reconsideration" means the limited state-funded support that may be available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

"Resident state" (for purposes of the child's medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0040 What are the eligibility criteria for the adoption support program? For a child to be eligible for participation in the adoption support program, the child must:

(1) Be less than eighteen years old when the department and the adoptive parents sign the adoption support agreement and at the time the adoption is finalized;

(2) Be legally free for adoption or eligible for a customary adoption;

(3) Be placed with a family with an approved preplacement report or home study (see RCW 26.33.190);

(4) Be a child with "special needs" as defined in WAC ((~~388-27-0140~~)) 110-80-0050; and

(5) Meet at least one of the following criteria:

(a) Is residing in a foster home or child caring institution or was determined by the department to be eligible for and likely to be so placed (For a child to be considered "eligible for and likely to be placed in foster care" the department must have opened a case and determined that removal from the home was in the child's best interest); or

(b) Is eligible for federally funded adoption assistance as defined in Title IV-E of the Social Security Act, the C.F.R., and the U.S. DHHS guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0100 What requirements apply to an application for ongoing adoption support? (1) The application must include a copy of the child's medical and family background report signed by the adoptive parent(s) ((~~(DSHS 13-041)~~)) (DCYF 13-041). It must also include copies of department records or medical or therapist reports that document the child's physical, mental, developmental, cognitive, or emotional disability, or risk of any such disability.

(2) The applicant must include a copy of a preplacement report or home study completed by the department, an agency, or an individual approved by the court (see RCW 26.33.190(1)).

(3) If the applicant is requesting a monthly cash payment, the applicant and the department must mutually agree to the amount of the payment according to the requirements of WAC ((~~388-27-0220~~)) 110-80-0220.

(4) If the applicant is requesting reimbursement of nonrecurring costs, the applicant must include this request in the application. (See WAC ((~~388-27-0380 and 388-27-0385~~))

110-80-0430 and 110-80-0440 for the type and amount of expenses the department may reimburse.)

(5) The applicant must furnish a copy of the applicant's most recently filed federal income tax return. If the applicant is not required to file a federal income tax return, the applicant must submit a financial statement with the applicant's adoption support application.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0210 What benefits are available to adoptive parents through the adoption support program? The adoption support program provides:

(1) Reimbursement for nonrecurring adoption finalization costs;

(2) Monthly cash payments, as negotiated by the parties;

(3) Payment for counseling services as preauthorized which are not available from the state's medicaid mental health services (see WAC ((~~388-27-0255~~)) 110-80-0240 for conditions and terms); and

(4) Medical assistance through the department's medicaid program.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0250 If the adoptive parent requests residential placement services for their adopted child, what department requirements apply? (1) The adoption support program is not able to pay for residential treatment placements of children who are not in department custody. See RCW 74.13.080 and WAC ((~~388-25-0025~~)) 110-60-0050.

(2) If the adoptive parent is in need of residential treatment services for a child, the department will make the following referrals:

(a) For treatment of a mental illness, the department will refer the family to the local mental health treatment provider;

(b) If the child has been diagnosed with a physical, mental, developmental, cognitive, or emotional disability, the department will refer the family to the developmental disabilities administration (DDA) to determine whether the child is eligible for services; or

(c) For reasons other than treatment of mental illness or developmental disabilities, the department will refer the adoptive parent to child welfare services at the local ((~~children's administration~~)) department of children, youth, and families (DCYF) office.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues? (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

(a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;

(b) Failure to respond with reasonable promptness to a written application or request for services;

(c) Denial of a written request to modify the level of payment or service in the agreement;

(d) Delay of more than thirty days when responding to a written request for modification of the agreement;

(e) Denial of a request for nonrecurring adoption expenses;

(f) Suspension of adoption support benefits; or

(g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within ninety days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request.

(3) The office of administrative hearings must apply the rules in ((~~WAC 388-27-0120 through 388-27-0390~~)) this chapter as they pertain to the issues being contested.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0420 Will the department reimburse an adoptive parent for nonrecurring adoption expenses? The department has authority to agree to reimburse some or all of an adoptive parent's nonrecurring adoption expenses if:

(1) The child has a qualifying factor or condition identified in WAC ((~~388-27-0140(1)~~)) 110-80-0050(1);

(2) Washington state has determined that the child cannot or should not be returned to the home of the child's biological parent;

(3) Except where it would be against the best interest of the child, the department or a public or private nonprofit child placing agency has made a reasonable but unsuccessful effort to place the child with appropriate adoptive parents without the benefit of adoption assistance; and

(4) The child has been placed for adoption according to applicable state or tribal laws.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0010 Foster care planning for Indian children—Definitions. For the purposes of ((~~WACs 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640~~)) this section through WAC 110-110-0100, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age eighteen and is one of the following:

(1) A member of an Indian tribe; or

(2) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0030 Foster care for Indian children—Services. Documented efforts must be made to avoid separating the Indian child from his or her parents, relatives, tribe, or cultural heritage. Consequently:

(1) When a family identifies Indian ancestry under the federal and state Indian child welfare acts, the ((~~children's administration (CA)~~)) DCYF caseworker has fifteen calendar days, or ten business days, from the date of identification to complete a family ancestry chart and begin the membership inquiry process. A copy of the family ancestry chart will be retained in the child's most current case file volume.

(2) ((~~CA~~)) The department staff will contact all identified federally recognized tribes in the case of Indian children being placed in foster care by the department or for whom the department has supervisory responsibility.

(3) If requested by a federally recognized tribe, or if a federally recognized tribe is unavailable the local Indian child welfare advisory committees (LICWAC) as defined under WAC ((~~388-70-600~~)) 110-110-0060 will serve as resource persons for the purposes of cooperative planning and aid in placement.

(4) The resources of the tribal government, the Indian community, and the department must be used to locate the child's parents and relatives to assist in locating possible placement resources, and to assist in the development of a plan to overcome the problem that brought the child to the attention of the authorities, or the department, or both the authorities and the department.

(5) In planning foster care placements for Indian children, ((~~CA~~)) the department will follow the federal and state Indian child welfare acts with regard to placement preference. The case record must document the reasons and circumstances of casework decisions and consideration in those regards.

(6) ((~~CA~~)) The department, in partnership with federally recognized tribes and ((~~CA~~)) its contracted agencies, will develop training for staff and caregivers designed to meet the needs of Indian children and their families. ((~~CA~~)) The department may also partner with urban Indian organizations, ((~~CA~~)) LICWAC((~~s~~)), national, state and local Indian child welfare organizations, and Native American/Alaskan Native consultants.

(7) The ((~~CA~~)) department must make diligent and ongoing efforts to recruit facilities and/or homes particularly capable of meeting the needs of Indian children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0050 Adoptive planning for Indian children by department staff. (1) In planning adoptive or ((~~pre-adoptive~~)) preadoptive placements for Indian children under WAC ((~~388-70-091, CA~~)) 110-110-0010, the department will follow the federal and state Indian child welfare acts with regard to placement preference.

(2) An adoptive family must be considered Indian if one or both parents is:

(a) A member of a federally recognized tribe; or

(b) An Alaska Native and a member of a Regional Corporation as defined in Title 43 U.S.C. Sec. 1606.

(3) In adoptive planning for Indian children, the unique cultural, religious, and sovereignty of federally recognized tribes and communities must be recognized. The adoption of Indian children by Indian families is the primary goal.

(4) As a part of the total evaluation for approving a foster parent adoption of an Indian child, ((~~CA~~)) department staff will document the foster family's past performance and future commitment in exposing the child to their Indian heritage.

(5) When an Indian child, in the custody of an out-of-state agency, is referred for potential adoptive parents residing in Washington, ((~~CA~~)) the department will follow the interstate compact and placement of Indian children policy of Washington state.

(6) When an Indian child, in the care and custody of ((~~CA~~)) the department, is referred for adoption out of Washington, ((~~CA~~)) the department will follow the interstate compact and placement of Indian children policy of Washington state.

(7) In the event of an international adoption ((~~CA~~)), the department will follow policy and ensure that placement preferences are followed per the federal and state Indian child welfare acts.

(8) ((~~CA~~)) The department staff may consult with ((~~a local Indian child welfare advisory committee~~)) LICWAC in planning for adoptive placement of Indian children when a federally recognized tribe has chosen not to be involved.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0060 Local Indian child welfare advisory committee (LICWAC)—Purpose. The intent of WAC ((~~388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640~~)) 110-110-0010 and 110-110-0020 are to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom ((~~the department of social and health services~~)) DCYF has a responsibility must be referred to ((~~a local Indian child welfare advisory committee~~)) LICWAC on an ongoing basis when a federally recognized tribe has not responded, is unavailable, or requests LICWAC involvement according to procedures which recognize the privacy rights of the families.

The purposes of ((~~local Indian child welfare advisory committees~~)) LICWACs are:

(1) To promote social service planning for Indian children((~~.~~));

(2) To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the ((~~department of social and health services.~~)) DCYF;

(3) To assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0070 Local Indian child welfare advisory committee (LICWAC)—Membership. Local Indian child welfare advisory committees must be established within each region. The number and locations of the local committees must be mutually determined by the Indian tribal govern-

ments and urban Indian organizations served by that region and the ((~~DSHS~~)) DCYF regional administrator.

(1) The committee must consist of representatives designated by tribal government and urban Indian organizations. The regional administrator must appoint committee members from among those individuals designated by Indian authorities. These members should be familiar with and knowledgeable about the needs of children in general as well as the particular needs of Indian children residing in the service area.

(2) The committee may also include bureau of Indian affairs staff, Indian health service staff, and other community members.

(3) The ((~~CA~~)) DCYF regional administrator must appoint a member of his or her child welfare staff as a liaison member of the committee.

(4) The ((~~local Indian child welfare advisory committee~~)) LICWAC is an ad hoc advisory committee not specifically authorized by statute. As such its members are not entitled to per diem and travel expenses for the performance of advisory committee functions.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0080 Local Indian child welfare advisory committee (LICWAC)—Functions. The functions of ((~~the local Indian child welfare advisory committee~~)) LICWAC are to:

(1) Assist ((~~DSHS~~)) DCYF staff in cooperative planning for Indian children((~~.~~));

(2) Consult ((~~DSHS~~)) DCYF staff on behalf of Indian children, regarding the provision of the child's safety, well-being, and permanency on behalf of Indian children((~~.~~));

(3) Assist ((~~DSHS~~)) DCYF staff in providing culturally relevant services to Indian children; and

(4) Make requests to the ((~~CA~~)) DCYF regional administrator to initiate reviews of casework decisions that the committee believes to be detrimental to the best interests of Indian children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0090 Local Indian child welfare advisory committee (LICWAC)—Meetings. Each committee and the ((~~CA local Indian child welfare advisory committee~~)) LICWAC staff liaison will mutually agree as to time, place and frequency and conduct of official committee meetings.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0100 Local Indian child welfare advisory committee (LICWAC)—Confidentiality. The members of ((~~the local Indian child welfare advisory committee~~)) LICWAC must agree to abide by RCW 74.04.060 and the rules of confidentiality binding ((~~the DSHS~~)) DCYF staff.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0020 What are the definitions for this chapter? The following definitions apply to this chapter:

"CA/N" means child abuse or neglect as defined in chapter 26.44 WAC.

"Department" or **"DCYF"** means the department of ((~~social and health services (DSHS)~~)) children, youth, and families.

"((~~DLR~~)) LD" means the licensing division ((~~of licensed resources~~)), a division of ((~~children's administration, department of social and health services~~)) DCYF.

"Residential staff" means individuals in charge of supervising the day-to-day living situation of the children in the residential portion of the school.

"School" means the Washington state school for the deaf.

"Superintendent" means the superintendent of the Washington state school for the deaf.

"WSD" means the Washington state school for the deaf.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0070 What health and safety standards and written policies will the monitors be looking for when conducting their health and safety reviews of the school?

Reporting requirements

The health and safety standards that apply to WSD are as follows:

(1) All residential program personnel and volunteer staff at the school must comply with the mandatory reporting requirements of child abuse or neglect, RCW 26.44.020.

(2) The school must comply with all applicable fire marshal and department of health requirements.

Written policies and procedures

(3) The department will be reviewing the written policies and procedures of the school that:

(a) Promote a program aimed at providing personal safety and protection of all students residing at the school;

(b) Provide sufficient staffing levels on all shifts to meet the physical, emotional, and safety needs of all students, as required under RCW 72.40.240;

(c) Implement and maintain effective admission and retention policies that protect all students from sexual victimization, as required under RCW 72.40.270;

(d) Implement and maintain an effective communication system between educational staff and residential staff and parents and/or legal guardians;

(e) Ensure that the residential facility meets all applicable fire and health requirements and promote environmental safety against physical risk or harm to students;

(f) Minimize student-to-student conflict or harm when transporting students;

(g) Conduct and document background and CA/N checks on all staff to determine each employee's suitability for employment at the school (see chapter ((~~388-06~~)) 110-04 WAC);

(h) Provide all students with training on self-protection from abuse or neglect, as required under RCW 72.40.230 and 72.40.260;

(i) Implement and maintain effective child protection policies that include proper reporting of incidents, notification, documentation, and cooperation with the department and law enforcement;

(j) Describe what procedures staff must follow when they have reason to believe a student may have been abused or neglected, as defined under RCW 26.44.020; and

(k) Maintain adequate documentation of all abuse or neglect incidents.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0080 What specific areas must be included in the comprehensive health and safety review? (1) In conducting a comprehensive health and safety review of the school, the department must review the ((~~children's administration's~~)) DCYF's case and ((~~management information system (CAMIS)~~)) electronic records for any ((~~child abuse or neglect~~)) CA/N referrals and the disposition of the investigations.

(2) The reviewers must:

(a) Examine the residential facilities for health and safety (a specific list of elements for review are outlined in WAC ((~~388-180-0230~~)) 110-150-0140);

(b) Develop appropriate questionnaires or survey tools for interviews;

(c) Conduct interviews of staff, students, parent, teacher, and community stakeholders for concerns of student health and safety at the school((~~.~~));

(d) Review facility logs, including incident reports and daily shift logs;

(e) Review medication policies, including documentation of medicine disbursement when and by whom;

(f) Review admissions and expulsion policies for compliance with RCW 72.40.040;

(g) Review staff coverage policies for compliance with RCW 72.40.240 and 72.40.270;

(h) Review behavior management policy for compliance with RCW 72.40.220, including a description of the de-escalation techniques used with different ages or developmental levels of students;

(i) Review employee/volunteer supervision policies for compliance with RCW 72.40.250;

(j) Review policies for protecting students from abuse or neglect policies for compliance with RCW 72.40.250;

(k) Review any corrective action plans including implementing the written plan of action to assure health and safety and prevention of abuse or neglect incidents as directed in RCW 72.40.250;

(l) Review the documentation of awareness and prevention training of staff for compliance with RCW 72.40.230 and 72.40.260; and

(m) Sample criminal history and CA/N checks of school employees for compliance with the school's criminal history inquiry and FBI fingerprinting process.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0140 What are the physical environment safety requirements for the residential facilities? The school must ensure that the residential facilities comply with the applicable state fire marshal and department of health regulations, including the following:

(1) The grounds, office, living areas, kitchen, bedrooms, bathrooms, shops, recreational areas, and laundry areas are clean and free of hazardous conditions.

(2) Furnishings are clean, comfortable, durable, and safe.

(3) Cleaning products and toxic chemicals are securely stored.

(4) Medications are securely stored.

(5) First-aid supplies are readily available.

(6) Emergency lighting ((~~devises~~)) devices are available.

(7) Kitchen and bathrooms are ventilated.

(8) The facilities regularly conduct and document fire drills.

(9) Smoke detectors are regularly inspected and the results of the inspections are documented.

(10) Procedures for evacuation and other emergencies are posted, reviewed, and tested at regular intervals.

WSR 19-21-024
PROPOSED RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed October 7, 2019, 9:20 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: Juvenile rehabilitation (JR), WAC 110-730-0050 Institutional minimum and 110-730-0060 Minimum security.

Hearing Location(s): On December 3, 2019, at 1:30 p.m., at Conference Room 3, Office Building 2, Service Level, 1115 Washington Street S.E., Olympia, WA.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: The department of children, youth, and families (DCYF) Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, by December 5, 2019.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: JR under DCYF operates eight community facilities to provide group and educational programming for minimum security juvenile offenders who have transferred after serving time in a JR institution. Prior to July 28, 2019, these facilities allowed juveniles to have approved leave for up to twelve hours per day to attend

school or participate in approved work, educational, community restitution, or treatment programs.

Section 1 of SSB 5815 (concerning individuals placed in minimum security status by DCYF) amended RCW 13.40.-205(10) to allow JR to increase the number of hours per day that these individuals may be in the community from twelve to up to sixteen hours a day if operated within existing appropriations. WAC 110-730-0050 (3)(b)(iii) Institutional minimum and 110-730-0060(3) Minimum security, both currently include references to up to twelve hours per day, which will need to be changed to sixteen hours. As the statutory language requires that this increase is to be operated within existing appropriations, given current budget constraints, it is not anticipated that the increase will produce a substantial change in the number of hours that individuals in community facilities will be approved for leave, but will allow for greater flexibility in individual cases. Technical corrections are made to update program title and WAC references following the transfer of JR from the department of social and health services to DCYF and the decodification of chapter 388-170 WAC and its recodification to Title 110 WAC.

Reasons Supporting Proposal: As noted above, this proposal is intended to implement **Section 1** of SSB 5815 to allow JR to increase the number of hours per day that individuals in community facilities may be in the community from twelve to up to sixteen hours per day.

Statutory Authority for Adoption: **Section 1** of SSB 5815, codified as chapter 468, Laws of 2019 (effective July 28, 2019); chapters 43.216, 34.05 RCW.

Statute Being Implemented: **Section 1** of SSB 5815, codified as chapter 468, Laws of 2019 (effective July 28, 2019).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This proposed rule making, which implements **Section 1** of SSB 5815, will be heard concurrently with the proposed rule making to implement **Section 2** of SSB 5815. An emergency rule filing (CR-103E) for section 2 was filed on July 26, 2019, as WSR 19-16-023, and a preproposal (CR-101) for section 2 was filed on the same date as WSR 19-16-024.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen, 1115 Washington Street S.E., P.O. Box 45720, Olympia, WA 98504, 360-902-7504; Implementation: Daniel Schaub, 1115 Washington Street S.E., P.O. Box 45720, Olympia, WA 98504, 360-902-7752; and Enforcement: Kathleen Harvey, 1115 Washington Street S.E., P.O. Box 45720, Olympia, WA 98504, 360-902-8086.

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 listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

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

October 7, 2019
Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-730-0050 Institutional minimum. (1) An institutional minimum classification must be assigned to a juvenile if:

(a) Indicated by the initial security classification assessment;

(b) Indicated by the community placement eligibility requirements unless a recent incident indicates the juvenile no longer meets these requirements; or

(c) The assistant secretary for ((~~JRA~~)) JR or designee approves an override of the medium security classification.

(2) Even if eligible under subsection (1) of this section, a juvenile must not receive an institutional minimum security classification if:

(a) The assistant secretary for ((~~JRA~~)) JR, or designee, signs an administrative override disapproving institutional minimum classification and assigning the juvenile a higher security classification; or

(b) The juvenile is a sex offender who meets the requirements for civil commitment referral under chapter 71.09 RCW or is classified as a risk level III under RCW 13.40.217.

(3) A juvenile classified as institutional minimum security:

(a) Must reside in an institution with the capability of at least:

(i) Lockable exterior doors or fire exit doors fitted with alarms; and

(ii) A security fence or windows without egress.

(b) May be permitted:

(i) Unescorted movement on facility grounds;

(ii) Participation in work crews or other programs outside the facility with a close staff escort;

(iii) Unescorted participation in community work, educational and community service programs, and family treatment or other activities to strengthen family ties, for up to ((~~twelve~~)) sixteen hours per day; and

(iv) Authorized leave pursuant to RCW 13.40.205.

(4) A juvenile on institutional minimum security must be transferred to minimum security upon the availability of an appropriate community placement if:

(a) Ten percent of the juvenile's sentence, and in no case less than thirty days, has been served in a secure facility; and

(b) All placement assessment requirements have been met.

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-730-0060 Minimum security. (1) The provisions of WAC ((~~388-730-0050~~)) 110-730-0050 also apply to a juvenile classified as minimum security, except the juvenile must reside in a community facility, residential treatment and care program, or a community commitment program facility (CCP) rather than in an institution.

(2) Juveniles must not be placed in a community facility or residential treatment and care program until:

(a) Ten percent of the juvenile's sentence, and in no case less than thirty days, has been served in a secure facility; and

(b) All placement assessment requirements have been met.

(3) In addition to the provisions of WAC ((~~388-730-0050~~)) 110-730-0050 (3)(b)(iii), minimum security juveniles may be permitted unescorted participation in treatment programs in the community that do not involve the family for up to ((~~twelve~~)) sixteen hours per day.

WSR 19-21-033
PROPOSED RULES
COLUMBIA BASIN COLLEGE

[Filed October 8, 2019, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-09-027.

Title of Rule and Other Identifying Information: Amending WAC 132S-05-015 Organization—Operation—Information; chapter 132S-20 WAC, Practice and procedure; chapter 132S-100 WAC, Student conduct code; WAC 132S-200-110 Animal control on campus; 132S-300-140 Pedestrian right of way; 132S-300-305 Authorization for issuance of parking permits; chapter 132S-400 WAC, Facility use for first amendment activities; and chapter 132S-500 WAC, Facility use for other than first amendment activities.

Hearing Location(s): On December 16, 2019, at 5:00 p.m., at 2600 North 20th Avenue, Board Room, Pasco, WA 99301. Please contact Rolando Garcia at 509-544-4904 as soon as possible to request any accommodations related to a disability. We need advance time to make arrangements.

Date of Intended Adoption: December 17, 2019.

Submit Written Comments to: Camilla Glatt, 2600 North 20th Avenue, MS-A2, email cglatt@columbiabasin.edu, fax 509-544-2029, 509-542-5548, by December 13, 2019.

Assistance for Persons with Disabilities: Contact Rolando Garcia, phone 509-544-4904, fax 509-544-2032, TTY Washington relay service 711 or 800-833-6384, email rgarcia@columbiabasin.edu, by December 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Columbia Basin College (CBC) has proposed amendments to its rules for brief and full adjudicative procedures, updates to the administrative review processes and appeals and related adjudicative roles. There are additional updates to animal control on campus, trespass, pedestrian's right of way, and college policy changes concerning facility use for expressive activities, student conduct and appeal process to safeguard the due process rights for all students, and improving the college's ability to respond to student conduct matters. All of the proposed amendments to the rules are part of a comprehensive effort to update the proposed WAC.

Reasons Supporting Proposal: CBC is proposing amending several WAC to keep the college compliant and up-to-date for students and staff with state and federal laws (facility use, animals on campus, brief and full adjudicative process, improve the college's ability to respond to student conduct matters, along with student conduct and appeal process, as well as providing clarity to certain sections).

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: CBC, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Camilla Glatt, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-5548.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 and does not apply to college rules.

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

Is exempt under RCW 19.85.02(3) and 34.05.310 (4)(g)(i).

Explanation of exemptions: Revisions impact college-specific internal policies.

October 7, 2019
Camilla Glatt
Vice President
for Human Resources
and Legal Affairs

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-05-015 Organization—Operation—Information. (1) Organization. Columbia Basin College is established in Title 28B RCW as a public institution of higher education.

The president is the chief executive officer and as such, establishes the structure of the administration.

(2) Operation. The Columbia Basin College administrative office at the Pasco campus is located at the following address:

Columbia Basin College
2600 North 20th Avenue
Pasco, WA 99301

and is open from 7:00 a.m. to 4:30 p.m., Monday through Thursday, and 7:00 a.m. to 12:00 p.m., Friday, except on legal holidays. College campuses are also located at the following addresses:

CBC Richland Health Science Center
891 Northgate Drive
Richland, WA 99352

CBC Chase Center
1600 North 20th Avenue
Pasco, WA 99301

Sunhawk Hall Residence
2901 North 20th Avenue
Pasco, WA 99301

(3) Additional and detailed information concerning the educational offerings may be obtained from college web site at www.columbiabasin.edu and at various locations including college libraries, admissions and the counseling office.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-001 Purpose. The purpose of this chapter is to provide process for brief and full adjudicative procedure hearings.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-025 Adoption of model rules of procedure. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at the Columbia Basin College. These rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules adopted in this title, the procedural rules adopted by the college shall govern.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-035 Brief adjudicative procedures. This rule adopts the provision of RCW 34.05.482 through 34.05.494. Brief adjudicative procedures may((~~, at the election of college,~~)) be used in all appeals related to:

(1) Residency determination. Appeals of residency determination under RCW 28B.15.013 are brief adjudicative proceedings conducted by the vice president for student services;

(2) Outstanding debts of college employees or students;

(3) Loss of eligibility to participate in athletic events;

(4) Contents of educational records;

(5) ((~~Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the vice president for student services.~~)) Federal financial aid appeals as provided by federal law;

(6) Disciplinary actions as provided in chapter 132S-100 WAC, Student code of conduct.

NEW SECTION

WAC 132S-20-043 Full adjudicative proceedings. This rule adopts the provisions of RCW 34.05.413 through 34.05.476 full adjudicative procedures are used in any proceeding in which such procedures are required pursuant to college policies, rules, or regulations.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-045 Appointment of presiding officers. The president or ((~~his/her~~)) their designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington Bar Association, a panel of individuals, the president or his/her designee, or any combination listed in this section. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, witness exclusion, means of recording adjudicative proceedings, and similar matters.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-055 Application for adjudicative proceeding. An application for adjudicative proceeding shall be in writing and should be submitted ((~~to the following address~~)) within ((~~twenty~~)) twenty-one calendar days of the college action giving rise to the application, unless provided for otherwise by statute or rule((~~: President's Office,~~)) at Columbia Basin College, 2600 N. 20th Avenue, Pasco, ((~~WA~~)) Washington 99301.

An application shall include the signature of the applicant, the nature of the matter for which an adjudicative proceeding is sought, the applicable statutes regarding rules, and an explanation of the facts involved. The procedures in applicable collective bargaining agreements between the college and representative union in effect and governing the matter will supersede these proceedings.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-065 Discovery ((~~and prehearing conferences~~)). Discovery, including investigation in adjudicative proceeding, may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall make reference to the civil rules of procedure. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

Prehearing conferences. Where an adjudicative procedure includes a hearing, prehearing conferences or other conferences may be held at the discretion of the presiding officer, or pursuant to a motion by either of the parties for a prehearing conference for the settlement or simplification of issues ((~~at the discretion of the presiding officer, or pursuant to a motion by either of the parties for a prehearing conference~~)). The prehearing conference may be conducted by telephone, television, or other electronic means, ((~~in~~)) at the discretion of the presiding officer and where the rights of the parties will not be prejudiced. Each participant in the conference shall have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-20-085 Recording devices. No camera or recording devices shall be allowed in those parts of proceedings which the presiding officer has determined shall be closed, except for the method of official recording ((~~selected~~)) by the college.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-030 Definitions. Advisor - A person of the complainant's or respondent's choosing who can accompany the complainant or respondent to any conduct related meeting or proceeding. This person cannot be a college employee or witness involved in the case.

Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

Board of trustees - The board of trustees of Community College District No. 19, state of Washington.

Bullying - Physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of the student code of conduct has occurred towards themselves, another person, ((~~and/or~~)) a group of people, or college property.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Consent - Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon activity, including sexual activity. A person cannot consent ((~~for~~)) to sexual activity if they are not of legal age, unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

Cyberstalking, cyberbullying, and online harassment - The prohibited behavior of stalking, bullying, and/or harassment through the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

Dating violence - Violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

Disciplinary action - The sanctioning of any student pursuant to WAC ((~~132S-100-430~~)) 132S-100-440 for the violation of any designated rule or regulation of the college((~~, including rules of student conduct, for which a student is subject to adverse action~~)).

Discrimination - Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class.

Domestic violence - Asserted violent misdemeanor and felony offenses or conduct committed by a current or former spouse, current or former cohabitant, a person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Force - Use of physical violence and/or threats, intimidation or coercion to overcome resistance or gain access or produce consent. Sexual activity that is forced is by definition nonconsensual. However, nonconsensual sexual activity is not by definition forced.

Harassment - Language or conduct by any means that is unwelcome, severe, persistent, or pervasive, and is of such a nature that it ((~~would, or does cause~~)) could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably causing a reasonable person substantial emotional distress ((~~and~~)) or undermines their ability to work, study, or participate in their regular life activities or participate in the activities of the college.

Hazing - Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group-affiliation activity.

Hostile environment - Any situation in which there is harassing conduct that could be based on protected class status and is sufficiently severe or pervasive, and is so objectively offensive that it has the effect of substantially limiting the person's ability to participate in or benefit from the college's educational and/or social programs.

Hostile environment sexual harassment - Occurs when sex- or gender-based conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of substantially limiting the ability of the person to participate in or benefit from the college's educational and/or social programs.

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final

examination week. Saturdays and Sundays, and any full-day campus closures due to holidays or other circumstances are not regularly scheduled instructional days.

Nonconsensual sexual contact - Any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

Nonconsensual sexual intercourse - Any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at CBC that ((~~fall~~)) are within the jurisdiction of student code of conduct, which means that the amount of evidence ((~~needs to~~)) must be at fifty-one percent or "more likely than not" before a student is found responsible for a violation.

President - The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any ((~~and all~~)) of their responsibilities as may be reasonably necessary.

Protected class - Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, or genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

Quid pro quo sexual harassment - Occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Respondent - The student who is alleged to have violated CBC policy including this code of conduct or against whom disciplinary action is being taken or initiated.

Rules of the student conduct code - The rules contained herein as now exist or which may be hereafter amended((~~, the violation of which subject a student to disciplinary action~~)).

Service or notification - The process by which a document is officially delivered to a party. Service or notification is deemed complete and computation of time for deadlines begins upon ((~~hand~~)) personal delivery of the document or upon the date the document is electronically mailed and/or deposited into the mail. Documents required to be filed with the college such as requests for appeals, are deemed filed upon actual receipt by the office as designated herein during office hours.

Sexual exploitation - Occurs when one person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: Invasion of sexual privacy, engaging in voyeurism, nonconsensual video or audio taping of sexual activity; sexually based stalking and/or bullying.

Stalking - Intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

Student - Any person ((~~taking~~)) from the time of application, admitted to CBC, or registered for courses either ((~~full-time or part-time~~)) full time or part time, or participating in any other educational offerings at CBC, excluding students enrolled in the High School Academy. ((~~If a student withdraws after allegedly violating the student code of conduct, but prior to the college reaching a disciplinary decision in the matter, the college can move forward with the disciplinary process, place the process on hold until the student returns, or choose to place the investigation results in the student's file for consideration should they reapply for admittance to reenroll in the college.~~))

Student appeals board - Also referred to as the "SAB" or "appeals board." The SAB ((~~presides over the appeal process for the SCO and SCB conduct decisions that a student has timely appealed as set forth herein~~)) is a three member panel which uses the brief adjudicative process to review appeals of disciplinary actions that do not include sanctions of expulsion, suspension for more than ten days, withholding or revocation of a degree, or loss of recognition of a student organization.

Student conduct board - Also referred to as the "SCB" is a ((~~hearing panel for some disciplinary matters as set forth herein~~)) three member panel which presides over cases that could result in a sanction of expulsion, suspension for more than ten days, revocation of a degree, and/or loss of recognition of a student organization using the full adjudicative process pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student conduct officer - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to delegate any and all of ((~~his/her~~)) their responsibilities as may be reasonably necessary.

Student conduct meeting - The conduct meeting with the student conduct officer using the brief adjudicative process to determine responsibility for violations of the student code of conduct, which do not include sanctions of expulsion, suspension for more than ten days, revocation of a degree, and/or loss of recognition of a student organization pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student organization - Any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-100 Student code authority. ((~~The SCO will develop policies for the administration of the student code of conduct as well as procedural rules for the conduct of SCB hearings that are consistent with the provisions of the student code of conduct as specified herein.~~

~~The CBC board of trustees, acting pursuant to RCW 28B.50.140(14), do by written order, delegate to the president of the college, the authority to approve or reject a disciplinary action for which there is a recommendation that a student be expelled or suspended.~~)) The CBC board of trustees, acting pursuant to RCW 28B.50.140, do by written order, delegate to the president of the college, the authority to adopt such rules and perform all other acts relating to student discipline, including suspension or expulsion of students who are in violation of those rules.

NEW SECTION

WAC 132S-100-107 Jurisdiction of the student code of conduct. The CBC student code of conduct will apply to conduct by students and student organizations that occurs on college premises, within the residence halls, at college-sponsored events and activities, foreign or domestic travel associated with any of these events or activities, and to off-campus conduct which is in violation or alleged violation of local, state, or federal law, or this student code of conduct. Allegations or violations which occur off campus can be subject to college disciplinary action if the conduct has an effect on the CBC campus. The student code of conduct applies to conduct from the time of application for admission until the award of a degree and/or certificate, even if the conduct may have occurred before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student is suspended or withdraws from the college while a disciplinary matter is pending. If a student withdraws after allegedly violating the student code of conduct, but prior to the college reaching a disciplinary decision in the matter, the college can move forward with the disciplinary process, place the process on hold until the student returns, or choose to place the investigation results in the student's file for consideration should they reapply for admittance, reenroll or register for any educational offerings at the college.

NEW SECTION

WAC 132S-100-112 Good standing. The award of a degree or certificate is conditioned upon the student's good standing in the college and satisfaction of all program requirements. "Good standing" means the student has resolved any unpaid fees, or acts of academic or behavioral misconduct, and has complied with all sanctions imposed as a result of any misconduct. CBC shall deny award of a degree or certificate if the student is dismissed from the college based on their misconduct.

NEW SECTION

WAC 132S-100-117 Composition of the student conduct board. The college will have a SCB composed of three members who shall be vice presidents and deans or directors as designated by the college and trained to conduct the full adjudicative process. The SCB will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened. Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. One member, acting as the chairperson, will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process. Any three members constitute a quorum of a conduct board and may act accordingly. The college may retain an advisor to the SCB, including an assistant attorney general.

NEW SECTION

WAC 132S-100-123 Composition of the student appeals board. The college will have a SAB composed of three members, appointed by the vice president for student services (VPSS) or designee, who will serve as a standing committee until a decision is made regarding the appeal of the student conduct matter for which it was convened. Any SAB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. The three members of the SAB shall include only faculty and administrative exempt nonstudent college employees trained to conduct the brief adjudicative process. The chairperson will provide administrative oversight throughout the appeal process. The college may retain an advisor to the SAB including an assistant attorney general.

NEW SECTION

WAC 132S-100-127 Convening boards. The VPSS will convene the members of the SCB or the SAB to adjudicate student code of conduct decisions. All board members will receive annual training in investigating and adjudicating student conduct matters in a manner that protects the safety and due process rights of the parties.

NEW SECTION

WAC 132S-100-130 Decisions. All student conduct decisions are made using the preponderance of evidence standard of proof. These decisions become final after twenty-one days from the date of notification to the student unless a written appeal is filed prior to that final date. Decisions to document a complaint without sanction are not eligible for appeal. All decision notifications by the SCO, SCB, SAB, or president will include a statement of the decision, a summary of relevant facts upon which the decision was based, and the procedures for appealing that decision if applicable. The notification will be personally delivered, sent electronically to the student's CBC email address, or by mail to the student's most recent address on file with the college within twenty instruc-

tional days of the student conduct proceeding. Students are responsible for promptly notifying the college of changes to their mailing address. Decisions of findings or sanctions by the SCO which do not include sanctions of expulsion, suspension for more than ten days, withholding or revocation of a degree, or loss of recognition of a student organization may be appealed to the SAB. Decisions of findings of all violations of the student code of conduct which are likely to include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization can be made by the SCO. Decisions of findings or sanctions from the SCB may be appealed to the college president. Decisions made by the SAB and college president are final.

NEW SECTION

WAC 132S-100-202 Conduct—Rules and regulations. The attendance of a student at CBC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

(1) Conduct themselves in a responsible manner;

(2) Comply with rules and regulations of the college and its departments;

(3) Respect the rights, privileges, and property of other members of the academic community;

(4) Maintain a high standard of integrity and honesty; and

(5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

Any student or student organization that, either as a principal or participator or by aiding or abetting, commits or attempts to commit to violate any of the proscribed conduct, rules and regulations, or college policy will be subject to disciplinary action.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-208 Abuse of the student conduct ((~~system~~)) process. Abuse of the student conduct ((~~system~~)) process which includes, but is not limited to:

(1) Failure to ((~~obey~~)) comply with any notice from a college official to appear for a meeting or hearing as part of the student conduct ((~~system~~)) process.

(2) Willful falsification, distortion, or misrepresentation of information during the conduct process.

(3) Disruption or interference with the orderly conduct of a college conduct proceeding.

(4) Filing fraudulent charges or initiating a college conduct proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct ((~~system~~)) process.

(6) Attempting to influence the impartiality of a member of the college conduct ((~~system~~)) process prior to, during, and/or after any college conduct proceeding.

(7) Harassment (written, verbal, or physical), retaliation, and/or intimidation of any person or persons involved in the conduct process prior to, during, or after any college conduct proceeding.

(8) Failure to comply with the sanction(s) imposed under the student code of conduct.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-215 Disorderly conduct. Includes, but is not limited to, the following:

(1) Obstruction of teaching, administration, or other college activities, including its public service function on- or off-campus, or of other authorized noncollege activities when the conduct occurs on college premises or at college-sponsored functions.

(2) Material and substantial interference with the personal rights or privileges of others or of the educational process of the college.

(3) Lewd or indecent conduct, breach of peace, or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored, or participated in, by the college or members of the academic community.

(4) Unauthorized use of electronic or other devices to make an audio, photographic, digital or video recording of any person ((~~while on college premises without their prior knowledge, or without their effective consent, when such a recording is likely to cause injury or distress. This includes, but is not limited to, covertly taking pictures of another person in a gym, locker room, or restroom~~)) without their consent in a location where that person has a reasonable expectation of privacy. This includes, but is not limited to, covertly taking pictures of another person in a gym, locker room, or restroom. Storing, sharing, publishing, or otherwise distributing such recordings or images is also prohibited.

NEW SECTION

WAC 132S-100-227 Drugs, controlled substances, and marijuana. (1) Legend drugs, narcotic drugs, controlled substances: Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, manufacturing, or seeking any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional or as otherwise expressly permitted by federal, state, or local law, is prohibited. Use, possession and distribution of drug paraphernalia for the drugs and substances identified in this section is prohibited.

(2) Marijuana: While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-230 Falsehoods and misrepresentations. Includes((~~, but is not limited to,~~)) the following:

(1) The intentional making of false statements and/or knowingly furnishing false information to any college official, faculty member, or office.

(2) Forgery, alteration, or misuse of any college document, record, fund, or instrument of identification with the intent to defraud.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-235 Hazing. Any method of initiation into a student club or organization, or any pastime or amusement engaged in with respect to ((~~such~~)) a group or organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college as described in Washington statute, RCW 28B.10.900.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-245 ((~~Liquor.~~)) Alcohol. (1) Consuming, possessing, furnishing, or selling of alcoholic beverages and/or being under the influence of any alcoholic beverage is prohibited on college premises or at college-sponsored or supervised events except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or their designee to permit the service of alcoholic beverages.

(2) Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-250 Misuse of equipment and technology. Misuse of the college's computer, telecommunications, or electronic technology, facilities, network, software, or equipment which includes, but is not limited to:

(1) Unauthorized entry into a file to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Use of another individual's credentials or password or allowing someone else to use your own credentials and password.

(4) ((~~Copyright violations.~~

~~(5) Use of the college's computer, telecommunications, or electronic technology facilities and resources:~~

~~(a) That interferes~~)) Violation of law including copyright laws.

(5) Interference with the normal operations of the college or the work of another student, faculty member, or college official.

(((~~(b) To send~~)) (6) Sending obscene or abusive messages.

(((~~(c) For~~)) (7) Obtaining personal profit, advertisement, or illegal purposes.

(((~~(d)~~))) (8) Use for purposes other than those necessary to fulfill an assignment or task as part of the student's program of instruction.

(((~~(e) To engage~~)) (9) Engaging in any ((~~of the prohibited~~)) actions and behaviors ((~~listed within the acceptable use of information technology resources~~)) prohibited by college policy.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-255 Safety misconduct. Intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency on college premises or at any college-sponsored activity, or falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities, or driving a vehicle recklessly or over the speed limit on campus property.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-260 Sexual misconduct. Engaging in nonconsensual sexual intercourse or nonconsensual sexual contact, requests for sexual favors((~~,~~)) or other ((~~verbal or physical~~)) conduct of a sexual nature where such behavior offends a reasonable, orderly, prudent person under ((~~these~~)) the circumstances. This includes, but is not limited to:

(1) Sexual activity or contact for which clear and voluntary consent has not been given in advance.

(2) Sexual activity with someone who is incapable of giving valid consent ((~~because, for example, they are~~)) including, but not limited to, someone who is under duress, is underage, sleeping or otherwise incapacitated due to alcohol ((~~or~~)), drugs, or any other reason.

(3) Sexual harassment, which includes unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment ((~~does not have to be of a sexual nature, however, and can~~)) also includes offensive remarks about a person's gender, gender identity, and/or sexual orientation. Sexual harassment encompasses:

(a) Hostile environment sexual harassment; and

(b) Quid pro quo sexual harassment.

(4) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking.

(5) Nonphysical conduct such as sexual- or gender-based cyberstalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity, and other forms of sexual exploitation.

(6) Any and all conduct which violates college policy pertaining to sexual misconduct, sexual harassment or discrimination based on sex, gender identity or sexual orientation.

NEW SECTION

WAC 132S-100-273 Unauthorized keys, entry, or use. Unauthorized keys, entry or use includes, but is not limited to:

(1) Unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or passcodes) to any college premises;

(2) Unauthorized entry upon or use of college premises or property; or

(3) Providing keys to an unauthorized person or providing access to an unauthorized person.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-275 Weapons. Unauthorized possession of weapons (e.g., firearms, daggers, swords, knives ((~~or~~)), other cutting or stabbing instruments, or clubs) or substances (e.g., explosives) apparently capable of producing bodily harm and/or damage to real or personal property is prohibited on or in college-owned or operated facilities and premises and/or during college-sponsored events.

(1) Carrying of firearms on or in college-owned or operated facilities and/or during college-sponsored events is prohibited except and unless the ((~~firearm~~)) permit is registered with the campus security department for a specified period of time.

(2) The aforementioned regulations within this section shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers or campus security officers acting in the legitimate performance of their lawful duties.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-280 Academic dishonesty. Academic dishonesty minimizes the learning process and threatens the learning environment for all students. As members of the CBC learning community, students are not to engage in any form of academic dishonesty. Academic dishonesty includes, but is not limited to, cheating, plagiarism, and fabrication or falsification of ((~~the~~)) information, research, or other findings for the purpose of fulfilling any assignment or task as part of the student's program of instruction. Any student who commits or aids and abets the accomplishment of an act of academic dishonesty will be subject to disciplinary action.

NEW SECTION

WAC 132S-100-297 Creating a public nuisance in neighboring communities. In furtherance of the college's interest in maintaining positive relationships with the community, the college shall hold students accountable under this conduct code for misconduct within any residential or commercial communities in the area. Conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to, creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-300 Responsibility for guests. A student or student organization is responsible for the conduct of their invited guests, advisors and representatives on or in college owned or controlled property and at ((~~functions~~)) activities sponsored by the college or sponsored by any recognized college organization.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-310 Violation of law and college discipline. College disciplinary proceedings may be ((~~instituted against~~)) used to determine responsibility of a student ((~~charged with~~)) for conduct that potentially violates the criminal law and this student code (that is, if both ((~~possible~~)) alleged violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code of conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings ((~~off campus at the discretion of the SCO~~)). Determinations made or sanctions imposed under this student code of conduct will not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-400 Student conduct process. As an agency of the state of Washington, the college's SCO, SCB, SAB, or president may be advised or represented by an assistant attorney general in any student code of conduct proceeding.

(1) Initiation of disciplinary action. A request for disciplinary action ((~~of a student~~)) for violation(s) of the student code of conduct must be made ((~~in writing or in person~~)) to the SCO as soon as possible ((~~but no later than thirty instructional days after the occurrence or the date the requestor knew or should reasonably have known of the occurrence. The choice to pursue a request for disciplinary action that is submitted after thirty instructional days of the occurrence will be subject to the discretion of the SCO~~)) following the violation. Conduct proceedings may be initiated when the SCO receives any direct or indirect report of conduct that may violate this code, which includes, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party. The college may initiate disciplinary action under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings. Any member of the college's administration, faculty, staff, or any student or nonstudent may make ((~~such~~)) a request for disciplinary action and it must be

a good faith claim. ((~~The SCO may decline the request, implement the request, refer the case to the SCB, or engage in informal negotiations to resolve the situation based on the allegation(s) and the evidence that has been provided. If the SCO is subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the request for disciplinary action.~~)) Formal rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable persons would rely upon in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded. The SAB or college president will determine the admissibility of evidence and may seek clarification from witnesses as needed. If the complaint indicates that the matter involves sexual misconduct, the SCO will forward the complaint to the Title IX office for review in accordance with the college's nondiscrimination and harassment policy and grievance procedure. The SCO or designee will conduct an initial investigation of a complaint to determine whether it alleges conduct that may be prohibited by the student code of conduct. If it is determined through the initial investigation that the report has merit, the SCO will conduct an investigation to determine responsibility. Except in cases of sexual assault or sexual violence, the parties may elect to mediate the dispute, which shall be facilitated by the SCO. If the SCO's investigation indicates that the alleged violation is so severe that a finding of responsibility is likely to merit expulsion, suspension of more than ten days, revocation of a degree, or loss of recognition of a student organization, the SCO will forward the findings of the investigation to the SCB for review, decision and disciplinary action using the full adjudicative process. If the SCO has a conflict of interest or is the subject of a complaint by the student, the vice president for student services shall, upon request and at their discretion, designate another person to fulfill any such disciplinary responsibilities relative to the request for disciplinary action.

(2) Notification requirements. ((~~Once the SCO has decided to begin the investigation process for the request of disciplinary action,~~))

(a) If it is determined through the initial investigation that an alleged violation of the student code of conduct might have occurred and which is not eligible for referral to the Title IX officer or the SCB, the SCO will provide the following written notification:

(i) That a report has been submitted alleging conduct which violates the student code of conduct and that a conduct investigation has been initiated to determine responsibility;

(ii) The specific sections of the student code of conduct which are alleged to have been violated;

(iii) That the student may either accept responsibility for the alleged violations or request a conduct meeting with the SCO to present evidence to refute the report;

(iv) That the student may provide evidence such as names and contact information of witnesses to aid the conduct investigation;

(v) The possible sanction outcomes and that the actual sanctions will depend on the determination of responsibility pending the results of the investigation; and

(vi) That if the student fails to participate in any stage of the conduct proceedings or to request a conduct meeting within fifteen days from the date of the notice, the college may move forward with the conduct proceeding without their participation.

(b) If the student requests a conduct meeting within fifteen days of the notice, the student will be ((~~sent a~~)) provided a written notice to appear for a ((~~disciplinary meeting with the SCO. A written notice to appear will be hand delivered or sent by certified mail to the most recent address in the student's record on file with the college, no later than fifteen instructional days after the decision is made to proceed with an investigation. The notice will not be ineffective if presented later due to the student's absence. Such notice will:~~

~~(a) Inform the student that a report has been filed alleging the student violated the student code of conduct.~~

~~(b) Set forth those provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violation(s).~~

~~(c)~~)) conduct meeting. The notice to appear will be personally delivered, sent electronically to the student's CBC email address, or sent by mail to the most recent address in the student's record on file with the college, not later than fifteen instructional days after the request for a conduct meeting. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(i) Set forth the specific provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violations, and a description of evidence, if any, of the violation.

(ii) Notify the student of the SCO's investigation and possible sanctions, if any.

(iii) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.

(((~~d~~))) (iv) Inform the student that failure to ((~~appear at the appointed time and place~~)) attend the conduct meeting will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and ((~~the student receiving~~)) disciplinary ((~~sanctions, which could include suspension or expulsion from the college~~)) actions.

(((~~e~~))) (v) Inform the student that they may ((~~bring~~)) be accompanied at the meeting by an advisor ((~~or representative to the meeting with them~~)) at their expense. The advisor ((~~or representative~~)) cannot be a college employee or witness. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor.

(vi) Inform the student that they may present evidence to support their assertions during the meeting.

(3) Student conduct meeting - Brief adjudicative process.

(a) ((~~When meeting with the SCO,~~)) During the student conduct meeting, the student will be informed of the following:

(i) ((~~The provision(s) of the rules of the student code of conduct or college policy that they are charged with violating;~~)) The specific acts and the provision(s) of college policy that the student is alleged to have violated;

(ii) The disciplinary process;

(iii) The range of sanctions which might result from the disciplinary process and that the actual sanctions will depend on the findings of responsibility;

(iv) The student's right to appeal.

(b) The student will have the opportunity to review and respond to the allegation(s) ((~~by providing~~)) and evidence and provide the SCO with relevant information ((~~to the SCO about their involvement, if any, in the alleged violation(s), explaining~~)), evidence and/or witnesses to the alleged violation(s), and/or explain the circumstances surrounding the alleged violation(s)((~~, and/or defending themselves against the allegations. If the student chooses to have an advisor or representative present at the meeting, the SCO will allow the advisor or representative to make a brief statement~~)).

(c) The advisor ((~~or representative is allowed to~~)) may assist the student ((~~with the process. Any questions that are made by the advisor or representative will be addressed through the discretion of the SCO~~)) during the conduct meeting, however the student is responsible for presenting their own information and evidence. The advisor may only communicate with the student they are advising. Any disruptions or failure to follow the conduct process and/or directions ((~~made by~~)) of the SCO may result in the advisor ((~~or representative~~)) being ((~~removed~~)) excused from the meeting.

(4) Decision by the SCO.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and ((~~after~~)) considering the evidence ((~~in the case~~)), the SCO may take any of the following actions:

(i) Determine that the student is not responsible for a violation of the student code of conduct and thereby terminate the ((~~proceedings and thereby exonerate the respondent~~)) student conduct process;

(ii) Determine that the student is responsible for a violation of the student code of conduct and impose disciplinary sanctions as provided herein;

(iii) ((~~Refer the matter to the SCB for appropriate action.~~)) Determine that further inquiry is necessary and schedule another meeting for reasonable cause; or

(iv) Refer the case to the SCB for the full adjudicative hearing process if the alleged violation is discovered to be of a severe nature and may result in sanctions that include expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.

(b) Notification of the decision by the SCO will be ((~~hand delivered to the student or sent by mail to the most recent address in the student's record on file with the college,~~)) issued pursuant to WAC 132S-100-130 within thirty instructional days of the final student conduct meeting. Due to federal privacy law, the college may not disclose to the complainant any sanctions imposed on the responding student unless the complainant was the alleged victim of a violent crime as defined under the Federal Educational Rights and Privacy Act (FERPA)(20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the responding student consents to such disclosure. A copy of the decision notification will be filed with the office of the SCO.

(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal as provided herein.

NEW SECTION

WAC 132S-100-407 Appeal process. (1)(a) Disciplinary decisions may be appealed by filing a written request with the office of the VPSS within twenty-one days of the notice of the decision. Disciplinary decisions of the SCO may be appealed for review by the SAB using the brief adjudicative process. Disciplinary decisions of the SCB may be appealed for review by the college president using the brief adjudicative process. Disciplinary decisions by the SCO that include sexual misconduct may be applied for review by the SCB using the brief adjudicative process. Failure to file a written appeal within twenty-one days will result in the decision becoming final with no further right of appeal.

(b) The request for appeal must include a brief statement explaining the grounds for the appeal or why the party is seeking review. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals.

(2) Decisions may be appealed for one or more of the following:

(a) To determine whether there was a procedural error that substantially affected the outcome of the finding or sanctioning. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the sanction(s) imposed were appropriate and not excessively lenient or excessively severe for the violation of the student code of conduct for which the student was found responsible.

(c) To consider new information, sufficient to alter a decision, or other relevant facts not brought during fact finding, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation or fact-finding.

(3) Refusal to participate during the investigation or student conduct process does not constitute a right to appeal.

The VPSS or designee will forward appeals based on one or more of the required grounds for appeal to the SAB or president as provided herein.

A party, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial appeal review as provided in these procedures.

Interim measures will remain in effect pending an appeal unless they have been removed pursuant to WAC 132S-100-445.

(4) Appeals of disciplinary action(s) will be taken in the following order:

(a) Complainants are afforded the same right to appeal as respondents in student conduct matters in which the complainant was the alleged target of violence or sexual misconduct. If both parties appeal the decision, the appeals will be

reviewed in the order in which they are filed or reviewed together, if they state the same, similar, or related grounds or substance for appeal.

(b) The SAB or college president's decision to affirm, reverse or modify the decision and/or sanction will be issued pursuant to WAC 132S-100-130.

(c) The SAB's, and the college president's decisions are final.

NEW SECTION

WAC 132S-100-413 Full adjudicative process. The SCB will use the following full adjudicative process to determine responsibility for serious violations which include sanctions of suspension for more than ten days, expulsion, withholding or revocation of a degree, or loss of recognition of a student organization.

(1) The parties will be sent written notification of the SCB adjudication proceedings within ninety days from the date of the filing of the appeal. The notification will contain the following:

(a) The time, date, and location of the hearing, which shall not be less than seven days from the date of the notice of the hearing;

(b) The specific acts alleged and the provision(s) of college policy which those acts violated;

(c) The SCB procedures;

(d) The name and contact information for the SCB and their advisor, if any, representing the college. The notice will include the official title, work mailing address, and telephone number of each of these individuals;

(e) Unless otherwise ordered by the SCB chairperson, the name and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their advisors;

(f) A statement that if a party fails to attend or participate in a hearing or other stage of this adjudicative proceeding, they may be held in default in accordance with chapter 34.05 RCW and/or the college may continue the student conduct process, including the hearing, despite the party's absence.

(2) The respondent and complainant have the right to be assisted by one advisor of their choice and at their own expense. The advisor must be someone who is not employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing may not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their representative/advisor.

The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or advisor invited by the parties to the hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chairperson. The advisor may not disrupt or interfere with any aspect of the proceeding.

The SCB chairperson shall have the right to impose reasonable conditions upon the participation of the advisor.

(3) The SCB and the parties will be provided reasonable access to the documentation and evidence which will be reviewed by the SCB, as well as the case file that will be retained by the SCO in accordance with applicable privacy laws.

(4) Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings.

A party may make a written request to the SCB chairperson for the recusal of an SCB member no less than five instructional days prior to the hearing. The request must be for good cause, which must be shown by the party making the request. The SCB chairperson will consider the request and notify the student of their decision regarding the recusal prior to the hearing. If the SCB chairperson grants the recusal, a replacement for the recused SCB member will be made without unreasonable delay.

(5) The parties involved in the hearing will be required to submit their witness list and any evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. Each party is allowed a maximum of three character witnesses to appear on their behalf. The parties must submit a witness list which contains a written statement from each witness that includes a brief description of the relevant information the witness will provide during the hearing. Witnesses not listed will not participate in the hearing.

(6) Discovery in the form of depositions, interrogatories, and medical examinations of parties are not permitted in student conduct adjudications. Other forms of discovery which ensure the prompt and thorough completion of the adjudication process may be permitted at the discretion of the SCB chairperson.

(7) Hearings will be closed to the public except if consented to by all parties and at the discretion of the SCB chairperson. Witnesses may be allowed in the hearing room only during the time in which they provide their statements to the SCB. The complainant and respondent, depending on their preference and subject to orders of a court of law, such as protection orders, may be present for and observe the entire hearing.

At the discretion of the SCB chairperson, and where the rights of the parties will not be prejudiced, all or part of the hearing may be conducted by telephone, video conference, or other electronic means. Each party shall have the opportunity to hear and if technically and economically feasible, to see the entire hearing while it is taking place. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.

(8) The SCB chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent and complainant, who disrupts a hearing or who fails to follow the directions of the SCB chair-

person may be excluded from the proceedings and may be subject to disciplinary action.

(9) Questions posed by any party to be answered by each other or by witnesses must be appropriate and respectful. The SCB chairperson may require any participant of the hearing to provide all questions in writing to the SCB chairperson. The SCB chairperson, if appropriate and at their sole discretion, will read the question to the individual to whom it is directed. Any question which the SCB chairperson has chosen not to read will be documented on record and kept within the case file. The SCB chairperson will decide matters related to the order of the proceedings.

(10) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed, except for the deliberations of the SCB. The record will be the property of the college.

(11) After weighing and considering the evidence, the SCB will decide by majority vote whether the respondent is responsible or not responsible for a violation of the student code of conduct. If there is a finding of responsibility for a violation, the SCB shall impose sanctions as set forth herein.

(12) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.

(13) The notice of decision of the SCB will be issued pursuant to WAC 132S-100-130. A copy of the SCB's decision will also be filed with the office of the SCO.

(14) Disciplinary action taken by the SCB is final unless the student exercises the right of appeal to the college president as provided herein.

NEW SECTION

WAC 132S-100-417 Brief adjudicative process. (1) The brief adjudicative process is conducted in accordance with RCW 34.05.482 through 34.05.494.

(2) The SCO will use the brief adjudicative process to make decisions of findings of responsibility as provided in this code of conduct.

(3) The SCB will use the brief adjudicative process to review appeals of disciplinary decisions which include allegations of sexual misconduct but do not include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.

(4) The president will use the brief adjudicative process to review appeals of all disciplinary decisions made by the SCB.

(5) The SAB will use the brief adjudicative process to review timely appeals of disciplinary decisions which do not include sexual misconduct, sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.

(6) Within twenty days of filing the appeal, the SAB or president, as applicable, shall review the record of the preceding conduct decision and all relevant information provided by the parties, and based on a preponderance of the evidence, shall make a determination to affirm, reverse, or modify the findings and/or sanctions. The SCB, SAB and president shall have the discretion to seek clarification from witnesses as needed.

(7) Notification of the decision will be issued pursuant to WAC 132S-100-130.

NEW SECTION

WAC 132S-100-423 Academic dishonesty process. (1) The class instructor is responsible for handling each case of academic dishonesty in the classroom and for determining a penalty grade as outlined in the course syllabus.

(2) If, within the instructor's professional judgment, reasonable evidence would suggest that a student engaged in academic dishonesty, the instructor will provide notice to the student, either written or verbal, of their assertion of academic dishonesty and of the academic penalty grade within thirty instructional days of the occurrence or when the instructor is made aware of the occurrence.

(3) The instructor will submit a report to the SCO of the assertion of academic dishonesty, the explanation of the notice or actual notice given to the student and a copy of all relevant evidence. The instructor may request that the incident only be documented with the SCO, or refer the matter for disciplinary action. If the student has a previous academic dishonesty record, the SCO may choose to move forward with the disciplinary process without an instructor's request.

NEW SECTION

WAC 132S-100-427 Classroom conduct. Instructors have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course. An instructor may exclude a student from any single class/program session during which the student is currently being so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum. The instructor will report any such exclusion from the class/program session to the SCO. The SCO may initiate disciplinary action under the student code of conduct.

NEW SECTION

WAC 132S-100-433 Sexual misconduct procedures. (1) The college's Title IX coordinator or designee shall review and investigate reports of sexual misconduct in accordance with the college's nondiscrimination and harassment policy and grievance procedure.

(2) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonable risk to the health, safety, and welfare of the complainant or other members of the college community, or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(3) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in the disciplinary process, to simultaneously receive notifications, and to appeal the finding and/or sanction.

(4) Notification of the results of the investigation or disciplinary action, if any, will be personally delivered, sent

electronically to the student's CBC email address, or sent by mail to the most recent address in the student's record on file with the college.

(5) In the event of conflict between the sexual misconduct procedures and the student code of conduct, the sexual misconduct procedures shall govern.

(6) All college employees who coordinate, investigate, or adjudicate issues involving sexual misconduct shall receive annual training on domestic violence, dating violence, sexual assault, stalking and investigation and adjudication processes that protect the safety and due process rights of the parties.

NEW SECTION

WAC 132S-100-437 Sexual misconduct appeal procedures. (1) A party may appeal a sexual misconduct disciplinary decision for review according to the procedures as stated in this code of conduct by filing a written request for appeal with the office of the VPSS within twenty-one days of the notification of the disciplinary decision.

(2) The college shall notify the other party of the appeal and provide that party an opportunity to respond to the appeal.

(3) Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall become final.

NEW SECTION

WAC 132S-100-440 Sanctions. Students found responsible for violations of the student code of conduct may be subject to the following sanctions:

(1) Warning. A verbal statement or notice in writing to the respondent that they are violating or have violated college rules or regulations and that continued violations may be the cause for further disciplinary action.

(2) Reprimand. Notice in writing that the respondent has violated one or more of the policies outlined in the student code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Loss of privileges. Denial of specified privileges for a designated period of time.

(4) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn may include, but are not limited to, intramural sports, information technology services, college facility use and rental, and involvement in organizational activities.

(5) Restitution. A student may be required to make restitution for damage, loss, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty instructional days or any period set by the SCO, SCB, SAB, or president will result in an administrative hold being placed on the student's registration, which will prevent future enrollment until the restitution is complete.

(6) Discretionary sanctions. Work assignments, essays, service to the college, or other related discretionary assignments.

(7) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of college rules or regulations or other failure to meet the college's expectations within the student code of conduct. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which their continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extra-curricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for a period which may extend to graduation or award of a degree or certificate or other termination of the student's enrollment in the college.

(8) Restricted access to (trespass from) certain college facilities, property or activities.

(9) Suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may apply. Students who are suspended may be denied access to all or any part of the campus or other facilities for the duration of the period of suspension.

(10) Expulsion. Permanent separation of the student from the college. Students who are expelled may be permanently denied access to all or any part of the campus or other facilities.

(11) Revocation of admission and/or degree or certificate. Admission to the college or a degree or certificate awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree or certificate, or for other serious violations committed by a student prior award of a degree or certificate.

(12) Withholding degree or certificate. The college may withhold awarding a degree or certificate until the completion of the process set forth in the student code of conduct, including the completion of all sanctions imposed, if any.

(13) 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. Authorization for release of information will be required to allow the college access to the 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 student code of conduct.

(14) Delayed suspension. A probationary amount of time set by the SCO, SCB, SAB, or president in which the student must remain in good standing. If the student is found responsible for violating the student code of conduct while still under the delayed suspension guidelines, then the student will be suspended, as set forth in subsection (7) of this section.

(15) No contact order. An order that prohibits direct or indirect physical, verbal, written, and/or any other form of communication or contact with an individual or group. Direct and indirect contact includes, but is not limited to, phone calls, letters, going within sight of places of work or residence, email, social media, etc.

If the respondent is found responsible for any violation, the student's past disciplinary record may be considered in determining an appropriate sanction.

NEW SECTION

WAC 132S-100-445 Interim measures. (1) Interim measures may be taken pending an investigation or adjudication if there is cause to believe that a student or student organization poses an imminent risk of harm to anyone in the college community, or to property, or if the misconduct is so severe, persistent, or pervasive as to substantially disrupt or materially interfere with the college's operations and/or activities or with an individual's education/work activities. Interim measures may include counseling, extensions of time or other course-related adjustments, modifications of class schedules, campus escort services, restrictions on contact between the parties, increased security and monitoring of certain areas of campus, restrictions on access to college owned or operated property and/or events (notice of trespass), including classes, activities and privileges, or any similar measures while the conduct process is pending.

(2) The student must adhere to the conditions of the interim restriction. If an interim restriction includes campus wide restricted access, the SCO may provide written permission for the student to enter campus for specific purposes such as meeting with the SCO or designee, faculty, staff or witnesses to prepare for an appeal, or to participate in the student conduct process.

(3) Notice of interim measure. The student will be provided written notice of the interim measure(s), stating:

(a) The time, date, place, and nature of the circumstances which created the need for interim measures.

(b) A description of any relevant evidence.

(c) The interim measure.

(d) The possible sanctions that could result from violation of the interim measure including arrest for criminal trespass if the student has been trespassed from campus.

(e) The student's right to either accept the interim measure or submit a written appeal of the interim measure within three instructional days to the office of VPSS office. An appeal is waived if not submitted within the prescribed time. If the student timely appeals, the interim measure shall remain in place during the appeal process. The VPSS will provide written notification to the student of the decision to either maintain or discontinue the interim measure within five instructional days of receipt of the appeal.

(f) If the student has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that they shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the SCO as arranged by an appointment, or to attend a disciplinary hearing. The interim measure shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim restriction.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-500 Records of disciplinary action. (1) Records of all disciplinary ((~~cases will be~~)) actions will become part of the student's disciplinary record and kept by the office of the SCO. ((~~Except in proceedings wherein the student is exonerated, all documentary proceedings and all recorded testimony will be preserved insofar as possible for at least seven years. No record of proceedings wherein the student is exonerated, other than the fact of exoneration, will be maintained in the student's file or other college repository after the date of the student's graduation or for one calendar year.~~)) Disciplinary records are "education records" as defined by FERPA and shall be maintained and disclosed consistent with FERPA and the college's educational records retention policies. All documentation of the student conduct proceedings will be preserved for at least seven years, except in disciplinary actions where no violation(s) of the student code of conduct was found. In such cases, only a record of the finding of no violation shall be maintained in the student's file or other college repository after the date of the student's graduation or award of a degree or certificate or for one calendar year, whichever is shorter. All records of expulsion will be kept for twenty-five years from the date of the decision.

(2) The office of the SCO will keep accurate records of all disciplinary actions taken by((~~, or reported to,~~)) that office. Such recordings will be placed in the student's disciplinary records. ((~~The SCO is responsible for ordering the removal of any notations of any disciplinary action on the student's record. A student may petition the SCO for removal of such a notation at any time.~~)) A student has a disciplinary record only after notification of a decision is made and the student is found responsible for a violation of the student code of conduct. A case that is currently under investigation or is classified as "documentation only" is not a disciplinary record.

(3) The Family Educational Rights and Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of twenty-one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132S-100-020	Good standing.
WAC 132S-100-105	Composition of the student conduct board.
WAC 132S-100-110	Student appeals board.
WAC 132S-100-115	Convening boards.

WAC 132S-100-120	Classroom conduct and the learning environment.
WAC 132S-100-125	Decisions.
WAC 132S-100-200	Jurisdiction of the student code of conduct.
WAC 132S-100-203	Conduct—Rules and regulations.
WAC 132S-100-225	Drugs and drug paraphernalia.
WAC 132S-100-270	Trespass or unauthorized presence.
WAC 132S-100-405	Student conduct board process.
WAC 132S-100-410	Academic dishonesty process.
WAC 132S-100-415	Appeal process.
WAC 132S-100-420	Sexual misconduct procedures.
WAC 132S-100-425	Appeal process for complainants of sexual misconduct.
WAC 132S-100-430	Sanctions.
WAC 132S-100-435	Interim measures.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-200-110 Animal control on campus. In order to ((~~assure~~)) maintain the administrative and education operations of Columbia Basin College, and the health and safety of all persons on properties owned or controlled by ((~~Columbia Basin~~)) the college, the following rules and regulations regarding animals ((~~on campus~~)) are hereby promulgated: ((~~No person will be permitted to bring any animal upon properties owned or controlled by Columbia Basin College unless such animal is a service animal as defined in RCW 70.84.021 and is under the immediate control of such person.~~))

(1) Except for natural wildlife inhabiting college property, animals are prohibited from being ((~~on college grounds~~)) in or upon any property owned or controlled by the college, and from entering college buildings, with the following exceptions:

(((~~(1)~~))) (a) Service animals as defined by RCW 70.84.021 that are being used by person with disabilities;

(((~~(2)~~))) (b) Events at which animals are participants as authorized by the college;

(((~~(3) When~~))) (c) Animals that are part of an academic program((~~. Owners shall have immediate~~)) as authorized by the college;

(d) Animals otherwise authorized by college policy; and

(e) A dog trained to aid and under the control of law enforcement officers while being used for law enforcement purposes or during demonstrations to illustrate the dog's capabilities.

(2) With the exception of dogs trained to aid law enforcement officers while in the performance of their duties, and except as otherwise provided by college policy, such animals as are permitted shall be under the immediate direct physical control of their ((~~animals (for example: Leashed, caged or carried)~~)) owner or handler while on the grounds of Columbia Basin College.

(3) No animal shall be permitted to enter any fountain or pond or other water feature located on college property.

(4) No animal which emits frequent or long-continued noise or activity so as to disturb or disrupt normal administrative or educational functions shall be permitted on college property. Any animal that places human and/or animal life in danger shall be immediately removed from college property.

(5) Organic matter deposited by animals, such as feces, blood, or urine must be removed immediately and properly disposed of by the animal's owner or handler.

(6) Exceptions to this section may be authorized by the college president or his or her designee(s).

(7) All animals brought onto college property are subject to applicable city, county or state health, safety, license and leash laws.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-200-120 Penalties for violations of animal control regulations. Any animal found in or on college property under conditions that violate any provision of this chapter shall be subject to apprehension and impoundment in accordance with applicable college, city, county or state rules, laws, or regulations. Persons violating ((~~WAC 132S-200-110~~)) this chapter may be trespassed from the college campus, otherwise subject to disciplinary action in accordance with applicable college policies, rules, laws or regulations, and/or referred by administration or campus security to the appropriate police agency for prosecution under the applicable city, county or state animal control ((~~code for the campus on which the violation occurred~~)) rules, laws or regulations.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-200-150 Trespass. Columbia Basin College campuses are open to the public, as are the buildings during business hours. To ensure safety of all on the campuses, the office of student conduct ((~~office and~~)) or the campus security office may at times need to issue a trespass notice to an individual, ((~~trespassing that~~)) restricting a person and/or their vehicle from access to college property or activities. All illegal activity shall be referred to the local law enforcement agency.

Trespass notices may be issued ((~~by the student conduct officer or campus security officers~~)) to an individual who has violated ((~~the student rights and responsibilities code,~~)) college regulations specified in Title 132S WAC, ((~~administrative~~)) college policies, state law or municipal codes, ((~~or~~)) has ((~~willfully~~)) jeopardized the safety of others.

((~~When the student conduct officer or any campus security officer deems that any of the above criteria have been met, he or she will issue a trespass notice to the individual.~~)) A copy of the notice will be kept on file at the campus security office and may be shown to the local law enforcement agencies if an arrest for violation of the trespass order is necessary in the future.

(1) **Temporary trespass notice.**

(a) A temporary trespass notice of up to twenty-four hours can be issued, without a right to appeal, to any person for whom the college has received a complaint or who has been observed doing any of the following:

(i) Causing harm or inflicting injury to college community members;

(ii) Threatening or intimidating members of the community;

(iii) Disrupting academic and administrative business of the college;

(iv) Causing damage to college or personal property; and/or

(v) Violating college policy, college regulation or the student ((~~conduct~~)) code of conduct.

(b) A temporary trespass notice will be ((~~hand~~)) personally delivered to the recipient at the time of the incident or as soon as possible if the recipient has left college grounds. Copies of all written notices are kept on file with the campus security office.

(c) ((~~If an individual~~)) Students who violate a temporary trespass notice will be referred to the office of student conduct for disciplinary action pursuant to the student code of conduct.

(d) If a nonstudent violates the temporary trespass notice, ((~~the student conduct officer or~~)) the campus security officer can extend the terms of trespass ((~~to remain in effect for up to two weeks~~)) notice.

(((~~d~~))) (e) Individuals have the right to appeal a trespass that is longer than twenty-four hours.

(2) **Permanent trespass notice.**

(a) Individuals who are not current students of the college can be issued a permanent trespass by the campus security office if deemed necessary to protect the campus community. Permanent trespass notices will be ((~~hand~~)) personally delivered or sent via U.S. mail (certified receipt) to the individual.

(b) A permanent trespass can be simultaneously administered with the assistance of local law enforcement agencies and their official trespass notification.

(c) Individuals have a right to appeal a permanent trespass.

(3) **((~~Student~~)) Trespass appeals process.**

(a) ((~~Currently enrolled students who wish to appeal a temporary trespass notice must contact the office of student conduct. However,~~)) A trespass notice that is in effect for twenty-four hours or less cannot be appealed.

(b) Students, ((~~who are permanently~~)) whose access to college property or activities has been restricted (trespassed) through the student ((~~rights and responsibility~~)) code of conduct process will be notified ((~~through the sanction letter from the student conduct officer~~)) according to the process of the student code of conduct.

(4) ((~~**Nonstudent trespass appeals process.**~~

~~(a) Nonstudents~~)) Persons who are not currently enrolled who wish to appeal a trespass notice must contact the office for the vice president of administrative services.

(((~~b~~))) (5) The criteria used for the appeals review include, but are not limited to:

(((~~i~~))) (a) Determination of the threat posed by the individual to the community;

(((~~ii~~))) (b) Review of the individual's need to be present on campus (with ((~~limitations~~)) adjustments when decided as appropriate); and

(((~~iii~~))) (c) Review of the incident or supporting documentation that resulted in the trespass notice being issued.

(((~~c~~))) (6) The vice president for administrative services will review one appeal or request from the trespassed individual for modification per year and reserves the right to deny any appeal based on the safety of the campus community.

(((~~d) If~~)) (7) The vice president of administrative services ((~~considers modifying or rescinding a trespass notice, he~~)) may consult with other college personnel, such as the student conduct officer or the vice president for human resources and legal affairs as part of the appeal review process((~~, such as the student conduct officer or the vice president for human resources and legal affairs.~~

~~(e)~~)).

(8) Notification of the outcome of the appeal will be sent to the requestor within thirty days of the request via U.S. mail (certified receipt).

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-140 Pedestrian's right of way. (1) The operator of a vehicle shall yield the right of way, slowing down or stopping, if need be to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(3) Every pedestrian crossing at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles.

(4) College administration, law enforcement and/or emergency services personnel are authorized to place signs, barricades, direct traffic flow, and other traffic directions upon/or in the CBC campus parking lots and campus grounds which include crosswalks, breezeways, or other areas for the regulation of traffic and parking that will provide safe ingress to and egress from CBC campuses. Pedestrians are responsible for obeying directions and safe travel through campus.

(5) Where a sidewalk is provided, pedestrians shall proceed upon such a sidewalk.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-305 Authorization for issuance of parking permits. The ((~~plant operations~~)) campus security office or designee is authorized to issue annually parking permits to faculty, staff members, employees of private parties and students using college facilities pursuant to regulations and the payment of appropriate fees as determined by the college.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-400-105 Definitions. (1) "College groups" shall mean individuals who are currently enrolled students or current employees of Columbia Basin College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) "College facilities" includes all buildings, structures, grounds, office space and parking lots.

(3) "((~~Limited~~)) Designated public forum ((~~areas~~))" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner restrictions.

(4) "First amendment activities" includes, but are not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-400-110 Statement of purpose. Columbia Basin College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the college's educational mission ((~~of the college~~)). The college's public character ((~~of the college~~)) does not grant ((~~to~~)) individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, as provided by WAC 132S-400-115, the college ((~~is a designated public forum opened~~)) designates areas intended for first amendment activities for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for noncollege groups. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-400-115 Use of facilities. (1) Subject to the regulations and requirements of this policy, noncollege groups may use the ((~~campus limited forums~~)) college's designated public areas, as identified in subsection (12) of this section for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) All sites used for first amendment 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 event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

(5) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(7) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department of office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances and state or federal laws.

(11) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. ((~~Noncollege groups may otherwise use college facilities as identified in this policy.~~))

(12) The college designates the following area(s) as the ((~~sole limited~~)) designated public ((~~forum area(s)~~)) areas for

use by noncollege groups for first amendment activities on campus:

(a) With respect to the Pasco campus:

(i) Mural gathering area (concrete pad north of the A building);

(ii) A building (southeast corner near the arbor and seating area);

(iii) Gjerde Center (northeast concrete portion in front of the main entrance to the H building); and

(iv) Community bulletin board (located at the west entrance to the Thornton Building).

(b) With respect to the Richland campuses:

(i) Public sidewalks for all campuses;

(ii) Richland Health Science Center located at 891 Northgate Drive, limited to the east or west side of the entrance concrete pad; and

(iii) Richland Original Campus located at 901 Northgate Drive, limited to the walkway space between buildings RB and RC, not to exceed the width of where the building ends immediately adjacent to the walkway.

(13) Noncollege groups that seek to use the ((~~campus limited forum~~)) designated public fora to engage in First Amendment activities shall provide notice to the campus security office no later than twenty-four hours prior to the event along with the following information, which shall be used for notification purposes only:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization");

(b) The name, address and telephone number of a contact person for the sponsoring organization;

(c) The date, time and requested location of the event;

(d) ((~~The nature and purpose of the event;~~

~~(e)~~)) The type of sound amplification devices to be used in connection with the event, if any; and

(((~~f~~))) (e) The estimated number of people expected to participate in the event.

(14) Noncollege group events shall not last longer than five hours from beginning to end.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-500-125 Limitations of use. (1) 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 an authorized representative of the college.

(2) If at any time actual use of college facilities by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

(3) Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff concerning use of the facilities.

(4) No person may enter onto college grounds or facilities possessing a visible firearm or other dangerous weapon, except specifically as allowed by law under WAC 132S-200-140.

(5) Promotional materials or posting for any event being held in a college facility must follow the same procedure as applies to students outlined in chapter 132S-100 WAC.

(6) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs.

(7) The college facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college are either sponsored by an appropriate college unit or conducted by contractual agreement with the college.

(8) College facilities may not be used for purposes of political ((~~campaigning~~)) campaign events or rallies by or for candidates who have filed for public office ((~~except for student-sponsored activities~~)). Rules, regulations, policies, procedures and practices regarding the use of college facilities shall not discriminate or promote discrimination among political parties, groups or candidates solely on the basis of their particular political viewpoint.

(9) Activities of commercial or political 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 or brochures outside rooms or facilities to which access may be granted.

(10) No person may solicit contributions on college property for political uses, except where this limitation conflicts with federal law concerning interference with the mail.

(11) ((~~Religious groups shall not~~)) No group shall, under any circumstances, use the college facilities as a permanent meeting place((~~. Use shall be intermittent only, so as not to imply college endorsement~~)) as the college's facilities must be readily available to advance the college's educational mission. No group shall use the college facilities as a permanent meeting place with regular use limited to . . . . . ., so as to ensure the college's facilities are readily available to advance the college's mission.

(12) Alcoholic beverages will not be served without the approval of the vice president for administrative services or designee(s). It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations including all state and local regulations and laws, and those of Columbia Basin College.

(13) Authorization for use of college facilities shall not be considered as endorsement of or approval of any group or organization nor the purposes they represent. The name of the college shall not be associated with any program or activity for which the college facilities are used without specific written approval from the president or his or her designee(s).

(14) Rental of college facilities carries no right of advertising on college premises other than the right to post a sign for the purpose of directing people to the place of assembly.

(15) Unless otherwise provided by contractual agreement, an authorized member of the college staff shall be required to be available at times when college facilities are in use by a group. If service beyond normal business hours is required as a result of any meeting, such time shall be paid by the using organization at the currently established rate. The college may require and charge users for security services at the college's discretion.

(16) Audio-visual equipment and materials are intended to support and supplement the college's curriculum. Equipment shall not be rented to external users, unless official prior approval has been granted and currently established rates are charged. The existence of equipment in a rented space does not mean the user has the right to use it.

WSR 19-21-036
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 8, 2019, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-030.

Title of Rule and Other Identifying Information: Amending chapter 308-127 WAC; WAC 308-127-040, 308-127-160, 308-127-210 and 308-127-225; and repealing WAC 308-127-310, 308-127-320, and 308-127-330.

Hearing Location(s): On December 3, 2019, at 3:30 p.m., at the Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Building #2, Conference Room #2108, Olympia, WA 98502.

Date of Intended Adoption: December 4, 2019.

Submit Written Comments to: Dee Sharp, Department of Licensing, Timeshares Program, P.O. Box 9021, Olympia, WA 98507, email DOLTimeshare@dol.wa.gov, fax 360-586-0998, by December 2, 2019.

Assistance for Persons with Disabilities: Contact Dee Sharp, phone 360-664-6486, fax 360-586-0998, TTY 711, email DOLTimeshare@dol.wa.gov, by December 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend sections in chapter 308-127 WAC to allow the salesperson license to become inactive when a licensee disassociates from their employer. The license will belong to the licensee and the licensee can be invited to work for timeshare companies.

Reasons Supporting Proposal: The amendment will allow the salesperson license to become "inactive" when the licensee disassociates from their employer. The license will belong to the licensee and the licensee can be "invited" to work for firms.

Statutory Authority for Adoption: RCW 64.36.270 and 43.24.023.

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, Implementation, and Enforcement: Dee Sharp, 2000 4th Avenue West, Olympia, WA, 360-664-6501.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule-making effort does not require a cost-benefit analysis because it is not a significant legislative rule and it will not have costs to implement, nor will it impose costs on businesses or licensees.

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

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

Explanation of exemptions: This rule making is making technical changes to the names of fees to align with a technology effort; it will also allow timeshare licensees to place their license in inactive status upon disassociation with an employer. These changes will not have an impact on small businesses and will assist licensees when changing employers.

October 8, 2019
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-07-023, filed 3/14/90, effective 4/14/90)

WAC 308-127-040 Materially adverse change. (1) A materially adverse change means any change in the condition of a promoter or its affiliates which causes or might cause loss or risk of loss to the interests of the timeshare purchasers or prospective purchasers.

A materially adverse change occurs under circumstances which include, but are not limited to, the following:

(a) Any bulk sale of all or a significant portion of the timeshare properties;

(b) Any actual or threatened bankruptcy, receivership, or similar proceeding involving the promoter or its affiliates;

(c) Any lien, encumbrance, or similar circumstance which threatens to affect, or does affect, any of the timeshare properties;

(d) Any sale, lease, substitution of, or addition to the inventory of the timeshare properties by the promoter or its affiliates;

(e) Any amendment or change in the timeshare instruments or the timeshare program;

(f) Any change in the affiliation of the promoter or the association with a timeshare exchange company;

(g) Any change in the promoter's or an affiliate's plan of promotion;

(h) Any change in the status of an escrow, trust, bond, letter of credit, impound or other protective device, being uti-

lized in the timeshare program for purposes of purchaser protection;

(i) Any criminal prosecution, civil lawsuit, or administrative proceeding in which the promoter or its affiliates are parties;

(j) Sell-out of the number of intervals registered to be sold to persons residing in the state of Washington;

(k) Any change in the financial status of the promoter or its affiliates that might adversely affect their ability to pay the timeshare expenses, including reserve accounts, during marketing of the timeshares.

(2) Materially adverse changes shall be reported to the agency for purposes of amending or renewing the registration and the public offering statement at the time they are known or proposed by the promoter or its affiliates. Failure to report such changes within 20 days shall result in the assessing of a $500.00 ((~~penalty~~)) late fee and shall be cause for suspension, revocation, or denial of a registration.

AMENDATORY SECTION (Amending WSR 04-19-040, filed 9/13/04, effective 11/1/04)

WAC 308-127-160 Fees. The following fees shall be charged under the authority of RCW 64.36.081 and 43.24.086:

(1) Registration application fees:	
Start up timeshare program including one project.	$1000.00
Each additional project in program.	200.00
Each apartment unit in program.	10.00
The first unit of personal property in the timeshare program.	500.00
Each additional unit of personal property in the timeshare program.	100.00
Businesses of listing or brokering resale intervals.	500.00
(2) Interval Fees:	
For each interval through one thousand.	1.00
Intervals beyond one thousand.	0.00
Each monthly filing of listings of resale intervals (in lieu of interval fees for resale intervals).	10.00
(3) Renewal fees:	
Timeshare program including one project.	500.00
Late renewal fee for timeshare program.	2000.00
Each additional project to a maximum of five projects.	200.00
Each apartment unit - to maximum of twenty-five apartment units.	10.00
(4) Consolidation fees:	
Each additional project added.	200.00
Each additional apartment unit.	10.00
The first additional unit of personal property being consolidated.	250.00
Each additional unit of personal property added in one consolidation.	100.00
(5) Exemption fees:	
Programs consisting of a single apartment unit in a single project with fifty-two or fewer intervals.	250.00
All other types of programs.	1000.00
(6) Impound fees:	
Initial establishment of an impound, escrow, trust, or other arrangement requiring a depositary.	500.00
Each required periodic report.	50.00
(7) Advertising fees:	
Each initial submission of advertisement whether or not submitted in a timely manner, and whether or not in use at the time of payment.	25.00
Examination of advertisement which are for the purpose of marketing surveys and not involving an examination of project or program instruments.	150.00
(8) Fees for persons in the business of offering commercial promotional programs:	
Registration of individual.	500.00
(9) Salespersons fees:	
((~~Registration~~)) Initial application, including first timeshare company association.	25.00
((~~Renewal~~)) Each timeshare company association after the first.	25.00
((~~Transfer~~)) Renewal.	25.00 per timeshare company association
(10) Fees for amendment of registration:	
For a timely submission of an amendment filing.	25.00
((~~Penalty~~)) Late fee for failure to file an amendment within twenty days of the occurrence of a materially adverse change.	500.00
(11) Inspection fees:	
Applicants and registrants shall pay the cost of inspections conducted pursuant to chapter 64.36 RCW. The inspection fees shall be paid prior to the granting of a registration or consolidation. The inspection fee shall be the actual cost to the department for conducting of the inspection.	

AMENDATORY SECTION (Amending WSR 90-07-023, filed 3/14/90, effective 4/14/90)

WAC 308-127-210 Relationship of timeshare promoters and salespersons and real estate brokers and salespersons. (1) ((~~A~~)) An active timeshare salesperson registration shall be ((~~registered to a specific~~)) associated with one or more timeshare promoters who ((~~has~~)) have one or more timeshare offerings registered in this state. The promoter shall have full responsibility for all activities of the promoter's timeshare salesperson which relate to offering timeshares for sale.

(2) An active real estate broker or salesperson may act as the brokerage agent of one or more timeshare promoters without registering as a timeshare salesperson. However, this exemption from registration as a timeshare salesperson applies only when the exempted person is performing real estate brokerage in compliance with chapter 18.85 RCW. Further, this exemption only pertains to the timeshare salesperson registration requirement. All other provisions of the Timeshare Act apply to real estate brokers and salespersons offering timeshares for sale.

(3) A natural person may be registered as a timeshare salesperson while licensed as a real estate broker or salesperson. However, the salesperson shall conduct timeshare activities and maintain associated business records separate and apart from his or her real estate broker or salesperson activities and records. The term "separate and apart" shall not preclude location of timeshare salesperson and real estate brokerage activities at the same office.

(4) Any individual who is registered as a timeshare salesperson and licensed as a real estate broker or salesperson shall disclose in writing to the recipient of a timeshare sales offer whether he or she is acting as the timeshare salesperson of a promoter or a real estate broker or salesperson at the time he or she presents the public offering statement.

AMENDATORY SECTION (Amending WSR 04-08-003, filed 3/24/04, effective 4/24/04)

WAC 308-127-225 Original application, renewal, ((~~termination~~)) inactivity, and fees for a timeshare salesperson registration. (1) An individual shall apply for registration as a timeshare salesperson on a form prescribed by the agency. The registration application for a timeshare salesperson shall identify the specific promoter responsible for the business activities of the salesperson and shall be valid for a period of one year.

(2) When a timeshare salesperson ceases to be employed by a timeshare promoter, the salesperson's registration shall be ((~~terminated~~)) set to an inactive status. Written notice of this ((~~termination~~)) cessation shall be given by the promoter to the ((~~director. A terminated~~)) department. An individual with an inactive timeshare salesperson license who desires to work for the same or another promoter shall ((~~apply for and receive registration as a timeshare salesperson~~)) register a new association with the department before engaging in further timeshare sales activities.

(3) An individual may renew his timeshare salesperson registration for one year if the agency receives the individual's request and renewal fee on or before the expiration of the individual's existing registration. The effective date of the renewal shall be the anniversary date of the previous registration. If the registration is not renewed before the expiration date reregistration is required before timeshare sales activity may be continued.

(4) An application for registration or a renewal of registration is not complete unless it is accompanied by the proper fee. Payment of the fee with a check which is subsequently dishonored is a deficient application. Upon notification to the promoter by the agency, the promoter shall cease employment of the applicant as a timeshare salesperson.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-127-310	Application of brief adjudicative proceedings.
WAC 308-127-320	Preliminary record in brief adjudicative proceedings.
WAC 308-127-330	Conduct of brief adjudicative proceedings.

WSR 19-21-040
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed October 8, 2019, 4:50 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Proposed Regulation IV of the Puget Sound Clean Air Agency, Clean Fuel Standard (CFS).

Webpage address http://www.pscleanair.org/CleanFuel Standard.

Hearing Location(s): On December 19, 2019, at 12:30 p.m., at the Washington State Convention Center, 705 Pike Street, Seattle, WA 98101-2310. Public comment will be taken from 12:30 to 4:30 p.m., and 5 to 8 p.m.

Date of Intended Adoption: The agency estimates no sooner than February 27, 2020.

Submit Written Comments to: Kathy Strange, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email CleanFuels@pscleanair.org, fax 206-343-7522, by January 6, 2020.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email christinab@pscleanair.org, by December 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to reduce and/or limit greenhouse gas (GHG) emissions to protect human health and the environment. The proposed rule would achieve the above through a reduction in the life cycle carbon intensity of transportation fuels that are sold, supplied, or offered for sale in the agency's

jurisdiction (King, Kitsap, Pierce and Snohomish counties). The proposed rule would result in a life cycle carbon intensity reduction of up to twenty-five percent by 2030.

The proposed rule sets annual life cycle carbon intensity reduction benchmarks, starting with a reporting year only. Fuels whose carbon intensities are above the reduction benchmark generate deficits, and fuels whose carbon intensities are below the reduction benchmark generate credits. One credit or deficit is equal to one metric ton of carbon dioxide equivalent (CO_2e). Each year, deficit producers are required to "retire" credits in equal proportion to their deficits in order to comply with the program; this can include a variety of mechanisms: Purchasing credits from credit generators, coprocessing biomass into renewable fuels, and/or generating credits through the refinery investment credit program.

Regulated entities required to participate include importers and producers of fuels such as gasoline, diesel, ethanol, biodiesel, and fossil compressed natural gas (CNG) and liquefied natural gas (LNG). Providers of fuels with a carbon intensity lower than the benchmark (credit generators) are eligible to "opt in" to CFS if they want to generate and sell credits. Opt-in fuels include electricity, bio-CNG, bio-LNG, hydrogen, renewable propane, and alternative jet fuel. The proposed rule includes exemptions for specific fuel applications, including interstate locomotives, ocean-going vessels, aircraft, military tactical vehicles and tactical support equipment, and small volume fuel producers and fuels used in small volumes.

In addition to the above, the proposed rule includes provisions that detail:

- How carbon intensities are calculated for fuels, how all entities must submit their applications for carbon intensities, and the agency's approval process for carbon intensities;
- How credits and deficits are calculated;
- The process for all parties to register and submit quarterly and annual reports;
- How credit revenue is to be used by electric utilities and transit agencies;
- Establishes an equity credit aggregator that is eligible to utilize electricity credits not claimed by others;
- Establishes a credit clearance market, a mechanism used if deficit generators are unable to retire sufficient credits during the compliance period (January 1 through December 31 each year); and
- Provisions for enforcement, confidentiality, severability, and definitions and acronyms.

The agency estimates that the proposed rule, with corresponding carbon intensity (CI) reductions in transportation fuel of fifteen percent, twenty percent, and twenty-five percent, would result in annual reductions of 1.8, 2.3, and 3 million metric tons GHG emissions by 2030, respectively. Using the Washington utilities and transportation commission (UTC) recommended value for the social cost of carbon in 2030 ($87/ton), the annual avoided costs would be approximately $150 million, $200 million, and $260 million, respectively, per year in 2030, (see UTC, social cost of carbon, https://www.utc.wa.gov/regulatedIndustries/utilities/Pages/SocialCostofCarbon.aspx). The social cost of carbon includes property and infrastructure damage and mitigation, agricultural losses, energy costs, and health impacts, but it is not considered exhaustive. (EPA[1], WUTC[2], Washington state department of ecology[3].)

1 US Environmental Protection Agency (EPA). EPA Fact Sheet - Social Cost of Carbon. December 2016. https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf.

2 Washington Utilities and Transportation Commission. Social Cost of Carbon. Revised August 29, 2019. https://www.utc.wa.gov/regulatedIndustries/utilities/Pages/SocialCostofCarbon.aspx.

3 Washington State Department of Ecology. Final Cost-Benefit and Least-Burdensome Alternative Analysis, Clean Air Rule. September 2016. https://fortress.wa.gov/ecy/publications/documents/1602015.pdf.

The agency estimates that the proposed rule will result in the reduction of harmful criteria pollutants and air toxics, particularly in communities located along major roadways. The agency estimated the fine particle pollution emissions reductions associated with CI reductions of transportation fuel. Through the agency's consultant, ICF, the agency estimated the corresponding monetary value of avoided deaths from reducing these emissions, using EPA's Benefits Mapping and Analysis Program (BenMap) (see ICF for Puget Sound Clean Air Agency. Puget Sound Regional Transportation Fuels Analysis, Final Report. September 2019, http://www.pscleanair.org/DocumentCenter/View/3809/Clean-Fuel-Standard-Technical-Analysis---Final-Report?bidId=). The results showed an estimated annual value of $10 to $40 million reduced costs per year based on avoided deaths. These results do not include other health endpoint reductions for fine particle pollution including: Asthma exacerbation, chronic obstructive pulmonary disease, work loss days, non-fatal heart attacks, etc.[4] Qualitatively, the agency also anticipates a reduction in mobile source air toxics from this rule, including known carcinogens such as benzene and diesel particulate matter.[5,6] A reduction in these pollutants corresponds to a reduction in potential cancer risk, and the impact will be greatest for communities with greatest current exposure (those along major roadways).

4 US Environmental Protection Agency (EPA). Integrated Science Assessment for Particular Matter. December 2009. https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=216546.

5 EPA. How Mobile Source Pollution Affects Your Health. https://www.epa.gov/mobile-source-pollution/how-mobile-source-pollution-affects-your-health.

6 Washington State Department of Ecology. Concerns About Adverse Health Effects of Diesel Engine Emissions. December 2008. https://fortress.wa.gov/ecy/publications/documents/0802032.pdf.

Through the agency's consultant, ICF, the agency developed several compliance scenarios that could meet a regional CFS and developed corresponding cost of implementation estimates. ICF modeled the macroeconomic cost and benefits of those scenarios across the agency's jurisdiction using the REMI model. The main costs to implement the rule stem from investments that fuel producers must make to comply with the rule, as well as the differential (increased) cost to purchase electric vehicles compared to conventional internal combustion engine vehicles. The CFS provides flexibility for

fuel producers to reduce their costs of compliance, but the agency conservatively modeled that they do little to reduce their cost of compliance, and pass most of it on to consumers. Additionally, the extra cost to purchase electric vehicles is forecast to decrease substantially over time. These combined costs are largely offset by savings from CFS that comes in the form of reduced fueling costs, due to electric vehicles being much cheaper to fuel than internal combustion engines. For the life cycle carbon intensity reduction of up to twenty-five percent by 2030 (scenario D), overall, these costs and savings offset each other: Across the four counties the impact on both employment growth and gross regional product growth was one tenth of one percent or less. *See* ICF for Puget Sound Clean Air Agency. Puget Sound Regional Transportation Fuels Analysis, Final Report. September 2019, http://www.pscleanair.org/DocumentCenter/View/3809/Clean-Fuel-Standard-Technical-Analysis---Final-Report?bidId=.)

Reasons Supporting Proposal: In February 2017, the agency's board of directors adopted science-based climate targets to reduce GHG emissions by fifty percent in 2030 and eighty percent by 2050 (below 1990 levels). Since almost half of all GHG emissions in the agency's jurisdiction are from the transportation and mobile sector, the agency's board of directors directed staff to analyze potential strategies to reduce GHG emissions in this sector. An analysis of a range of potential strategies to reduce transportation GHG emissions indicated that a CFS would result in substantial reductions in transportation-related GHG emissions (see Puget Sound Clean Air Agency. Candidate Actions to Reduce Transportation Greenhouse Gas Emissions - Evaluation Report, June 2018, http://www.pscleanair.org/DocumentCenter/View/3314/Evaluation-Report_Transportation-Actions_June2018?bidId=).

A subsequent report indicated that a regional clean fuel standard is feasible to implement with forecasts of currently available fuels (see ICF for Puget Sound Clean Air Agency. Puget Sound Regional Transportation Fuels Analysis, Final Report. September 2019, http://www.pscleanair.org/DocumentCenter/View/3809/Clean-Fuel-Standard-Technical-Analysis---Final-Report?bidId=). As stated above, the ICF report showed a clean fuel standard provides public health cobenefits through reduction of fine particle air pollution, particularly in communities near major roadways. The report also included a macroeconomic impacts review and concluded that for the life cycle carbon intensity reduction of up to twenty-five percent by 2030 (scenario D), impact to the regional economy (as measured by changes to employment and gross regional product growth) was almost indiscernible: One tenth of one percent or less, positive or negative.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Under chapter 79.94 RCW, the agency may adopt rules in its jurisdiction establishing emission standards for types of emissions or types of sources of emissions, or a combination of these. The proposed CFS is intended to establish emission standards for GHGs from producers, importers, and distributors of transportation fuel that supply the agency's four-county jurisdiction (King, Kitsap, Pierce and Snohomish counties).

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Strange, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4095.

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 local air agencies, per RCW 70.94.141(1). However, costs considerations are discussed above.

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

Is exempt under chapter 19.85 RCW.

Explanation of exemptions: Chapter 19.85 RCW does not apply to local air agencies which is not a state agency (*see* RCW 70.94.141(1)). However, cost considerations are discussed above.

October 8, 2019
Craig Kenworthy
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 19-22 issue of the Register.

WSR 19-21-042
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)

[Filed October 9, 2019, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-76 [18-06-076].

Title of Rule and Other Identifying Information: The securities division is proposing to amend WAC 460-44A-503 to require notice filings concerning securities offerings exempt under Rule 506 of federal Regulation D be made through the North American Securities Administrators Association's online electronic filing depository (EFD) system.

Hearing Location(s): On November 26, 2019, at 9:00 a.m., at 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: November 27, 2019.

Submit Written Comments to: Michelle Webster, 150 Israel Road S.W., Tumwater, WA 98051, email michelle.webster@dfi.wa.gov, fax 360-902-0524, by November 25, 2019.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, phone 360-902-8760, fax 360-902-0524, TTY 360-664-8126, email Carolyn.Hawkey@dfi.wa.gov, by November 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division is proposing to amend WAC 460-44A-503, which currently sets forth notice filing requirements for securities offerings made in reliance on federal Regulation D, Rule 506. The proposed rule amendments would create a new subsection of the rule, requiring that notice filings and fees for securities offerings made in reliance on Rule 506 to be submitted electronically through EFD. The proposed rule amendments would also clarify that any amendments to previously filed notice filings concerning Rule 506 offerings must also be filed through EFD.

Reasons Supporting Proposal: Launched by the North American Securities Administrators Association in 2014, EFD is an online system that has modernized and streamlined the process of submitting notice filings by allowing issuers to electronically submit Form D concerning Rule 506 offerings to state securities regulators and pay filing fees. Currently, forty-eight jurisdictions either accept or mandate Rule 506 notice filings made through EFD. The system is in wide use; in 2018, sixty-eight thousand four hundred thirty-eight new notice filings, seven thousand four hundred thirty-five amendment filings, and nine thousand three hundred eight renewal filings for Rule 506 offerings were made through EFD in those jurisdictions utilizing the system. In Washington alone, the securities division received three thousand four hundred twelve Rule 506 notice filings through EFD, compared to five hundred seventy-seven notice filings on paper.

Although the securities division currently accepts notice filings through EFD as well as paper submissions, paper submissions require the securities division to manually process and scan the notice filings, which may result in delays to the issuer in receiving an acknowledgment of its filing or any follow-up correspondence. Requiring issuers to use the EFD system to file Rule 506 notice filings would eliminate inefficiencies and result in a streamlined process for both issuers and the securities division.

Statutory Authority for Adoption: RCW 21.20.327, 21.20.450.

Statute Being Implemented: RCW 21.20.327.

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

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle Webster, Esq., 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8736; Implementation: Faith Anderson, Program Manager, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and Enforcement: William Beatty, Securities Administrator, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not an agency identified in RCW 34.05.328.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

WAC 460-44A-503

Concerning Regulation D, Rule 506 Notice Filings

Introduction: The securities division of the department of financial institutions has prepared this small business economic impact statement (SBEIS) in connection with proposed amendments to WAC 460-44A-503. The proposed amendments to WAC 460-44A-503 would require notice filings concerning securities offerings exempt under federal Regulation D, Rule 506 to be made online through the EFD system.

Launched by the North American Securities Administrators Association in 2014, EFD is an online system that has modernized and streamlined the process of submitting notice filings by allowing issuers to electronically submit Form D concerning Rule 506 offerings to state securities regulators and pay filing fees. Currently, forty-eight jurisdictions either accept or mandate Rule 506 notice filings made through EFD. The system is in wide use; in 2018, sixty-eight thousand four hundred thirty-eight new notice filings, seven thousand four hundred thirty-five amendment filings, and nine thousand three hundred eight renewal filings for Rule 506 offerings were made through EFD in those jurisdictions utilizing the system. In Washington alone, the securities division received three thousand four hundred twelve Rule 506 notice filings through EFD, compared to five hundred seventy-seven notice filings on paper.

The securities division is considering a rule amendment to require Rule 506 notice filings to be made through EFD. As detailed in this SBEIS, the securities division gathered information on the possible economic impact of the proposed rule amendments, and determined that rule amendments should be adopted to streamline the process of Rule 506 notice filings for all involved parties.

Procedural Background: On March 6, 2018, the securities division filed a CR-101 Preproposal statement of inquiry with the office of the code reviser (code reviser), stating that it was considering requiring filers to submit Rule 506 notice filings to the securities division through the EFD system. The securities division conducted a survey to determine the costs associated with the proposed rule amendments, and distributed the survey on March 5, 2019. The survey was also posted to the securities division's website. At the same time, the securities division distributed draft rule amendments to WAC 460-44A-503 to the survey pool in a mailing on March 5, 2019. The securities division also posted the draft on its website.

The securities division carefully considered the responses to the survey, and determined that no changes to the proposed rule amendments were necessary, based on the feedback it received. The securities division now intends to proceed with rule making to amend WAC 460-44A-503 by formally proposing the draft amendments in a notice of proposed rule making (CR-102) with the code reviser.

Summary of the Proposed Amendments: The proposed rule amendments would amend WAC 460-44A-503. WAC 460-44A-503 currently sets forth notice filing requirements for securities offerings made in reliance on federal Regulation D, including offerings made in reliance on Rule 506. The proposed rule amendments would create a new sec-

tion of the rule, requiring that notice filings and fees for securities offerings made in reliance on Rule 506 be submitted electronically through EFD. The proposed rule amendments would also clarify that any amendments to previously filed notice filings must also be filed through EFD.

Need for Economic Impact Statement: RCW 19.85.-030 provides that an agency must prepare an SBEIS if the proposed rule will impose more-than-minor costs on businesses in an industry. The term "minor cost" is defined to mean a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. To make a filing through EFD, there is a per-offering system use fee of $155, in addition to the state filing fees. Accordingly, the securities division determined that as SBEIS may be required for this rule making.

Survey of Interested Persons:

Description of Survey Process:

To obtain information to prepare an SBEIS, RCW 19.85.040 permits an agency to survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the securities division prepared an online small business economic impact survey to survey businesses that may be impacted by the proposed rule amendments.

Federal Regulation D, Rule 506 provides exemptions from federal registration requirements for securities offerings that fulfill certain requirements. As securities offered in Rule 506 offerings are "covered" securities, an issuer conducting an offering in reliance on Rule 506 is not required to file more than a notice of the offering and pay a filing fee to each state in which it seeks to conduct the offering. However, Rule 506 is only one of a number of "covered" securities offerings that require a notice filing, and one of numerous exemptions from registration. As such, the securities division does not know in advance who might decide to conduct an offering pursuant to Rule 506.

For purposes of gathering information to prepare an SBEIS, the securities division determined to survey every person that had made a Rule 506 notice filing in the last three years. The securities division reasoned that these persons might be likely to rely on Rule 506 exemptions in the future, or file amendments or renewals to current Rule 506 notice filings. These persons may also include attorneys or paralegals who advise those making Rule 506 notice filings, and have a sense of the potential economic impact on small businesses. In addition, the securities division reasoned that this group might have recent insights about the impact of the proposed rule amendments in connection with future notice filings.

On March 5, 2019, the securities division sent an email containing a link to its online survey to the survey pool described above. If a filer did not provide an email address in its filing, then the securities division sent the letter by regular mail. Both the letter and the email explained the reasons for conducting the survey, requested that recipients complete the survey by following the link provided, and provided a link to the draft rule amendments. The survey was delivered to one thousand five hundred fifty-one recipients. Finally, the securities division posted a link to the electronic survey on its rule-making website so that any interested persons who did not otherwise receive the initial request could take the survey.

The online survey consisted of twelve questions. The survey explained the current notice filing requirements, and explained that filing through EFD would require the payment of a per-offering system use fee of $155, in addition to any state filing fees. The survey further explained the circumstances under which an issuer would, and circumstances under which an issuer would not, be required to pay the system use fee. For the payment of fees, the survey explained that the EFD system currently utilizes the automated clearing house (ACH) system for facilitating payments of state filing fees and system use fees. The survey asked whether the proposed rule amendments would cause increased costs to comply with the proposed rule, and then requested information on the additional costs of complying in the categories of professional services, equipment, supplies, labor, and administrative costs. Each question also allowed a free-form response for survey takers to explain any other additional compliance costs. Lastly, the survey requested data on whether the proposed amendments would result in lost sales or revenue, or the loss or addition of any jobs.

The survey period lasted from March 5, 2019, through April 4, 2019. The securities division received sixty-three unique responses to the survey, although some respondents did not respond to all of the questions in the survey. The securities division received full or partial survey responses from twenty-three respondents that identified themselves as persons or companies that file Rule 506 notice filings; eight respondents that identified themselves as "other" - primarily paralegals, attorneys, or compliance firms that file Rule 506 notice filings on behalf of clients; and thirty-two respondents that identified themselves as an attorney or paralegal that advises Rule 506 notice filing issuers. Of the sixty-three respondents, twenty-six were small businesses as defined by RCW 19.85.020(3) because they had fifty or fewer employees. The remaining respondents were associated with business entities that ranged from seventy employees to two thousand five hundred employees, or declined to answer. The securities division considered comments from all respondents, as many of the large businesses represented in this survey are law firms that advise Rule 506 filers or may file on their behalf. The results of the survey are discussed below.

REQUIRED ELEMENTS OF THE SBEIS

A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor, professional services, and increased administrative costs:

As discussed above, Rule 506 is an exemption from federal registration requirements. Issuers seeking to rely on Rule 506 are required to electronically submit a Form D on the Securities and Exchange Commission's EDGAR (Electronic Data Gathering, Analysis and Retrieval) system. Issuers are also required to file notice of a Rule 506 offering, and pay a filing fee, to each state in which it seeks to conduct the offer-

ing. This notice primarily consists of the Form D filed with the Securities and Exchange Commission.

To file a notice with the securities division, filers may utilize one of two methods: (1) Mailing a paper filing to the securities division, along with a check made out to the Washington state treasurer's office to pay the filing fee; or (2) electronically submitting a filing through the EFD system, and using the ACH system to pay required fees.

For those using EFD to make notice filings, the EFD system automatically digests what is filed on EDGAR. However, filers must affirmatively select the jurisdictions in which they are seeking to make notice filings. To use the EFD system, filers are required to pay a per-offering system use fee, in addition to state filing fees. For example, when an issuer files a new Form D through the EFD system, it must pay a $155 system use fee. If the issuer later needs to amend the filing for that particular offering, it will not be charged the system use fee. However, if the amendment filing is the first type of filing for the offering made through EFD, then the system use fee would be collected for that filing.

Although the majority of filers already utilize the EFD system to file notices with the securities division, the proposed rule amendments would *require* filers to do so. As such, filers may incur expenses relating to the need to comply with this requirement, including paying the one-time system use fee, or establishing an account to facilitate ACH payments. Filers may rely on the assistance of counsel, or accounting departments, in order to comply with the requirements to file through the EFD system.

The securities division surveyed respondents to determine whether the requirements of the proposed rule amendments would add costs to their business, and if so, how much. The survey summarized the rule, including the circumstances under which the filer would incur the per-offering system use fee, and asked whether the proposed rule amendments would create any additional costs for the filer to comply, and whether there would be additional costs, other than the system use fee.

Of the sixty-three respondents, an overwhelming number indicated that the proposed rule amendments would not create additional costs to their businesses, apart from the per-offering $155 system use fee. The following chart provides the responses to the survey question regarding whether compliance with the proposed rule amendment would create additional costs to the respondents' businesses.

Whether Rule Changes Would Create Additional Costs (Beyond the $155 Per-Offering System Use Fee)		
	Yes	**No**
Proposed Rule Amendments	2 (3%)	61 (97%)

Where the survey takers indicated that the proposed rule amendments would create additional costs, the survey requested information regarding the amount of increased costs of professional services, equipment, supplies, labor, and administrative costs. As survey respondents were requested to provide information regarding its number of employees, the securities division was able to calculate the average increased cost per employee, to the extent information was supplied by the respondents. Of the sixty-three unique respondents, forty-four respondents provided estimated employee/independent contractor figures.[1] These costs per employee were then averaged.

[1] In the aggregate, these respondents had twelve thousand five hundred fifteen employees and independent contractors.

Information provided by certain respondents was not included in the per-employee averages. Specifically, one respondent stated that it would require additional time for its accounting department, as the EFD system does not currently accept credit card payments, but did not provide any quantitative cost estimates, or the number of its employees. Two respondents stated that it would see increased professional services costs in a "small amount" or "not much" but otherwise indicated no additional costs for equipment, labor, supplies, or administrative expenses. One respondent stated that it would cost $50,000 in additional professional services, but declined to provide the reasons for its estimate, or the number of employees it had. As such, the securities division did not include these respondents in the per-employee averages.

Average Cost Increase Per Employee (All Respondents)					
	Professional Services	Equipment	Supplies	Labor	Administrative
Proposed Rule Amendments	$4.79	$0.20	$0.02	$0.82	$0.99

Of these forty-four respondents, only five provided quantitative estimated additional costs above "$0" *and* the number of employees the respondent had. The below chart provides the average cost increase per employee only for the respondents who provided estimates of additional costs (regardless if they answered "yes" to the question of whether the proposed rule amendments would result in increased costs), and disclosed the number of employees or independent contractors the respondent had. Not all respondents provided increased cost estimates for all categories; accordingly, the average cost increase per employee is only calculated using the number of employees per respondent that actually provided an estimate in that particular category.[2] For those that simply indicated the EFD system use fee would result in increased administrative costs, but did not provide quantitative estimates, the securities division calculated the fees based on the number of new and amended EFD filings the respondent estimated that it would make per year, multiplied by $155, and included that in the calculation of the average increase in administrative costs per employee.

[2] Specifically, the "Professional Services" category is based on four respondents with twenty-eight employees in the aggregate; the "Equipment" category is based on two respondents with fourteen employees in the aggregate; the "Supplies" category is based on one respondent with four employees; the "Labor" category is based on three respondents with one thousand five hundred eight employees in the aggregate; and the "Administrative" category is based on three respondents with twenty-four employees in the aggregate. Only one of the respondents who is included in the labor categories is not a "small business." The remainder are.

Average Cost Increase Per Employee (Respondents with Increased Costs)					
	Professional Services	Equipment	Supplies	Labor	Administrative
Proposed Rule Amendments	$2,142.86	$178.57	$75.00	$6.80	$517.50

Analysis of Increased Costs: The survey results indicated that the proposed rule amendments, *i.e.*, switching from paper notice filing to electronic submissions would create greater costs for some respondents than for others. Because the survey responses ranged widely, the securities division discusses the range of responses for each type of cost category below.

Additional Professional Services:

The survey results indicated that approximately twelve percent (eight of sixty-three) of the survey respondents believed that the proposed rule amendments would increase additional professional services. However, only five respondents provided quantitative estimates, which ranged between $10,000 and $50,000, and the $50,000 estimate was excluded from the range due to the lack of information regarding employee numbers. The quantitative estimates for those respondents that provided their number of employees and independent contractors indicated an average of $2,142.86 per employee for professional services. The nonquantitative estimates provided by respondents were: "not much," a "small amount" and "additional time for our accounting department since [the EFD system] do not take credit cards."

The securities division found the quantitative cost increase estimates surprising because the proposed rule amendments merely change the manner in which Rule 506 notice filers submit notices; the proposed rule amendments do not change the underlying filing requirements.

As Rule 506 is a federal exemption from registration, Rule 506 notice filers are required to first file their Form D online using the Securities and Exchange Commission's EDGAR system. The EFD system automatically digests the notices that are filed on EDGAR, and then the filer affirmatively selects the jurisdictions in which it seeks to file. In addition, for those filing notices in multiple states, fourteen other states already require that such notices be submitted through the EFD system. Although notice filers are required by the EFD system to pay an additional system use fee, it is difficult to see how a filer might incur, for example, an additional professional cost of $50,000. We speculate that some businesses might be required to expend efforts to facilitate ACH payments, rather than credit card or check payments, and that this may increase professional costs for them.

In contrast to these few respondents, a majority of survey respondents (thirty-four of sixty-three, or fifty-four percent) affirmatively indicated that the amount of increased costs was "$0" (others stated "N/A" or failed to respond). One respondent expressly indicated that it would incur no additional legal fees in changing the method of Rule 506 notice filings from paper to filing online. Another indicated that most of its filings are already submitted through the EFD system, so it would save the cost of writing a separate check and mailing a paper package to the securities division. The respondent further indicated that it would save costs to move to filing on EFD only. When averaged against all respondents, the estimated increased costs would be an average of $4.79 per employee. Accordingly, the securities division believes that it would not significantly increase professional costs to comply with the proposed rule amendments.

Equipment Costs:

The survey results indicated that approximately three percent (two of sixty-three) of the survey respondents believed that the proposed rule amendments would result in increased equipment expenses. Of the respondents that anticipated the proposed rule amendments would increase costs, these cost estimates ranged from $500 to $2,000 for an average per-employee increase of $178.57. It is unclear the basis for the estimated increased equipment costs. The primary manner of filing the Rule 506 notice filing with the Securities and Exchange Commission is already electronic. Accordingly, the securities division speculates that Rule 506 notice filers might incur additional costs to set up ACH payments.

In contrast, fifty percent of survey respondents (thirty-two of sixty-three) expressly indicated that there would be $0 in increased equipment costs (the remainder stated "N/A" or failed to respond), and on a whole would result in an average increase of $0.20 per employee. The securities division believes that the proposed rule amendments would not significantly increase equipment costs for Rule 506 notice filers. Rather, we anticipate that filers may save costs in printing, postage, and administrative time to file notices online.

Supply Costs:

The survey results indicated that approximately two percent (one of sixty-three) of the respondents believed that the proposed rule amendments would result in increased supply costs. That respondent estimated that the proposed rule would increase costs in an amount of $300, for an average increase of $75 per employee. However, the respondent did not explain the basis for the increased supply costs.

In contrast, fifty-two percent of survey respondents (thirty-three of sixty-three) expressly indicated that there would be $0 in increased supplies costs (others stated "N/A" or failed to respond). When averaged against the remainder of the respondents, the expenses result in an average increase of $0.02 per employee on a whole. Accordingly, the securities division believes that the proposed rule amendments would not significantly increase supply costs for Rule 506 notice filers. Rather, we anticipate that businesses may save costs in printing and postage supplies they would otherwise incur to make paper filings with the securities division.

Labor Costs:

The survey results indicated that approximately five percent (three of sixty-three) of the respondents believed that the proposed rule amendments would result in increased labor costs. Of the three percent of respondents that anticipated the proposed rule amendments would increase costs, the individual estimates ranged from $150 to $10,000, for an average cost increase of $6.80 per employee. Although the primary manner of filing the Rule 506 notice filing with the Securities and Exchange Commission is electronic, the securities division speculates that Rule 506 notice filers might incur addi-

tional labor costs to set up ACH payments, or familiarize themselves with the EFD system.

In contrast, forty-nine percent of survey respondents (thirty-one of sixty-three) expressly indicated that there would be $0 in increased labor costs (others stated "N/A," "unknown," or failed to respond). When all responses are averaged together, the proposed rule amendments result in an average increase of $0.82 per employee for labor costs. As such, the securities division believes that the proposed rule amendments would not significantly increase labor costs for Rule 506 notice filers. Rather, we anticipate that filers (and the persons who work for them and/or make filings on their behalf) may save costs in printing, postage, and labor in filing all notices online.

Administrative Costs:

The survey results indicated that approximately five percent (three of sixty-three) of the respondents believed that the proposed rule amendments would result in increased administrative costs. For the five percent that anticipated that the proposed rule amendments would increase administrative costs, those costs included an average of $517.50 per employee. In calculating this average, for those that simply indicated the EFD system use fees would result in increased administrative costs, but did not provide quantitative estimates, the securities division calculated the fees based on the number of new and amended EFD filings the respondent estimated that it would make per year, multiplied by $155. The quantitative responses ranged from $1,800 to $10,000.

In contrast, fifty percent of survey respondents (thirty-two of sixty-three) expressly indicated that there would be $0 in increased administrative costs (others stated "N/A" or failed to respond). One respondent stated that there would be less administrative costs associated with a move to EFD filings. When all respondents are averaged together, the respondents anticipate that the proposed rule amendments will result in an increase of $0.99 per employee. Accordingly, the securities division believes that the proposed rule amendments would not significantly increase administrative costs for Rule 506 notice filers. Rather, we anticipate that filers may save costs in the time it takes to file notices online, and the time spent printing and mailing notice filings.

Other Compliance Costs Associated with the Proposed Rule Amendments:

In addition to professional services, equipment, supplies, labor, and administrative costs to comply with the proposed rule amendments, the securities division also requested respondents to explain any other compliance costs associated with the draft rule. Three of sixty-four respondents identified the EFD system use fee as a source of additional compliance costs. One of these three clarified that the EFD system use fee is fine when the filer is making a filing in several states at once, but if the filer is only seeking to file in Washington, then the system use fee could be costly. In contrast, two other respondents indicated that it would be more cost-effective to file Rule 506 notices through the EFD system than to make paper filings, the savings of which may be passed on to their clients. One additional respondent identified the "blue sky filing fee" as an additional compliance cost; however, the filing fee imposed by the securities division is $300, regardless of the manner of notice filing. The proposed rule amendments do not change the filing fee. The remaining respondents indicated that additional costs were not applicable, or would equal "$0."

Whether compliance with the proposed rule will cause businesses to lose sales or revenue:

The rule making is unlikely to result in lost sales or revenue for businesses that file Rule 506 notice filings through the EFD system. Of the sixty-three respondents, only two indicated that the proposed rule amendments might cause a loss in sales or revenues, or three percent of the respondents. The survey requested a free form answer regarding which specific provisions in the proposed rule amendments might result in lost sales or revenue. One of the two respondents who stated "Yes" to lost sales or revenue stated "N/A" with respect to the estimated amount of lost revenue, and further stated "N/A" when prompted to identify the particular provision that would result in lost revenue. Accordingly, this respondent may have answered "Yes" to the initial question in error. The other respondent estimated lost revenue in the amount of $10,000, and further explained, "As a Coamony [sic] operating in Canada the EFD is NOT set up to allow for the bank on this side - thus I cannot use the system." This respondent is correct in that not all financial institutions allow ACH payments. However, Canadian companies do successfully file Rule 506 notice filings currently with the states through the EFD system, and therefore we believe that this issue may be remedied.

In contrast, fifty-eight respondents (ninety-two percent of the respondents surveyed) indicated that they did not believe that the proposed rule amendments would result in lost sales or revenues. One respondent further opined that requiring Rule 506 notice filings to be made through the EFD system would save law firms the time and costs associated with creating letters, ordering checks, and preparing paper filing packages, compared to clicking through the EFD system.

An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:

The survey also asked whether the proposed rule amendments might result in the addition or elimination of any jobs. Only one respondent indicated that the proposed rule amendments may cause its business to eliminate any jobs, and estimated that one job might be eliminated. However, this same respondent is the same that has difficulties facilitating ACH payments as a Canadian company, and the division believes that these issues can be remedied. In contrast, sixty (ninety-five percent of all respondents) respondents indicated that they believed the proposed rule would not cause their businesses to eliminate any jobs.

None of the respondents indicated that the proposed rule amendments would cause them to add any jobs.

Based on the survey results, the securities division estimates that the average person or company filing Rule 506 notice filings, or the average attorney or paralegal advising Rule 506 notice filing issuers, would not eliminate or add any jobs as a result of the proposed rule amendments.

A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate:

RCW 19.85.040 requires the securities division to determine whether compliance with the proposed rule amendments will have a disproportionate impact on small business by comparing the cost[s] of compliance for small business[es] with the costs of compliance for the ten percent of businesses that are the largest businesses.

The securities division categorized each survey response based on whether it came from a small business, or whether it represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. Generally, the survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

The results may be impacted by the fact that the survey pool included both persons/companies that file Rule 506 notice filings and attorneys/paralegals that advise Rule 506 notice filers. The respondents that qualified as small businesses were comprised of issuers, law firms, and compliance firms with a small number of employees. Meanwhile, the largest ten percent of businesses surveyed were international law firms, with thousands of employees. The expenses to comply with the proposed rule amendments would naturally tend to be higher for a small business issuer that is likely filing a limited number of notice filings in a limited number of states, and may incur the EFD system use fee. They may also rely on legal and accounting services. In contrast, large law firms are merely assisting issuers in preparing or filing the notices. When surveyed, several respondents that were larger law firms indicated that electronic filings are more cost-effective than paper filings, the savings of which may be passed on to these issuers.

The following chart compares the average cost increase per employee associated with the proposed rule amendments for both the largest ten percent of businesses required to comply and small businesses. Small businesses are defined as fifty or fewer employees. The largest ten percent of businesses were likewise determined by the number of employees. These charts include only data from respondents who provided quantitative answers to cost categories (including $0) and disclosed the number of employees or independent contractors the respondent had. For example, one respondent indicated a "small amount" of additional professional services costs would be incurred, and therefore was not included in calculating the average figures presented below. Unlike the table of increased costs per employee displayed above, the tables below express per-employee averages for *all* small businesses, and *all* of the ten percent of the largest businesses, regardless of whether they estimated increases or not.

For those that simply indicated the EFD system use fees would result in increased administrative costs, but did not provide quantitative estimates, the securities division calculated these costs based on the number of new and amended EFD filings the respondent estimated that it would make per year, multiplied by $155, and included this figure in arriving at the average administrative cost increase per employee.

Average Cost Increase Per Employee (Comparison of Small Business and Largest 10% of Businesses)

	Professional Services	Equipment	Supplies	Labor	Administrative
Small Businesses	$184.00	$7.60	$0.92	$31.08	$38.22
Largest 10%	$0.00	$0.00	$0.00	$0.02	$0.00

Comparison of lost sales or revenue:

In their survey responses, the largest ten percent of businesses indicated that they would not lose any sales or revenue as a result of the proposed rule amendments. In contrast, one small business indicated that it would loss [lose] sales or revenue in the amount of $10,000 because of the draft rules, averaging to an amount of $5,000 of lost revenue per employee. However, this same respondent indicated that it has difficulties facilitating ACH payments as a Canadian company, which we believe can be remedied without substantial expense.

Comparison of addition or elimination of jobs:

None of the respondents indicated that the proposed rule amendments would cause them to add any jobs. However, one small business indicated that the proposed rule amendments might cause its business to eliminate jobs, and estimated that one job might be eliminated. However, this same respondent indicated that it has difficulties facilitating ACH payments as a Canadian company, which we believe can be remedied without substantial expense. In contrast, sixty (ninety-five percent of all respondents) respondents indicated that the proposed rule would not cause their businesses to eliminate any jobs, which includes all of the ten percent [of] largest businesses.

Steps taken by the department under RCW 19.85.-030(2) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps:

The securities division carefully considered all of the survey responses submitted, as well as a number of potential methods to reduce the impact of the proposed rule amendments on small businesses. Based on the survey results discussed above, the securities division determined not to make any modifications to its proposed rule amendments. We discuss the methods considered and the reasons for not making modifications to the proposed rule amendments below.

Reducing, modifying, or eliminating substantive regulatory compliance:

The securities division received several comments in its economic impact survey which indicated that the proposed rule amendments may increase costs to comply. However, the overwhelming number of survey respondents indicated that the proposed rule amendments impose no additional costs. Several respondents even indicated that it would save them time and money to make filings through the EFD system. Indeed, since the creation of the EFD system, the securities division has heard informal feedback from state securities regulators, filers, and other interested parties that the electronic filing system has streamlined the process to file and process such documents. The securities division believes that mandating filings through the EFD system will ultimately save printing, packaging, and mailing costs, which

will result in cost and time efficiencies. It is important to note that many notices that are filed in hard copy are submitted by overnight courier at significant expense to ensure timely submission. With electronic filing, filings are made in a matter of minutes and avoid the expense of overnight couriers.

Although the EFD system charges a separate per-offering system use fee, the securities division notes that smaller businesses will only incur the one-time system use fee in connection with offerings to raise capital, which are unlikely to occur with any frequency. In addition, the time saved by attorneys who file on behalf of issuers can be expected to be passed on to those issuers.

Lastly, the securities division notes that it issues acknowledgments to these hard copy Rule 506 notice filings, and in certain instances, may issue follow-up correspondence. The submission of paper notice filings requires the securities division to manually receive, process and scan the filings, which may result in delays to the filer receiving any follow-up correspondence or an acknowledgment of the filing itself. Requiring filings to be made through the EFD system will eliminate inefficiencies and result in a streamlined process for both filers and the securities division. Issuers can confirm the receipt of the filing through EFD without requiring an acknowledgment from the division. Accordingly, the securities division made no changes to the proposed rule amendments.

Simplifying, reducing, or eliminating recordkeeping and reporting requirements:

The proposed rule amendments would only impact the manner in which Rule 506 notice filings are made with the securities division. As such, there are no recordkeeping or reporting requirements to simplify, reduce, or eliminate. Based on feedback received from survey respondents, it appears that switching to electronic submissions through the EFD system may decrease costs and increase efficiencies by eliminating printing, packaging, and the mailing of separate paper notice filings.

Reducing the frequency of inspections:

The securities division does not inspect or otherwise examine the filers who submit Rule 506 notice filings. Rather, the primary responsibility of issuers making offerings in reliance on federal Rule 506 is to file notice of such offering and to pay the filing fee with the securities division. Accordingly, the securities division is unable to reduce the frequency of inspections.

Delaying compliance timetables:

The securities division will allow filers and other interested persons adequate time to adjust to the proposed rule amendments through existing processes, including following the timing and notice procedures required in connection with proposed rule making. The securities division understands that it may take time for filers to familiarize themselves with the EFD system, or set up accounts to facilitate ACH payments, and that this may require input from attorneys or accountants. The securities division will publish notice on its website, distribute such notices to interested persons, and offer assistance to filers that have difficulties navigating the EFD system. In addition, the securities division is considering implementing a limited grace period in which it will continue to accept paper filings after the proposed rule amendments become effective.

Reducing or modifying fine schedules for noncompliance:

There are no fines associated with a filer's failure to comply with the proposed rule amendments. However, the securities division is also considering implementing a limited grace period in which it will continue to accept paper filings after the proposed rule amendments become effective.

Any other mitigation techniques:

Because the proposed rule amendments may have an increased impact on small businesses, the securities division determined to take additional mitigation steps to reduce overall burden of compliance. The securities division outlines these steps below.

First, in connection with the proposed rule amendments, the securities division will publish and distribute notice of proposed rule making, and adoption of proposed amendments, to its interested persons list and to those who have made Rule 506 filings in the most recent three years. The securities division will also publish notice of our rule making on our website, and further revise our website to add a direction to file through the EFD system, wherever Rule 506 offerings are discussed.

The securities division will also offer support to filers navigating the EFD system. If filers have questions regarding the EFD system, or its requirements, the securities division will endeavor to provide answers to such questions, or will direct the filer to the appropriate EFD system administrator. The securities division will also direct filers to the frequently asked questions section of the EFD website. The company that developed the EFD system also provides a user helpdesk that is available from 9 a.m. to 6 p.m. eastern time, and the securities division will take care to ensure that filers are aware of this resource.

The securities division is also considering a limited grace period in which it will continue to accept paper filings after the proposed rule amendments become effective. If the securities division receives paper filings during this grace period, then we will notify the filer of the new filing requirements and accept the paper filing.

Beyond the steps outlined above, the securities division does not believe that it can reduce costs further.

How the department will involve small businesses in rule development:

Since the beginning of the rule-making process, the securities division has involved interested persons, including small businesses, in the development of the proposed rules.

On March 6, 2018, the securities division filed a preproposal statement of inquiry (CR-101) concerning the rule making. The securities division distributed the CR-101 notice to its interested persons list for securities registration matters. This group of recipients included many small businesses and those that advise small businesses. The CR-101 notice invited interested persons to participate in the rule-making process by submitting comments to the securities division.

The securities division next prepared a survey to determine the economic impact of the proposed rule amendments. The survey, along with a copy of the draft proposed amendments, was sent to a survey pool consisting of every person

that had made a Rule 506 notice filing in the last three years. The securities division reasoned that these persons might be likely to rely on Rule 506 exemptions in the future, or file amendments or renewals to current Rule 506 notice filings. In addition, the securities division reasoned that this group might have current insights about the impact of the proposed rule amendments on small businesses. The securities division will continue to seek the feedback of interested parties as the rule-making process continues.

A list of the industries that will be required to comply with the rule:

Companies electing to conduct securities offerings in reliance on federal Rule 506 in this state will be required to comply with the proposed rule amendments, *i.e.*, file notices of such offerings through the EFD system. Similarly, attorneys and/or paralegals that elect to assist issuers with making such filings will likewise be required to comply with the proposed rule amendments.

A copy of the statement may be obtained by contacting Michelle Webster, Esq., 150 Israel Road S.W., Tumwater, WA 98501, phone 360-902-8736, fax 360-902-0524, TTY 360-664-8126, email michelle.webster@dfi.wa.gov.

October 9, 2019
Charlie Clark
Director

AMENDATORY SECTION (Amending WSR 19-04-084, filed 2/4/19, effective 3/7/19)

WAC 460-44A-503 Filing of notice and payment of fee. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504 or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(b) and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(b) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(c) and RCW 21.20.327(2), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(c) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 or 147A and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147/Rule 147A and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 C.F.R. Part 232).

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on

Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(b), or made in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(c), the issuer shall file notices and fees required by this section through the Electronic Filing Depository (EFD) system, operated by the North American Securities Administrators Association. Any amendments to previously filed notices of sales on Form D as permitted or otherwise required by this section shall be filed through EFD.

WSR 19-21-048
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 10, 2019, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-09-032.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-410-0005 Cash assistance overpayment amount and liability and 388-410-0015 Recovery of cash assistance overpayments by mandatory grant deduction.

Hearing Location(s): On November 26, 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 November 27, 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., November 26, 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 November 12, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-410-0005 and 388-410-0015 to clarify which members of a household are and are not responsible for repaying cash overpayments, the circumstances where overpayments are recovered by means of a mandatory grant deduction, and that cash overpayments are not recovered from children.

Reasons Supporting Proposal: These amendments protect the financial well-being of children by clarifying that cash overpayment liability and repayment apply to adults, not children.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5770 [98504-5470], 360-522-2214.

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

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

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rules do not have an economic impact on small businesses. They only impact DSHS clients.

October 8, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-066, filed 3/29/19, effective 5/1/19)

WAC 388-410-0005 Cash assistance overpayment amount and liability. (1) The amount of overpayment for cash assistance households is determined by the amount of

assistance received to which the assistance unit was not entitled.

(2) Cash overpayments are recovered from:

(a) Any ((~~individual~~)) adult member of an overpaid assistance unit, whether or not the member is currently a recipient;

(b) Any assistance unit of which ((~~a~~)) an adult member of the overpaid assistance unit has subsequently become a member; or

(c) A nonneedy caretaker relative or guardian who received ((~~the overpayment on behalf of~~)) assistance for a child who is in the assistance unit.

(3) A cash assistance overpayment is not recovered from:

(a) ((~~A nonneedy caretaker relative or guardian who did not receive the overpayment on behalf of a child;~~

~~(b)~~)) A child who was in the assistance unit at the time the overpayment was accrued;

(((~~(c) A nonneedy caretaker relative or guardian who was assessed an overpayment for a child who is not currently part of the assistance unit;~~)) or

(((~~(d)~~))) (b) A person not receiving assistance when an unintentional overpayment of less than thirty-five dollars is discovered, computed, or both.

(4) Overpayments resulting from incorrectly received cash assistance are reduced by:

(a) Cash assistance a household would have been eligible to receive from any other category of cash assistance during the period of ineligibility; and

(b) Child support the department collected for the month of overpayment in excess of the amount specified in (a) of this subsection; or

(c) Any existing grant underpayments.

(5) A cash assistance overpayment cannot be reduced by a food assistance underpayment.

(6) An underpayment from one assistance unit cannot be credited to another assistance unit to offset an overpayment.

(7) All overpayments occurring after January 1, 1982 are required to be repaid by mandatory grant deduction except where recovery is inequitable as specified in WAC 388-410-0010.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-410-0015 Recovery of cash assistance overpayments by mandatory grant deduction. (1) All overpayments of cash assistance are recovered by means of a mandatory deduction from future continuing assistance grants except:

(a) When a nonneedy caretaker relative or guardian was assessed an overpayment for a child who is not currently part of the assistance unit or,

(b) As specified by WAC 388-410-0010.

(2) All adult members of an overpaid assistance unit are responsible for repayment of an overpayment. Repayment may be from:

(a) Resources, ((~~and/or~~)) income or both; or

(b) Deductions from subsequent grants; and

(c) An assistance unit member's estate.

(3) The mandatory grant deduction of an intentional overpayment is ten percent of the monthly grant payment standard.

(4) A monthly grant deduction of up to one hundred percent of the grant can be established when:

(a) The overpayment is intentional;

(b) The client has liquid resources available but refuses to use these resources in full or partial satisfaction of the overpayment; and

(c) The amount of income and resources remaining available to the assistance unit is not less than ninety percent of the grant payment standard.

(5) An unintentional overpayment is recovered by grant deduction of five percent of the monthly grant payment standard unless the client voluntarily requests a larger deduction in writing.

(6) A monthly deduction for overpayment recovery can be established against the clothing and incidental grant of a recipient in a nursing facility, intermediate care facility, or hospital. A monthly deduction cannot be established against the vendor payment to the nursing facility, intermediate care facility or hospital.

(7) When the monthly grant deduction is equal to or more than the current grant for which the client is eligible had no overpayment occurred, the grant is suspended.

(8) No more than the total amount of an overpayment may be collected by mandatory deduction from a client's public assistance grant. The client will receive compensation for an underpayment resulting from any erroneous monthly deduction.

WSR 19-21-058
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed October 11, 2019, 11:18 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 19-08-081.

Title of Rule and Other Identifying Information: Chapter 16-125 WAC, Farm milk storage tanks and bulk milk tanker—Requirements, the department is proposing to repeal WAC 16-125-035 Farm tank pickup and washing requirements. By repealing this section, the department is deferring to the standards for picking up milk from farm tanks and for washing and sanitizing the tanks specified in the 2017 pasteurized milk ordinance (PMO) that is adopted under chapter 16-101 WAC, Washington state milk and milk products standards.

Hearing Location(s): On November 26, 2019, at 9:00 a.m., at the Natural Resources Building, Room #172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: December 3, 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 November 26, 2019.

Assistance for Persons with Disabilities: Contact Angela Starr, phone 360-902-1967, fax 360-902-2087, TTY 800-833-6388, email astarr@agr.wa.gov, by November 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 16-125-035 requires that (1) all milk must be picked up at least every forty-eight hours from farm tanks, and (2) all farm tanks must be emptied, washed, and sanitized at least once every forty-eight hours. Northwest Dairy Association and Darigold petitioned the department, requesting that these time requirements be changed to align with the 2017 PMO, which was adopted under chapter 16-101 WAC on April 5, 2019.

Reasons Supporting Proposal: RCW 15.36.021 authorizes the department to, by rule, establish, amend, or both, definitions and standards for milk and milk products and states that those definitions and standards shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by the federal Food and Drug Administration (FDA) which are published in PMO. FDA designs PMO to protect consumers from milk borne diseases in both grade "A" pasteurized and raw milk and encourages all states to adopt the most recent version in order to promote uniformity with other states. The 2017 PMO specifies a seventy-two hour requirement for farm tank pickup and washing under Item 10r - Utensils and Equipment - Cleaning. The 2017 version of PMO, including the seventy-two hour requirement for farm milk pickup and tank washing, was adopted by the department in April 2019 under chapter 16-101 WAC thus making the forty-eight hour requirement in WAC 16-125-035 conflict with the requirements adopted in chapter 16-101 WAC and confusing for stakeholders to follow. By repealing WAC 16-125-035, which requires milk pickup and tank washing every forty-eight hours, this rule will not conflict with the requirements specified in PMO as adopted under chapter 16-101 WAC. Its repeal improves consistency with national standards and facilitates the interstate shipment of grade "A" and manufactured food dairy products.

PMO has established that seventy-two hours between tank washings is effective for managing bacterial growth when proper sanitation practices at the farm and plant are maintained. The forty-eight hour requirement is not necessary to protect public health.

Statutory Authority for Adoption: RCW 15.36.021.

Statute Being Implemented: Chapter 15.36 RCW.

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

Name of Proponent: Northwest Dairy Association of Darigold, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Smith, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-1952.

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 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.

Is exempt under RCW 34.05.310 (4)(c).

Explanation of exemptions: PMO, published by FDA, outlines minimum standards and requirements for grade "A" milk and milk products pertaining to production, processing, packaging, and sale. FDA developed PMO with the assistance of milk regulatory and rating agencies at every level of federal and state government, including both health and agriculture departments; all segments of the dairy industry, including producers, milk plant operators, equipment manufacturers, and associations; and educational and research institutions.

RCW 15.36.021 authorizes the department to, by rule, establish, amend, or both, definitions and standards for milk and milk products and states that those definitions and standards shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by FDA which are published in PMO. Under chapter 16-101 WAC, Washington state milk and milk products standards, the department adopts most provisions of PMO. The rule specifies which provisions of PMO that the department does not adopt.

PMO specifies a seventy-two hour requirement for picking up milk from farm tanks and for washing and sanitizing the tanks. When conducting rule making under chapter 16-101 WAC earlier this year, the department did not adopt an exception to PMO related to the schedule for picking up milk from farm tanks and for washing and sanitizing the tanks. This means that under chapter 16-101 WAC, milk producers must follow PMO's requirements. However, WAC 16-125-035 specifies a forty-eight hour milk pick up from farm tanks and a forty-eight hour washing and sanitizing schedule.

In order to respond to a petition for rule making and also correct the conflict between rules, the department is proposing to repeal WAC 16-125-035 thereby making it clear that milk producers in Washington state must follow the standards specified in FDA's PMO for picking up milk from farm tanks and washing and sanitizing the tanks.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

October 11, 2019
Steve Fuller
Assistant Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-125-035	Farm tank pickup and washing requirements.

WSR 19-21-076
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 14, 2019, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-103.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-1600 WorkFirst—Sanctions, 388-400-0005 Who is eligible for temporary assistance for needy families?, and 388-484-0006 TANF/SFA time limit extensions.

Hearing Location(s): On November 26, 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/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than November 27, 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., November 26, 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 November 12, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes these amendments to expand the temporary assistance for needy families (TANF) time limit extensions to families experiencing homelessness and to eliminate permanent WorkFirst noncompliance sanction disqualifications.

Reasons Supporting Proposal: The proposed amendments are necessary to implement 2SHB 1603 (chapter 343, Laws of 2019).

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.08.025, 74.08A.-010.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504-5770 [98504-5470], 360-725-4619.

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. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rules do not have an economic impact on small businesses.

October 10, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-104, filed 9/30/14, effective 11/1/14)

WAC 388-310-1600 WorkFirst—Sanctions. ((~~Effective November 1, 2014.~~))

(1) **What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) **What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing. The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

(e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.

(3) **What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter ((~~170-290~~)) 110-15 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children.

(e) You had an immediate legal problem, such as an eviction notice; or

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) **What happens in my noncompliance case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in sanction status for two months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.-030; and

(vii) How to reapply if your case is closed((~~; and~~

~~(viii) That upon your third sanction case closure after March 1, 2007, you may be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, your entire household is ineligible for TANF/SFA~~)).

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have and send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) **What happens if we do a home visit because you didn't attend your noncompliance case staffing?**

If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).

(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.

(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.

(6) **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.

(d) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(7) **What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

(8) **Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting). Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(a) If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status, you will receive a grant reduction sanction penalty.

(i) Your grant is reduced by one person's share or forty percent, whichever is more.

(ii) The reduction is effective the first of the month following ten-day notice from the department; and

(iii) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.

(i) Your case may be closed the first of the month following the ten-day notice from the department.

(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.

(A) Your grant is reduced by one person's share or forty percent, whichever is more.

(B) The reduction is effective the first of the month that your grant is reopened; and

(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(9) **What happens before your case is closed due to sanction?**

Before we close your case due to sanction status, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How you can request an administrative hearing if you disagree with this decision;

(d) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (13).

(10) **What happens if my sanction grant reduction penalty started before November 1, 2014?**

If you are in sanction and entered sanction before November 1, 2014, your case may be closed after you have been in sanction for four months in a row.

(11) **How do I end the penalties and get out of sanction status?**

To end the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

(12) **What happens when I get out of sanction status before my case is closed?**

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(13) **What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (14). If your case closed for another reason while you were in sanction status and is reopened, you will reopen in month two of sanction status.

(14) **What if I reapply for TANF or SFA after my case is closed due to sanction?**

(a) Except as specified in subsection (14)(b) if you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

(b) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and

complete the interview by July 31. If you meet this timeframe:

(i) We will undo your case closure sanction penalty((~~, and we will not count the closure toward permanent disqualification under subsection (15)~~)); and((,))

(ii) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.

(((~~(15) **What happens if a supervisory level employee approves case closure for the third time?**~~

~~If we close your case for sanction at least three times after March 1, 2007, you will be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, any household you are in will also be ineligible for TANF/SFA.~~))

AMENDATORY SECTION (Amending WSR 14-10-046, filed 4/30/14, effective 6/1/14)

WAC 388-400-0005 Who is eligible for temporary assistance for needy families? (1) You can get temporary assistance for needy families (TANF), if you:

(a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC; and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

(i) Prove who is the father of children applying for or getting TANF or SFA; and

(ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you apply for TANF, have not received TANF or SFA within the past thirty days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

(3) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(4) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

(5) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005((~~; or~~

~~(d) If the child lives with a parent who provides care for the child, that adult cannot have been permanently disqualified from receiving TANF/SFA due to noncompliance sanction as defined in WAC 388-310-1600~~)).

(6) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

(7) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) **What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) **Who is eligible for a hardship TANF/SFA time limit extension?**

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless as described in RCW 43.185C.010 (12).

(3) **Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) **When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) **Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) **How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), ((~~or~~)) (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

WSR 19-21-082
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed October 14, 2019, 1:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-016.

Title of Rule and Other Identifying Information: WAC 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)?, 192-170-010 Availability for work—RCW 50.20.-010, 192-180-005 Registration for work—RCW 50.20.010 (1) and 50.20.230, 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240, 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044, and 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011.

Hearing Location(s): On December 3, 2019, at 8-9 a.m., at the Employment Security Department, 212 Maple Park Avenue, Commissioner's Conference Room, Olympia, WA 98501.

Date of Intended Adoption: January 27, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by December 2, 2019.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@es.wa.gov [teckstein@esd.wa.gov], by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5398 (chapter 50, Laws of 2019) amended RCW 50.20.010, 50.20.230, and 50.20.240 and established different eligibility requirements to receive unemployment insurance benefits for individuals

complying with an electrical apprenticeship training program. Rules are necessary to more precisely define what these eligibility requirements are, and specify the particular electrical apprentices to whom these new eligibility requirements apply.

Reasons Supporting Proposal: Amending the rules will allow the department to conform to new statutory requirements.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.010, 50.20.230, and 50.20.240.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michaell, Olympia, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, 360-902-9579.

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 Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, https://www.esd.wa.gov/newsroom/ui-rule-making/electrical-apprentices.

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

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

October 14, 2019
Dan Zeitlin
Employment System
Policy Director

AMENDATORY SECTION (Amending WSR 19-12-091, filed 6/4/19, effective 7/22/19)

WAC 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)? (1) **Written directives.**

(a) The commissioner may direct you in writing to schedule a time to report in person for reemployment services. The written directive will contain a deadline by which you must schedule and participate in reemployment services.

(b) If you fail to schedule a time to participate in reemployment services by the deadline, you will be ineligible to receive benefits for the week containing the date of the deadline, unless you show justifiable cause.

(c) If you fail to participate in reemployment services at the time you scheduled, you will be ineligible to receive benefits for the week containing the time you scheduled, unless you show justifiable cause.

(d) The department may verify the reasons you failed to schedule or participate in reemployment services. In all such cases, your ability to work or availability for work may be questioned.

(2) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member of a full referral union and are eligible for dispatch and referral according to union rules;

(b) Are attached to an employer as provided in WAC 192-180-005;

(c) Are participating in a training program approved by the commissioner; ((~~or~~))

(d) Within the previous year have completed, or are currently scheduled for or participating in, similar services; or

(e) Are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

(d) Self-assessment of job skills and interests;

(e) Job interview techniques;

(f) The development of a resume or fact sheet; and

(g) The development of a plan for reemployment.

(4) **Justifiable cause.** Justifiable cause for failure to schedule or participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to schedule or participate in reemployment services. Justifiable cause includes, but is not limited to:

(a) Your illness or disability or that of a member of your immediate family;

(b) Conflicting employment or your presence at a job interview scheduled with an employer; or

(c) Severe weather conditions.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are considered available for work if you are complying with an electrical apprenticeship program approved by the department of labor and industries.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230. (1) **Am I required to register for work?** You must register for work unless you are:

(a) Attached to an employer, meaning you are:

(i) Partially unemployed as defined in WAC 192-180-013(1);

(ii) On standby as defined by WAC 192-110-015;

(iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090; or

(iv) Participating in the shared work program under chapter 50.60 RCW;

(b) A member of a union that participates in the referral union program (see WAC 192-210-110);

(c) Participating in a training program approved by the commissioner; ((~~or~~))

(d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents; or

(e) An active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(2) **How soon do I have to register?**

(a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.

(b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.

(3) **Where do I register for work?** You will be registered for work with the department. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

(4) **What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

WAC 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240. (1) **Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer as defined in WAC 192-180-005(1); ((~~or~~))

(b) Participating in a training program approved by the commissioner; or

(c) An active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(2) **When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1) of this section.

(3) **What are my weekly job search requirements?**

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

(ii) Participate in three approved in-person job search activities through the WorkSource office or the equivalent public employment agency in the state in which you reside, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities each week.

(c) If you are a member of a referral union you must be registered with your union, eligible for and actively seeking dispatch, and comply with your union's dispatch or referral requirements (see WAC 192-210-120). Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

(4) **What is a "job search contact"?** A job search contact is a contact with an employer to inquire about or apply for a job. You must use job search methods that are customary for your occupation and labor market area including, but not limited to, in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100 and 50.20.110) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department decides the contact is designed in whole or in part to avoid meeting the job search requirements. Simply posting your resume online (for example, Simplyhired.com or Craigslist) does not constitute a job search contact for purposes of this section; in addition to posting your resume, an application or contact with an employer for a job must be submitted to count as one of the required weekly job search contacts.

(5) **What is an "in-person job search activity"?** This is an activity provided or monitored through the WorkSource office or the equivalent public employment agency in the state in which you reside that will assist you in your reemployment efforts. It includes, but is not limited to, job search workshops, training classes, or other facilitated services provided or monitored by WorkSource staff or other affiliated agencies and approved by the local WorkSource office. For claimants residing in Washington state, an in-person job search activity must be documented in the department's computer system to qualify. For interstate claimants, the activity must be documented by the equivalent public employment agency in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in

subsection (3) of this section, unless the directive is required under WAC 192-180-012.

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

(a) Increase the number of employer contacts each week;

(b) Change your method of looking for work;

(c) Expand the geographic area in which you look for work;

(d) Look for work in a secondary occupation; or

(e) Accurately record your job search activities as required by WAC 192-180-015.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given; the directive is rescinded in writing; your benefit year ends; or you receive final payment on any extension of benefits related to that benefit year, whichever is later.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044. (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

(2) You will not be directed to attend a job search workshop or training course if:

(a) You have an offer of bona fide work that begins within two weeks; or

(b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center; ((~~or~~))

(c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for work or have been identified as a dislocated worker as defined in RCW 50.04.075; or

(d) You are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

(a) RCW 50.20.010 (1)(c);

(b) RCW 50.20.240; or

(c) RCW 50.22.020(1).

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011. (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC, or unemployed due to strike or lockout) after all wages for the claimant on the current claim have been received. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to ((~~100%~~)) one hundred percent (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

WSR 19-21-083
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)
[Filed October 14, 2019, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-006.

Title of Rule and Other Identifying Information: WAC 246-853-675 (osteopathic physicians) Patient notification, secure storage, and disposal and 246-854-255 (osteopathic physician assistants) Patient notification, secure storage, and disposal. The board of osteopathic medicine and surgery (board) is proposing amendments to establish patient notification, documentation, counseling requirements, and right to refuse an opioid prescription or order for any reason, when prescribing opioid drugs, as directed by SSB 5380 (chapter 314, Laws of 2019), codified as RCW 18.57.810 and 18.57A.810. The board is also proposing clarifications of when notification is not required.

Hearing Location(s): On December 6, 2019, at 9:00 a.m., at the Department of Health, Creekside at Centerpointe, Suite 310, Room 309, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: December 6, 2019.

Submit Written Comments to: Tracie Drake, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.

gov/doh/policyreview, fax 360-236-2901, by November 27, 2019.

Assistance for Persons with Disabilities: Contact Tracie Drake, phone 360-236-4766, fax 360-236-2901, TTY 360-833-6388 or 711, email osteopathic@doh.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5380 requires the board, along with the Washington medical commission, dental quality assurance commission, podiatric medical board, and nursing care quality assurance commission to adopt or amend rules establishing additional patient notification and right to refuse requirements.

Sections 5 and 6 of SSB 5380, codified as RCW 18.57.-810 and 18.57A.810, direct the board to adopt or amend the opioid prescribing rules by January 1, 2020, to establish the requirement for osteopathic physicians and osteopathic physician assistants to notify patients of their right to refuse an opioid prescription or order and to document any refusal.

Section 17 of SSB 5380, codified as RCW 69.50.317, requires the prescribing practitioner, prior to the first opioid prescription, to discuss with the patient risks of opioids, pain management alternatives to opioids, and provide the patient a written copy of the warning language. The proposed rules are amended to include pain management alternatives in the patient notification.

In addition, the proposed rules clarify situations where the notification requirements would not apply. Specifically, notification requirements would not apply to emergent care, situations where pain represents a significant health risk, procedures involving administration of medications, when a patient is unable to grant or revoke consent, or for medication assisted treatment for substance use disorders. These exemptions are included because SSB 5380 only applies to prescriptions and these exemptions clarify settings in which direct administration is occurring.

The intent of SSB 5380 is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Reasons Supporting Proposal: The proposed rules are necessary to restate patient notification and patient right to refuse related to opioid prescribing requirements for osteopathic physicians and osteopathic physician assistants, and to clarify situations when notification is not required. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of SSB 5380. The goal is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Statutory Authority for Adoption: RCW 18.57.005.

Statute Being Implemented: RCW 18.57.810, 18.57A.-810, and 69.50.317.

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

Name of Proponent: Washington state board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tracie Drake, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Tracie Drake, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 360-833-6388 or 711, email Osteopathic@doh. 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(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Except for exemptions in WAC 246-853-675 (3)(d) and 246-854-255 (3)(d), all proposed changes are dictated by statute.

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. WAC 246-853-675 (3)(d) and 246-854-255 (3)(d) contain exemptions to the new requirements of law, which are not part of the law, in settings where complying with the law would be overly burdensome or impossible for providers. The board determined the proposed rules do not impose more-than-minor costs on businesses in the industry. These rules impact providers only.

October 14, 2019
Renee Fullerton
Executive Director

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

WAC 246-853-675 Patient notification, secure storage, and disposal. (1) The osteopathic physician shall ((~~provide information to~~)) discuss with the patient educating them of risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, type of patient, and phase of treatment. The osteopathic physician shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phases of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient written notification must include information regarding:

(a) Pain management alternatives to opioid medications;

(b) The safe and secure storage of opioid prescriptions; ((~~and~~

~~(b)~~)) (c) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs; and

(d) The patient's right to refuse an opioid prescription or order for any reason. If a patient indicates a desire to not receive an opioid, the osteopathic physician shall document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(4) The requirements in this section do not apply to the administration of an opioid including, but not limited to, the following situations:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the actual administration of an opioid or anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(5) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(6) The requirements of this section may be satisfied with a document provided by the department of health.

(7) The requirements of this section may be satisfied by an osteopathic physician designating any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

WAC 246-854-255 Patient notification, secure storage, and disposal. (1) The osteopathic physician assistant shall ((~~provide information to~~)) discuss with the patient educating them of risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, type of patient, and phase of treatment. The osteopathic physician assistant shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phases of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient written notification must include information regarding:

(a) Pain management alternatives to opioid medications;

(b) The safe and secure storage of opioid prescriptions; ((~~and~~

~~(b)~~)) (c) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs; and

(d) The patient's right to refuse an opioid prescription or order for any reason. If a patient indicates a desire to not receive an opioid, the osteopathic physician assistant shall document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(4) The requirements in this section do not apply to the administration of an opioid including, but not limited to, the following situations:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the actual administration of an opioid or anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(5) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(6) The requirements of this section may be satisfied with a document provided by the department of health.

(7) The requirements of this section may be satisfied by an osteopathic physician assistant designating any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

WSR 19-21-090
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed October 15, 2019, 2:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-033.

Title of Rule and Other Identifying Information: WAC 468-38-071 Maximums and other criteria for special permits—Divisible.

Hearing Location(s): On November 27, 2019, at 1:00 p.m., at the Transportation Building, Nisqually Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: November 27, 2019.

Submit Written Comments to: Justin Heryford, P.O. Box 47367, Olympia, WA 98504-7367, email Heryfoj@wsdot.wa.gov, fax 360-705-7987, by November 26, 2019.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email EngleK@wsdot.wa.gov, by November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal modifying WAC 468-38-071 was initiated by the Washington state department of transportation (WSDOT) maintenance and operations.

The proposal exempts government vehicles operating during emergency conditions such as snow and ice removal from the pilot/escort vehicle requirements in WAC 468-38-100.

The first change adds "government vehicles" where it currently mentions "department" vehicles and the second change adds subsection [(5)(b)](v) which states, "Exemption from the pilot/escort vehicle(s) requirements of WAC 468-38-100."

Proposed language:

Are there special permits available to government vehicles for emergent conditions? Yes. There are specific criteria authorizing issuance of permits to government vehicles during emergent conditions.

The secretary of transportation, or designee, may issue permits to government vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., now [snow] removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

(i) Weight on axles in excess of what is allowed in RCW 46.44.041;

(ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual;

(iv) Movement at night that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for maintenance vehicles established by the commission on equipment; and

(v) Exemption from the pilot/escort vehicle(s) requirements of WAC 468-38-100(1).

Reasons Supporting Proposal: During inclement weather when government vehicles are responding to snow and ice operations pilot/escort vehicles are not used. This rule change is matching the administrative code with existing practices as well as allowing for expedited responses during emergent conditions. These vehicles are required to obtain a WSDOT oversize/overweight permit and adhere to the conditions of the permit. Permits are only authorized during emergent conditions for government vehicles.

Statutory Authority for Adoption: RCW 46.44.090.

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

Name of Proponent: Washington state patrol, Washington Trucking Associations, Northwest Pilot Car Association, private and governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7987; Implementation: Kevin Zeller, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-704-6342; and Enforcement: Captain Thomas Foster, 106 11th Avenue S.E., Olympia, WA 98504, 360-596-3808.

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 proposal does not change the current process for government vehicles responding to emergent conditions.

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.

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. Current practices will be unchanged. There will be no additional impact due to this proposal.

October 15, 2019
Kara Larsen, Director
Risk Management and
Legal Services Division

AMENDATORY SECTION (Amending WSR 13-18-009, filed 8/22/13, effective 9/22/13)

WAC 468-38-071 Maximums and other criteria for special permits—Divisible. (1) **Can a vehicle, or vehicle combination, acquire a permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?** Yes. There are specific configurations that receive extra length, extra width, or extra height when carrying a divisible load.

(2) **What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul the rancher's own hay from the rancher's own fields to feed the rancher's own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-

100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(f) An overwidth permit, termed a tarping system permit, may be issued to a vehicle or vehicle combination for a divisible load when such vehicle is equipped with a tarping system as defined in WAC 468-38-073 (5)(n) and under the following conditions:

(i) The divisible load must be authorized by a tarping system permit in order to display the special conditions on the permit;

(ii) A tarping system permit is required for any divisible load exceeding one hundred and two inches (eight feet six inches) in width but not exceeding nine feet in width, all of which must be within the confines of the tarping system dimensions. For example, bulging of the tarping material, to accommodate the load, is not authorized;

(iii) A tarping system permit is authorized to be used in conjunction with either of the overlength permits authorized under (a) or (b) of this subsection; and

(iv) Vehicles operating with a tarping system permit are exempt from the requirements and restrictions listed in WAC 468-38-075(1).

(3) **Are there any measurement exclusive devices related to these permits?** Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three inches beyond the width of a vehicle. The examples are not all inclusive.

(4) **Are overweight permits available for divisible loads?** Yes. There are specific criteria authorizing overweight permits to divisible loads.

(a) ((~~The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:~~

~~(i) Weight on axles in excess of what is allowed in RCW 46.44.041;~~

~~(ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;~~

~~(iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and~~

~~(iv) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.~~

~~(b)~~)) Additional weight allowances are authorized through special permit for a segment of US-97 from the Canadian border to milepost 331.12 designated as a heavy haul industrial corridor. The permits will authorize vehicles to haul divisible loads weighing up to the Canadian inter-provincial weight limits and must comply with the following requirements:

(i) Vehicles applying for the Canadian weight special permit must be licensed to their maximum legal weight limit in Washington state.

(ii) Displaying the US-97 heavy haul industrial corridor permit does not waive registration fees, fuel taxes, operating authority requirements, future legislative or regulatory changes. Except as provided in the provisions for the heavy weight industrial corridor on US-97, all Washington state and federal laws must be complied with.

(iii) Routes of travel are strictly limited: Both directions of US-97 from the Canadian border at milepost 336.48 to milepost 331.12.

(iv) A Washington state axle spacing report is required for Canadian weight verification.

(v) The following descriptions indicate the maximum weight limits that will be permitted:

(A) Primary steering axle - 600 lbs. (272 kg) per inch (25.4 mm) of width of tire* with a maximum limit of 12,100 lbs.

(B) Other axles - 500 lbs. (227 kg) per inch of width of tire*.

(C) Single axles - 20,000 lbs. (9,100 kg) maximum.

(D) Tandem axles - 37,500 lbs. (17,000 kg) maximum.

*Width of tire is determined by tire side-wall nomenclature.

(E) Tridem axles.

Axle Spread	Pounds	Kilograms
94" (2.4m) to < 118" (3.0m)	46,300	21,000
118" (3.0m) to < 141" (3.6m)	50,700	23,000
141" (3.6m) to < 146" (3.7m)	52,900	24,000

Note: When computing allowable weights, the most conservative figure (whether weight per width of tire, axle weights, or gross weights) will govern.

(F) Maximum gross weight - Pounds (kilograms).

Number of Axles	2	3	4	5	6	7	8
Truck	36,000 (16,350)	53,000 (24,250)					
Truck and Full Trailer			74,000 (33,500)	91,000 (41,250)	106,500 (48,250)	118,000 (53,500)	139,994 (63,500)
Truck and Pup		56,200 (25,450)	74,000 (33,550)	91,000 (41,250)	99,800 (45,250)		

Number of Axles	2	3	4	5	6	7	8
Tractor and Semi		52,300 (23,700)	69,700 (31,600)	87,100 (39,500)	95,900 - 102,500*		
A-Train**				92,500 (41,900)	109,800 (49,800)	118,000 (53,500)	118,000 (53,500)
B-Train**				90,000 (40,700)	107,200 (48,600)	124,600 (56,500)	139,994 (63,500)
C-Train**				92,500 (41,900)	109,800 (49,800)	120,500 (54,600)	130,000 (58,500)

*Semi tridem axle spacing and weight limits:

94" to < 118" (2.4m to < 3.0m) spread - 95,900 lbs. (43,500 kg).

118" to < 141" (3.0m to < 3.6m) spread - 100,310 lbs. (45,500 kg).

141" to < 146" (3.6m to < 3.7m) spread - 102,500 lbs. (46,500 kg).

**Double trailer vehicles definition for this section:

A-Train: Double trailers coupled by a single drawbar.

B-Train: Two semi-trailers coupled by a fifth wheel mounted to rear of first trailer.

C-Train: Double trailers coupled by double drawbars with self-steering dolly axle(s).

(((~~(c)~~))) (b) Additional weight allowances are authorized through a special permit for the transportation of divisible loads on state highways during national emergencies or major disasters declared by the president. Emergency permits are available for loads that comply with the conditions following:

(i) The national emergency must be declared by the president of the United States;

(ii) Permits are issued exclusively for vehicles and loads that are delivering relief supplies for any destination that is part of the geographical area covered by the emergency declaration;

(iii) The entire permitted load must consist of emergency supplies; and

(iv) The weight limits for an emergency permit are as follows:

(A) Single axle weight not to exceed 21,500 lbs.;

(B) Tandem axle weight not to exceed 43,000 lbs.;

(C) Tridem axle group weight not to exceed 53,000 lbs. (Tridem axle group defined for this section as three consecutive axles more than 8 feet apart but less than 13 feet apart measured from the center of the first axle of the group to the center of the last axle of the group);

(D) 160,000 lbs. gross weight;

(E) Must comply with all bridge and road weight restrictions;

(F) When requested by law enforcement, documents must be displayed describing the permitted load and that it is destined for the declared emergency area;

(G) Emergency permits under this section will expire no later than one hundred twenty calendar days after the date of the emergency declaration; and

(H) Permits authorized by the emergency declaration will not be issued for loads originating in the declared emergency area except for activities that clear roadways, staging areas, or locations for temporary structures in specific areas in the disaster area.

(5)(a) **Are there special permits available to government vehicles for emergent conditions?** Yes. There are specific criteria authorizing issuance of permits to government vehicles during emergent conditions.

(b) The secretary of transportation, or designee, may issue permits to government vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

(i) Weight on axles in excess of what is allowed in RCW 46.44.041;

(ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual;

(iv) Movement at night that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for maintenance vehicles established by the commission on equipment; and

(v) Exemption from the pilot/escort vehicle(s) requirements of WAC 468-38-100(1).

WSR 19-21-092
WITHDRAWAL OF PROPOSED RULES
GREEN RIVER COLLEGE
(By the Code Reviser's Office)

[Filed October 15, 2019, 3:33 p.m.]

WAC 132J-276-090, proposed by the Green River College in WSR 19-08-059, appearing in issue 19-08 of the Washington State Register, which was distributed on April 17, 2019, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 19-21-093
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
(By the Code Reviser's Office)
[Filed October 15, 2019, 3:33 p.m.]

WAC 246-480-100, proposed by the department of health in WSR 19-08-085, appearing in issue 19-08 of the Washington State Register, which was distributed on April 17, 2019, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 19-21-094
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed October 15, 2019, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-097.

Title of Rule and Other Identifying Information: Chapter 468-06 WAC, Public access to information and records.

Hearing Location(s): On November 27, 2019, at 1:30 p.m., at the Transportation Building, Nisqually Conference Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: November 27, 2019.

Submit Written Comments to: Ashley Holmberg, P.O. Box 47410, Olympia, WA 98504-7410, email HolmbeA@wsdot.wa.gov, fax 360-705-6808, by November 26, 2019.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email EngleKa@wsdot.wa.gov, by November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating the process for submitting public records requests and clarifying that the rule also applies to public records requests to the Washington state transportation commission.

Reasons Supporting Proposal: The Washington state department of transportation (WSDOT) implemented a new web-based public disclosure system and recent legislation updated the fees agencies are permitted to charge for the production of public records.

Statutory Authority for Adoption: RCW 42.56.040.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Ashley Holmberg, Olympia, Washington, 360-705-7320; and Enforcement: Kara Larsen, Olympia, Washington, 360-704-6366.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

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).

Explanation of exemptions: This rule updates the public records request process and thus relates only to internal government operations.

October 15, 2019
Kara Larsen, Director
Risk Management
and Legal Services

AMENDATORY SECTION (Amending WSR 15-24-130, filed 12/2/15, effective 1/2/16)

WAC 468-06-010 Purpose. The purpose of this chapter is to provide rules for the Washington state department of transportation (the department), and the Washington state transportation commission (the commission) implementing the provisions of chapter 42.56 RCW that relate to requests for inspection and copying of public records.

AMENDATORY SECTION (Amending WSR 15-24-130, filed 12/2/15, effective 1/2/16)

WAC 468-06-020 Definitions. (1) "Commission" means the Washington state transportation commission.

(2) "Denial" means the department withheld a record in part or in its entirety based on a statutory or other legal exemption.

(((~~(2)~~))) (3) "Department" means the Washington state department of transportation.

(((~~(3)~~))) (4) "Disclosure" means the existence of a record is revealed to a requestor in response to a PRA request, regardless of whether it is produced.

(((~~(4)~~))) (5) "Production" means disclosed records are produced (made available for inspection and copying).

(((~~(5)~~))) (6) "Public Records Act" or "PRA" means chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 15-24-130, filed 12/2/15, effective 1/2/16)

WAC 468-06-050 Public records officer. The department's public records officer is designated by the department as the person responsible for implementing the department's rules and regulations, for acknowledging receipt of public records requests, and for coordinating with staff statewide to identify, gather, and release public records in compliance with the public records disclosure requirements. The department's public records officer also serves as the commission's public records officer.

AMENDATORY SECTION (Amending WSR 19-14-003, filed 6/19/19, effective 7/20/19)

WAC 468-06-060 Requesting public records. (1) Submitting a request. Requests for public records to the department or the commission can be made by:

(a) Using the public disclosure request center, by clicking on the link on the web site at http://www.wsdot.wa.gov/Contact/PublicDisclosure, or going to https://wsdot.mycusthelp.com/WEBAPP/_rs/supporthome.aspx; or

(b) Submitting a written request to the department that includes:

(i) The name, address, telephone number, and email address of the person requesting the records;

(ii) The date and time of the request;

(iii) A description of the public records sought adequate for the department to identify and locate all responsive records;

(iv) Language stating that the request for records is intended as a public records request or a similar statement placing the department on fair notice that records are being sought under the PRA; and

(v) A statement indicating whether copies or the records are sought or if the requestor wants to arrange to inspect records.

Requests not submitted through the public disclosure request center identified in (a) of this subsection can be submitted ((~~to the department~~)) via U.S. mail, hand delivery, or facsimile at:

Public Records Office
Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47410
Olympia, WA 98504-7410
Facsimile: 360-705-6808

((~~Failure to submit requests to the department at the above location may result in a delay in the department's response.~~))

(2) A request not submitted in a manner identified in subsection (1) of this section will not be considered a public records request under chapter 42.56 RCW, but will be responded to as an informal routine inquiry or a general request for information.

(3) Requested production. Nonexempt records are available through inspection, paper copies, or electronic copies. The requestor should indicate the production preference and make arrangements to pay the fees, if any.

WSR 19-21-095
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed October 15, 2019, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-093.

Title of Rule and Other Identifying Information: Amending WAC 192-500-080 Qualifying event, 192-500-170 Self-employed, 195-510-010 Election, withdrawal, and cancellation of coverage, 192-510-020 Election of coverage for federally recognized tribes, 192-510-025 What wages are reportable to the department for premium assessment purposes?, 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?, 192-510-050 How will the department assess the size of new employer?, 192-510-060 When are employer premium payments due?, 192-510-065 When can an employer deduct premiums from employees?, 192-510-085 How will the department assess premiums when a conditional premium waiver expires?, 192-530-040 Voluntary plans—Notice requirements under RCW 50A.20.020, 192-550-010 What happens if an employer fails to submit required reports?, 192-550-020 What happens if an employer willfully fails to remit required payments?, 192-550-040 Can employer interest be waived?, 192-560-020 What is the application process for a small business assistance grant?, 192-570-020 Complaints regarding unlawful acts, 192-630-010 What happens if an interested party does not respond to the department's request for information?, 192-640-005 Definitions, 192-650-015 Are negotiated settlements of overpayments permitted?, 192-700-005 When is an employee entitled to employment restoration after leave ends?, 192-700-010 Can an employer deny employment restoration?; and new WAC 192-500-185 Waiting period, 192-700-020 When does an employer need to provide a continuation of benefits to an employee who is on paid family or medical leave?, 192-810-010 Definitions, 192-810-020 Purpose, 192-810-030 How do individuals and entities request records from the department?, and 192-810-040 Misuse or unauthorized disclosure.

Hearing Location(s): On November 26, 2019, at 9:00 a.m., at 640 Woodland Square Loop S.E., Park Place Conference Room, Lacey, WA 98503.

Date of Intended Adoption: November 27, 2019.

Submit Written Comments to: Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, online portal https://www.opentownhall.com/portals/289/forum_home?phase=open, by November 26, 2019.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-902-9345, TTY 711, email TEckstein@esd.wa.gov, by November 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will provide further definitions for waiting week, address continuation of benefits, and address the updated pointers that resulted from recodification.

Reasons Supporting Proposal: The rules will assist in meeting the requirements to implement payment of benefits to eligible employees by January 1, 2020, as mandated by Title 50A RCW. Additionally, the rules provide processes and definitions related to privacy as a result of the passage of SHB [ESHB] 1099.

Statutory Authority for Adoption: RCW 50A.04.215.

Statute Being Implemented: RCW 50A.05.010, 50A.15.020, 50A.10.030; chapter 50A.25 RCW.

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

Name of Proponent: Employment security department, paid family and medical leave division, governmental.

Name of Agency Personnel Responsible for Drafting: Christina Streuli, Lacey, Washington, 360-791-6710; Implementation and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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. All proposed rules are exempt under RCW 34.05.328(5). After review of the proposed rules, the agency determined the rules do not impose more-than-minor costs on businesses because the rules are not significant legislative rules. Rules proposed are either interpretive, or procedural. The proposed rules set forth the agency's interpretation of statutory provisions governing verbiage for processes, clarifying definitions, providing clarification and procedure for privacy provisions, and update certain statutory references to reflect recodification of statutes.

Please see significance analysis for more information.

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

Is exempt under RCW 34.05.328 (5)(c)(i), (ii), and 19.85.025(5).

Explanation of exemptions: RCW 34.05.328 (5)(c)(ii) creates an exemption for interpretive rules. This exemption applies to portions of the proposal. RCW 34.05.328 (5)(c)(i) creates an exemption for procedural rules. This exemption applies to portions of the proposal.

October 15, 2019
April Amundson
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

WAC 192-500-080 Qualifying event. A "qualifying event" is:

(1) For family leave, events described in RCW ((~~50A.04.010~~)) 50A.05.010(9).

(2) For medical leave, events described in RCW ((~~50A.04.010~~)) 50A.05.010(14).

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-500-170 Self-employed. (1) A "self-employed" person is:

(a) A sole proprietor;

(b) A joint venturer or a member of a partnership that carries on a trade or business, contributes money, property, labor or skill and shares in the profits or losses of the business;

(c) A member of a limited liability company;

(d) An independent contractor who works as described in RCW ((~~50A.04.010~~)) 50A.05.010 (7)(b)(ii); or

(e) Otherwise in business for oneself as indicated by the facts and circumstances of the situation, including a part-time business.

(2) A corporate officer is an employee and not self-employed.

NEW SECTION

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) Subject to subsection (6) of this section, an employee must only meet the requirement of one waiting period in a claim year.

(5) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

(6) The waiting period does not apply to family leave related to either a child's birth or placement of a child.

(7) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

WAC 192-510-010 Election, withdrawal, and cancellation of coverage. (1) Self-employed persons as defined in RCW ((~~50A.04.105~~)) 50A.10.010(1) and federally recognized tribes as defined in RCW ((~~50A.04.110~~)) 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(5) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(6) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(7) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

WAC 192-510-020 Election of coverage for federally recognized tribes. (1) Federally recognized tribes electing coverage are employers as defined in RCW ((~~50A.04.010~~)) 50A.05.010 and are subject to all rights and responsibilities under Title 50A RCW.

(2) Employees of federally recognized tribes that elect coverage are employees as defined in RCW ((~~50A.04.010~~)) 50A.05.010 and are subject to all the rights and responsibilities under Title 50A RCW.

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-510-025 What wages are reportable to the department for premium assessment purposes? (1) Examples of wages reportable to the department for premium assessment purposes include, but are not limited to:

(a) Salary or hourly wages;

(b) Cash value of goods or services given in the place of money;

(c) Commissions or piecework;

(d) Bonuses;

(e) Cash value of gifts or prizes;

(f) Cash value of meals and lodging when given as compensation;

(g) Holiday pay;

(h) Paid time off, including vacation leave and sick leave, as well as associated cash outs, unless these wages are considered supplemental benefit payments provided by the employer;

(i) ((~~Bereavement leave;~~

~~(j)~~)) Separation pay including, but not limited to, severance pay, termination pay, and wages in lieu of notice;

(((~~k~~))) (j) Value of stocks at the time of transfer to the employee if given as part of a compensation package;

(((~~l~~))) (k) Compensation for use of specialty equipment, performance of special duties, or working particular shifts; and

(((~~m~~))) (l) Stipends/per diems unless provided to cover a past or future cost incurred by the employee as a result of the performance of the employee's expected job functions.

(2) Examples of what the department will not consider wages include, but are not limited to:

(a) A payment from an employer benefit that is not part of the employee's standard compensation.

Example: While on paid medical leave, an employee receives sixty-one percent of the employee's typical weekly wage from the state. Through an internal short-term disability benefit, the employer pays the employee the remaining thirty-nine percent of the employee's typical weekly wage as a supplemental benefit payment, bringing the employee's total benefit to one hundred percent of the employee's typical weekly wage. Since this supplemental benefit payment is not part of the employee's standard compensation, it is not considered a wage, and should not be reported on either the employee's weekly claim or the employer's quarterly report.

(b) Any payment made to an employee to cover a past or future cost incurred by the employee related to the performance of the employee's expected job functions. Such costs include, but are not limited to, costs of meals and travel.

Example: An employer pays a per diem to an employee on a business trip to cover the cost of local travel and meals. This amount is not considered a wage, even if the per diem exceeds the actual cost incurred.

(c) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) to, or on behalf of, an individual or the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for the employer (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

(i) Retirement;

(ii) ((~~Sickness or accident~~)) Short-term or long-term disability;

(iii) Medical or hospitalization expenses in connection with sickness or accident disability; or

(iv) Death.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants? (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will only count the number of in-state employees as defined in RCW ((~~50A.04.010~~)) 50A.05.010(4) when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have fifty or more employees for the preceding calendar year, and the employer is then determined to have fewer than fifty employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than fifty employees for the preceding calendar year, and the employer is then determined to have fifty or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

Example: On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

WAC 192-510-050 How will the department assess the size of new employers? An employer that has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect until the following September 30th pursuant to RCW ((~~50A.04.115~~)) 50A.10.030 (8)(c).

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

WAC 192-510-060 When are employer premium payments due? (1) Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid.

(2) Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

(3) Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest under RCW ((~~50A.04.140~~)) 50A.45.025.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

WAC 192-510-065 When can an employer deduct premiums from employees? (1) An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

(2) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under RCW ((~~50A.04.115~~)) 50A.10.030 (3)(d) for that pay period. The employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

(3) Subsections (1) and (2) of this section do not apply if an employer was unable to deduct the maximum allowable employee share of the premium for a pay period due to a lack of sufficient employee wages for that pay period.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

WAC 192-510-085 How will the department assess premiums when a conditional premium waiver expires? (1) If an employee who is exempt from premiums under a conditional waiver works eight hundred twenty hours in any period of four consecutive quarters, the waiver will be determined to have expired.

(2) Upon expiration of a conditional premium waiver, the department will assess and notify:

(a) The employer of all the owed employer premiums; and

(b) The employee of all the owed employee premiums.

(3) Payment will be due upon receipt of the assessment.

(4) Failure to pay the assessment by the required date will result in the accrual of interest under RCW ((~~50A.04.140~~)) 50A.45.025.

(5) Upon payment of the employee premiums, the employee will be credited for the hours worked and will be eligible for benefits under Title 50A RCW as if the premiums were originally paid.

(6) Nothing in this section prevents the employer from paying part or all of the employee's share of the premiums.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

WAC 192-530-040 Voluntary plans—Notice requirements under RCW ((~~50A.04.075~~)) 50A.20.020. (1) The department will provide a notice that meets the requirements of RCW ((~~50A.04.075~~)) 50A.20.020 to employers with approved voluntary plans if requested.

(2) Employers may create their own notices that meet the requirements of RCW ((~~50A.04.075~~)) 50A.20.020. Each employer must provide a copy of its voluntary plan notice to the department for approval. The notice must be submitted online or in another format approved by the department and must contain at least the same information as the state notice.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-550-010 What happens if an employer fails to submit required reports? (1) An employer that willfully fails to file a complete and timely report under WAC 192-540-030 through 192-540-050 is subject to penalties under RCW ((~~50A.04.090~~)) 50A.45.010.

(2) The department will send a warning letter for an employer's first incomplete or untimely report. For a second or subsequent occurrence within five years of the date of the last occurrence, the department will assess penalties under the following schedule:

(a) 2nd occurrence: $75.00

(b) 3rd occurrence: $150.00

(c) 4th and subsequent occurrences: $250.00

(3) After five years without a warning letter or occurrence, prior occurrences will not count and the employer shall

receive a warning letter instead of a penalty on the next occurrence.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-550-020 What happens if an employer willfully fails to remit required payments? (1) An employer that willfully fails to remit payment for premiums in full when due is subject to penalties under RCW ((~~50A.04.090~~)) 50A.45.010 in addition to accruing interest under WAC 192-550-030.

(2) The total amount of the penalty will be equal to the entire balance of premiums not remitted and any interest accrued on those delinquent premiums.

Example: If an employer owes $300 in premium payments and $20 in interest, the penalty for willfully failing to remit payment will equal $320, for a sum total due and owing of $640.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-550-040 Can employer interest be waived? (1) An employer may submit to the department an interest waiver request that includes all relevant facts, including all available proof, as to why it is requesting a waiver under RCW ((~~50A.04.140~~)) 50A.45.025.

(2) At its discretion, the department may waive interest if it finds that the interest was caused by the department's own error or the department's inability to decide the issue.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-560-020 What is the application process for a small business assistance grant? (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested;

(c) An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and

(d) Written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit of ten applications per year under RCW ((~~50A.04.230~~)) 50A.24.010(4).

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

(4) If a grant application is denied, the application will count against an employer's limit of ten applications per year.

(5) The denial of a grant application is appealable.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-570-020 Complaints regarding unlawful acts. (1) It is unlawful for an employer to discriminate against any employee for a reason specified in RCW ((~~50A.04.085~~)) 50A.40.010. When the department receives notification from an employee that discrimination may have occurred the department will investigate the allegation and issue a determination. The determination will include any remedies available under RCW ((~~50A.04.100~~)) 50A.40.030.

(2) Nothing in the chapter shall be construed to prohibit a private right of action under all applicable laws.

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-630-010 What happens if an interested party does not respond to the department's request for information? (1) If an interested party fails to respond by the due date on the notice provided under WAC 192-630-005, the department will make a determination based on available information.

(2) Subject to RCW ((~~50A.04.510~~)) 50A.50.030, if benefits are denied because the employee did not respond to a request for information, the denial will remain in effect until the employee provides sufficient information to establish that the employee is qualified for paid family or medical leave.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-640-005 Definitions. For purposes of this chapter:

(1) "Overpayment" means any or all of the following:

(a) Payment of any paid family or medical leave benefits to which the department determines the employee is not entitled;

(b) Penalties assessed under RCW ((~~50A.04.045~~)) 50A.15.060; or

(c) Interest accrued under RCW ((~~50A.04.065~~)) 50A.15.090.

(2) "Equity and good conscience" means fairness as applied to each individual case after considering the totality of the circumstances.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-650-015 Are negotiated settlements of overpayments permitted? (1) The department can accept a negotiated settlement to repay a debt of overpayment under RCW ((~~50A.04.185~~)) 50A.45.070. Except as provided in subsection (3) of this section, a negotiated settlement of the

overpayment for less than the full amount owed will be considered when requiring an employee to repay the full amount would be against equity and good conscience as defined in WAC 192-640-005.

(2) In considering settlement offers, the department will first consider whether it is financially advantageous to the department to collect the debt. The department may also consider:

(a) The age and amount of the overpayment;

(b) The number of prior contacts with the employee;

(c) If the employee previously made good faith efforts to pay the debt;

(d) The ability to enforce collection; or

(e) Other information relevant to the employee's ability to repay the debt.

(3) Except in unusual circumstances, a settlement offer will not be accepted when the employee's overpayment is the result of fraud. Unusual circumstances that may warrant a negotiated settlement of the overpayment and associated penalties include, but are not limited to, long-term or terminal illness, severe permanent disability, or other circumstances that seriously impair the employee's long-term ability to generate income.

(4) The department's decision to accept or reject a settlement offer is not subject to appeal. If the department rejects the settlement offer, the employee is permitted to make another offer if the employee's circumstances change.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-700-005 When is an employee entitled to employment restoration after leave ends? (1) Subject to RCW ((~~50A.04.025~~)) 50A.35.010(3), an employee who meets the criteria listed in RCW ((~~50A.04.025~~)) 50A.35.010 (6)(a) who takes leave under Title 50A RCW is entitled, on return from the leave, to be restored by the employer to:

(a) The position of employment held by the employee when the leave commenced; or

(b) An equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(i) "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take extended leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(ii) "Employment benefits" includes all benefits provided or made available to employees by an employer such as:

(A) Insurance;

(B) Paid time off;

(C) Educational benefits; or

(D) Retirement benefits.

(2) An employee is entitled to such reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within WAC 192-700-010(1).

(3) The protections provided in RCW ((~~50A.04.025~~)) 50A.35.010 and this section apply to the employee beginning with the date the employee starts taking leave.

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-700-010 Can an employer deny employment restoration? (1) An employee is not entitled to employment protection under Title 50A RCW if:

(a) An employer exercises its right to deny restoration under RCW ((~~50A.04.025~~)) 50A.35.010 (6)(b) and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or

(b) The employer is able to show that an employee would not otherwise have been employed at the time of reinstatement.

(2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

(a) A statement that the employer intends to deny employment restoration when the leave has ended;

(b) The reasons behind the decision to deny restoration;

(c) An explanation that health benefits will still be paid for the duration of the leave; and

(d) The date in which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration are required to adhere to the continuation of health benefits in RCW ((~~50A.04.245~~)) 50A.35.020 for the remainder of the employee's approved leave.

NEW SECTION

WAC 192-700-020 When does an employer need to provide a continuation of benefits to an employee who is on paid family or medical leave? (1) An employer is required to maintain any existing health benefits to an employee when the following criteria are met:

(a) The employee is taking leave under Title 50A RCW from an employer; and

(b) The employee meets the eligibility requirements for a continuation of health benefits as required by the Family and Medical Leave Act, as it existed on October 19, 2017.

(2) If the employer and employee share the cost of existing health benefits, the employee remains responsible for the employee's share.

(3) If the criteria in subsection (1) of this section are met at any point during an employee's duration of leave under Title 50A RCW, the employer is required to provide any existing health benefits for the entire duration of the employee's paid family or medical leave.

Chapter 192-810 WAC

PUBLIC DISCLOSURE AND PRIVACY FOR PAID FAMILY AND MEDICAL LEAVE

NEW SECTION

WAC 192-810-010 Definitions. (1) The definitions set forth in RCW 42.56.010 apply to this chapter unless context clearly requires otherwise.

(2) "Public records officer" means the departmental employee responsible for responses to requests for public records or that person's designee.

(3) "Department" means the employment security department.

(4) An employer's "own records" as used in RCW 50A.25.040 means records and information provided to the department by the employer or the employer's predecessor in interest.

NEW SECTION

WAC 192-810-020 Purpose. The purpose of this chapter is to provide rules for the paid family and medical leave program in implementing chapter 42.56 RCW relating to public records and chapter 50A.25 RCW relating to records and information deemed private and confidential by the paid family and medical leave program.

NEW SECTION

WAC 192-810-030 How do individuals and entities request records from the department? (1) The department will manage all records requests consistent with the provisions of chapter 42.56 RCW.

(2) Requests for public records may be submitted to the public records officer.

(3) If an individual requests records or information concerning that individual held by the department under RCW 50A.25.040(1), those records must be released only to the requesting individual.

(4) If an individual submits a records request and asks that the requested records be sent to a third party directly, the individual must follow the provisions of RCW 50A.25.040 (3).

NEW SECTION

WAC 192-810-040 Misuse or unauthorized disclosure. (1) If misuse or an unauthorized disclosure of records or information deemed private and confidential under chapter 50A.25 RCW occurs, each party involved in the data-sharing that is aware of the misuse or unauthorized disclosure must inform the department within two business days of the discovery of the data security breach.

(2) In addition to informing the department of the misuse or unauthorized disclosure, the party responsible for the disclosure must take all reasonably available actions to rectify the disclosure to the department's standards. In most cases, these actions will include, at a minimum:

(a) Ceasing any continued release;

(b) Informing all individual whose data may have been released improperly of the situation; and

(c) Providing identity protection mechanisms at no charge to the individuals whose data may have been released.

WSR 19-21-102
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed October 16, 2019, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-036.

Title of Rule and Other Identifying Information: Chapter 314-35 WAC, Vapor products, the Washington state liquor and cannabis board (WSLCB) proposes new sections and amendments to existing rule to implement the directives of EHB 1074 (chapter 15, Laws of 2019), regarding vapor product legal age for sales; and E2SHB 1873 (chapter 445, Laws of 2019), regarding vapor taxation.

Hearing Location(s): On November 26, 2019, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98501.

Date of Intended Adoption: December 11, 2019.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by November 26, 2019.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, Americans with Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by November 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules expand the regulatory authority of WSLCB concerning vapor product licensing and enforcement consistent with the directives of EHB 1074 and E2SHB 1873. The proposed rules increase the age of sale for vapor products; increase vapor product licensee recordkeeping requirements; clarify vapor product licensee requirements, including qualification, application denial, insurance requirements, license suspension and revocation; establish transportation requirements; establish the ability for WSLCB to seize both cannabinoid vapor products and vapor products; establish forfeiture guidelines; and establish a penalty structure that aligns with the current WSLCB penalty reform framework. The proposed rules apply to existing and future vapor product distributors, retailers, and product delivery sellers.

Reasons Supporting Proposal: Washington state recognizes that there is a growing body of empirical research to support an overall, statewide health goal of increasing the age of sale for both tobacco and vapor products to twenty-one. Based on this evidence, increasing the age of sale for these products will significantly reduce the number of adolescents and young adults who are smoking, and improve the health of adolescents, young adults, young mothers, and young children. EHB 1074 accomplishes this by prohibiting the sale of tobacco and vapor products to persons under the age of

twenty-one. In addition to creating a vapor tax structure that applies to all persons licensed to sell vapor products under chapter 70.345 RCW, E2SHB 1873 added vapor licensee responsibilities, and broadened WSLCB enforcement authority. Further, Governor Inslee's Executive Order 19-03 Addressing The Vaping Use Public Health Crisis became effective September 27, 2019. This rule proposal is a significant step toward alignment with the goals expressed in Executive Order 19-03. Rules are needed to set enforceable standards consistent with legislative and policy directives, and to clarify existing rule.

Statutory Authority for Adoption: Chapter 70.345 RCW; RCW 82.24.250, 82.32.300.

Statute Being Implemented: RCW 70.345.010, 70.345.-030, 70.345.090, 82.25.030, 82.25.040, 82.25.090, 82.25.-095.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation and Enforcement: Lisa Reinke, Enforcement Captain, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(v) because the subject of proposed rule making is explicitly and specifically dictated by statute.

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

Is exempt under RCW 19.85.025(3) as the 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(3): WAC 314-35-010, 314-35-015, 314-35-020, 314-35-023, 314-35-024, 314-35-025, 314-35-027, 314-35-030, 314-35-040, 314-35-045, 314-35-050, 314-35-055, 314-35-060, 315-35-065, 314-35-070, 314-35-075, 314-35-080, 314-35-085.

Explanation of exemptions: RCW 34.05.310 (4)(d): WAC 314-35-010, 314-35-015, 314-35-020, and 314-35-023; RCW 34.05.310 (4)(e): WAC 314-35-024, 314-35-025, 314-35-027, 314-35-030, 314-35-040, 314-35-045, 314-35-050, 314-35-053, 314-35-055, 314-35-060, 314-35-065, 314-35-070, 314-35-075, 314-35-080, and 314-35-085.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

What is the scope of the rule package? Compliance with the majority of the proposed requirements described in this document are not likely to cause vapor product licensees to lose sales or revenue. However, the proposed specific requirement to carry commercial liability insurance coverage will likely result in additional compliance costs.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification (NAICS) code or codes? What are their minor cost thresholds? The NAICS code, business description, and minor cost thresholds are described and calculated below:

NAICS Code	NAICS Business Description	# of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll
453998	Tobacco Stores	3,869	$183.99

These calculations are based on the following:

- NAICS 453998, All Other Miscellaneous Store Retailers (except Tobacco Stores). This code specifically includes retailing electronic cigarettes.
- BLS (Bureau of Labor Statistics), Retail Salesperson, SOC (Standard Occupational Classification) code is 41-2031.
- Washington state ESD (employment security department) reports $14.40 as the median hourly wage for SOC 41-2031. The reported annual wage for the SOC is $35,594. For purposes of this calculation, the agency assumed that each business employed, on average, two full-time retail salespersons.
- According to WSLCB data, there are 3,869 vapor licenses issued in Washington state. This figure includes licenses that have of [a] physical Washington address.
- The number of vapor licensees that could be considered to be small businesses as defined in RCW 19.85.020(3) is estimated at 2,176. This estimate does not include gas station chains or franchises, such as Chevron, Arco or Shell. It does not include grocery or drug store chains, such as Safeway, QFC, Walmart, Walgreens or Rite Aid.
- For purposes of this calculation, the agency assumes that each small business employs, on average, two full-time employees. Annual payroll based on ESD data for two full-time Retail Salespersons = $35,594 x 2 = $71,188.
- $71,188 x (1,000/3,869) x (0.01) = **$183.99 (minor cost threshold).**

Does the rule have a disproportionate impact on small businesses? Basic, commercial general liability insurance is estimated to range in cost from $2,500 and $3,500 annually depending on a variety of factors, including but not limited to levels of coverage and geographic location. These estimates suggest that there may be a disproportionate impact on small businesses (defined as businesses with less than fifty employees, and not by receipts/sales).

Did the agency make an effort to reduce the impact of the rule? The current estimated costs associated with the proposed rules are related to the necessary protection of public health and safety. The agency asserts that these costs are necessary, appropriate, and supported by the Governor's Executive Order 19-03, Addressing the Vaping Use Public Health Crisis.

Did the agency involve small businesses in the rule development process? The majority of the proposed rules are required by statute and nonnegotiable. The specific section that is the subject of this analysis is necessary, appropriate, and supported by the Governor's Executive Order 19-03, Addressing the Vaping Use Public Health Crisis.

Will businesses have to hire or fire employees because of the requirements in the rule? The proposed rules do not require additional staffing. Vapor product licensees may modify current business models, including staffing levels, in response to market shifts and adjustments that may occur as a result of the attention to the reported effects of nicotine and nonnicotine vapor product consumption. However, some businesses may already be insured at the proposed minimum, and these rule proposal[s] would not result in any staffing level adjustment.

A copy of the statement may be obtained by contacting Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

October 16, 2019
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-010 Vapor products—Introduction. This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, delivery sales, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

NEW SECTION

WAC 314-35-015 Definitions. The following definitions apply to this chapter in addition to the definitions provided in RCW 70.345.010, unless the context clearly indicates otherwise:

(1) "Control" means the direct power to order or direct the management of a licensee.

(2) "Domicile" means a person's true, fixed primary permanent home. It is the place where a person intends to remain and where the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(3) "Financial institution" means any bank, consumer loan company, credit union, savings bank, savings and loan association, trust company, or similar lending institution under the jurisdiction and registered with the department of financial institutions.

(4) "Profit" means the entire gross receipts from all sales and services made in, upon or from a licensed business.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-020 ((~~Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations.~~)) Licensing requirements. (1) ((~~The~~)) Vapor product license types are:

(a) Vapor product retailer's license((~~,~~));

(b) Vapor product distributor's license((~~,~~)); and

(c) Vapor product delivery sale license. ((~~A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is~~))

(2) All vapor product license types are required to perform the functions ((~~of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not~~)) of the respective license type regardless of whether the vapor product contains nicotine.

(((~~(2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot~~)) (3) A vapor product manufacturer must hold a vapor product distributor license if the manufacturer is engaged in the business of selling vapor products in Washington state, and brings or causes to be brought into this state from outside the state any vapor products for sale consistent with RCW 70.345.010 (7) and (9).

(4) No vapor product license will be issued to a location that is a domicile or attached to a domicile, is not a fixed or stationary location, or both.

(((~~(3)~~))) (a) The board will not approve any vapor product license for a location where board access without notice or cause is limited.

(b) The board may revoke any vapor product license that is issued to an attached structure or any other location inconsistent with this section.

(5) A person or entity must meet ((~~certain~~)) all qualifications ((~~to receive~~)) described in this chapter and chapter 70.345 RCW to be issued a vapor product license, and must continue to meet those qualifications to maintain the license.

(((~~(4) No more than~~)) (6) One license of each vapor product license type may be issued at a single location.

(((~~(5)~~))) (7) A licensed location must be separated from other vapor product businesses, and not accessible through neighboring businesses.

(((~~(6)~~))) (8) For the purpose of initial or renewal application review for a vapor product license, the board may conduct an investigation of all licenses it has issued to an applicant including, but not limited to, administrative violation history. The board reserves its discretion to issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the board.

(9) For the purpose of ((~~reviewing an~~)) initial or renewal application review for a vapor product license ((~~or considering the denial of a license application, the WSLCB~~)), the board may consider the applicant's prior criminal conduct ((~~of the applicant~~)) and criminal history record within the five years prior to the date the application is received by the ((~~WSLCB~~)) board. The ((~~WSLCB~~)) board uses the following point system to determine a person's qualification for a license((~~. The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined in (a) through (e) of this subsection. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition~~

~~of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.~~)):

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 70.345, 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

(((~~(7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.~~

~~(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.~~)) (10) The board may, at its discretion, issue a vapor product license to a person or entity that has accumulated eight or more points as described in this subsection.

(11) If an applicant has a pending case for an alleged offense that totals eight or more points, the board will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the board may administratively close the application.

(12) The board may conduct a final inspection of the proposed licensed premises to determine if the applicant has met the requirements of the licensure requested.

NEW SECTION

WAC 314-35-021 Insurance requirements. Vapor product licensees must obtain insurance coverage described in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the vapor product licensees. Vapor product licensees must furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secure. Failure to provide proof of insurance may result in license cancellation.

(1) Commercial general liability insurance: The licensee must at all times carry and maintain commercial general liability insurance or commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. The limits of liability insurance must not be less than one million dollars.

(a) This insurance must cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants.

(b) The insurance must also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section must be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers must be named as an additional insured on insurance policies required under this section. All policies must be primary over any other valid and collectable insurance.

NEW SECTION

WAC 314-35-023 Vapor product license transfer and relocation. (1) A license may not be transferred or relocated without prior approval of the board.

(a) A licensee must notify the board at least ten business days before any ownership changes or location changes of the licensed vapor products business. Failure to notify the board without applying for a separate license for a new location will be treated as operating without a license.

(b) If a licensee fails to notify the board prior to moving a location, the licensee may be suspended until the new location meets the requirements and qualifications for a vapor products license.

(c) License relocation may be requested by contacting board enforcement by email or telephone.

(2) As a condition of licensure, all vapor products licensees must:

(a) Keep premises where vapor products are stored, manufactured, and offered for sale in a clean and sanitary condition.

Examples of clean and sanitary conditions include, but are not limited to:

(i) Vapor product mixing areas separate from restroom;

(ii) Storage of cleaning agents separate from consumable vapor products;

(iii) Vapor products not in contact or stored with or near hazardous materials and products.

(b) Label all packages and containers that contain nicotine with the nicotine content of the product until the product is packaged and labeled in finished packaging for sale consistent with the packaging and labeling requirements described in RCW 70.345.075.

(c) Vapor product licensees may only purchase vapor products from board licensed vapor product locations.

NEW SECTION

WAC 314-35-024 Vapor product packaging and labeling. (1) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must label the vapor product with all of the following:

(a) A warning regarding the harmful effects of nicotine;

(b) A warning to keep the vapor product away from children;

(c) A warning that vaping is illegal for those under the legal age to use the product; and

(d) Except as provided in WAC 314-35-023 of this section, the amount of nicotine in milligrams per milliliter of liquid along with the total volume of the liquid contents of the product expressed in milliliters.

(2) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must comply with any other packaging and labeling requirements including, but not limited to, specific warnings as mandated by the United States Food and Drug Administration, any other federal agency, or any agency of state of Washington including, but not limited to, the Washington state department of health.

NEW SECTION

WAC 314-35-025 Vapor product applicant and licensee hearing rights. (1) If the board denies a vapor product license application or renewal, or suspends or revokes a license for any of the reasons listed in this chapter or in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions of chapter 34.05 RCW.

(2) Appeals under this chapter will be conducted by a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 314-35-027 Qualifying for a vapor product license. A vapor product license must be issued in the name(s) of the true party(ies) of interest.

(1) True parties of interest must qualify to be listed on the license, consistent with RCW 70.345.020. For purposes of this chapter, "true party of interest" means:

Entity	True Party(ies) of Interest
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	All general partners and spouses. All limited partners and spouses.
Limited liability company	All members and spouses. All managers and spouses.
Privately held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.
Publicly held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.
Multilevel ownership structures	All persons and entities that make up the ownership structure.
Any entity or person(s) expecting or receiving profits, or part thereof, or exercising control over a licensed business	Any entity or person who is in receipt of, or has the right to receive profits, or part thereof, from the licensed business during any full or partial calendar or fiscal year.
Any entity or person(s) who exercise(s) control over the licensed business in exchange for money or expertise	Any entity(s) or person(s) and spouses who exercise(s) control over the licensed business in exchange for money or expertise.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) The board may conduct an investigation of any person or entity who exercises any control over the applicant's or licensee's business operations, including a financial investigation, a criminal history background check, or both. When an entity other than the owner controls daily business operations consistent with an agreement between the owner and the operating entity, the operating entity becomes a true party of interest. The operating entity must meet the same qualifications and requirements as a licensee.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-030 Vapor product licensee record-keeping requirements. (1) Vapor product ((~~distributors and manufacturers~~)) licensed locations must keep complete, legible and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought ((~~in~~)) into or caused to be brought ((~~in from without~~)) into the state from outside the state, or shipped or transported to ((~~retailers in this state, and of all sales of vapor products made. These~~)) locations in Washington state, or sold. The required records must show:

(a) The names and addresses of purchasers((~~,~~));

(b) The names and addresses of sellers;

(c) The inventory of all vapor product((~~s,~~)) (to include the description of the product, size (mL), brand); and

(d) Other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. ((~~All invoices and other records required by this section to be kept~~

~~must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.~~))

(2) Vapor product licensees must render with each sale of vapor products to persons other than ultimate consumers itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, brand, size (mL), and all prices. ((~~Vapor product licensees must preserve legible copies of all such invoices for five years from the date of sale.~~))

(3) ((~~Every licensed~~)) Vapor product ((~~retailer~~)) licensees must ((~~procure~~)) obtain itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, brand, size (mL), and all prices and discounts.

(4) ((~~The licensed vapor product retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section must be preserved for five years from the date of purchase.~~)) Vapor product licensees must make all records available for inspection upon request of the board or its duly authorized agents or employees, and may not interfere with location inspection, record inspection, or both. The board or its duly authorized agents or employees may enter any vapor product licensed location at any time without a search warrant to inspect the premises for:

(a) Required invoices as described in this section; and

(b) Regulated products contained in the licensed location.

(5) All invoices, documents, or other records required under the provisions of this chapter must be legible, preserved, and retained for five years from the date of the invoices, documents, or other records at the place of the business where the vapor products are sold or stored.

(6) Vapor product licensees must provide the board, any of its agents or employees free, unhindered access to the vapor product licensed location.

(7) A licensed manufacturer with representatives who sell or distribute the manufacturer's vapor products must provide the board with a list of the names and addresses of all such representatives at an email address established by the board and maintained on the board's web site. The licensed manufacturer must ensure that the list of representatives who sell or distribute its vapor products is kept current.

(a) A manufacturer's representative is not authorized to distribute or sell vapor products unless the manufacturer holds a valid distributor's license under chapter 70.345 RCW; and

(b) A manufacturer's representative must carry a copy of the hiring distributor's license at all times when selling or distributing the manufacturer's vapor products.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-040 Age-restricted vapor products retailer licensed locations. (1) Age-restricted vapor products retailer licensed locations must register as such with the ((~~WSLCB~~)) board by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the ((~~WSLCB~~)) board in writing ten business days prior to a change in the age-restriction status. The board will make the appropriate age-restricted status form ((~~is~~)) available on ((~~the WSLCB~~)) its web site.

(2) ((~~Holders of a~~)) Vapor product retailer ((~~license~~)) licensed locations where entry into the licensed premises is age-restricted to persons ((~~eighteen~~)) twenty-one years of age or older must post signs provided by the ((~~WSLCB~~)) board at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time ((~~during opening hours of the licensed vapor products retail establishment~~)).

(3) All vapor product licensed locations that allow vapor products to be consumed on the premises, including vapor product tastings as provided in RCW 70.345.100, must be restricted to persons age twenty-one and over at all times.

(4) Any restricted location as described above may not employ persons under the age of twenty-one.

NEW SECTION

WAC 314-35-045 Vapor product licensee responsibilities. (1) Vapor product licensees and their employees must conduct the licensed premises in compliance with all applicable statutes as they now exist or may later be amended including, but not limited to, Titles 9, 9A RCW, chapters 69.50, 70.155, 70.158, 70.345, 82.24, and 82.26 RCW.

(2) Licensees have the responsibility to control their conduct and the conduct of employees and patrons at all times. Except as otherwise provided by law, licensees and employees may not:

(a) Be disorderly, apparently intoxicated, or under the influence of a controlled substance, on the licensed premises;

(b) Permit any disorderly person to remain on the premises;

(c) Engage in or allow behavior that provokes conduct that may endanger public safety.

NEW SECTION

WAC 314-35-050 Vapor product license suspensions and revocations. (1) The board may revoke or suspend a retailer, distributor, or delivery seller license issued under chapter 70.345 RCW and this chapter upon sufficient cause showing a violation of chapter 70.345 RCW, this chapter, or both.

(2) Any retail location license issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section and RCW 70.345.170.

(3) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180 (2)(e). The license or licenses may be approved by the board if it finds that the licensee has complied with the provisions of this chapter.

(4) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or after revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form. If the suspension or revocation involves licenses issued under chapter 82.24 or 82.26 RCW, the person is prohibited from selling cigarette and tobacco products consistent with WAC 314-34-020 and RCW 26.28.080.

(5) On the date a vapor product license suspension goes into effect a board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the board due to a violation of a board law or rule.

(6) During the period of vapor product license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable vapor product laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises has been closed for any reason other than what is stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than what is stated in the board's suspension notice.

(7) During the period of vapor product license suspension:

(a) A vapor product licensee may operate their business provided there is no sale, delivery, service, consumption, removal, or receipt of vapor products.

(b) If a vapor product license is suspended, revoked, or both, the location's licenses under chapter 82.24 or 82.26 RCW if held are also revoked, consistent with subsection (4) of this section.

(8) If the board makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license for the reasons listed in this section, or as provided in this chapter or chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions described in chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

(9) Any determination and order by the board, and any order of suspension or revocation by the board of the license issued under chapter 70.345 RCW or this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal in the superior court of Thurston County. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

NEW SECTION

WAC 314-35-053 Transportation. (1) No person may transport or cause to be transported vapor products for sale, except:

(a) A licensed distributor under chapter 70.345 RCW;

(b) A licensed retailer under chapter 70.345 RCW;

(c) A seller with a valid delivery sale license under chapter 70.345 RCW; or

(d) A person who has given the board advance notice of the commencement of transportation of vapor products.

(2) When transporting vapor products for sale, the person must have, in their actual possession, invoices or delivery tickets for the vapor products that must show:

(a) The true name and address of the consignor or seller;

(b) The true name and address of the consignee or purchaser; and

(c) The number of items, size of each item in mL, and brands of the vapor products being transported.

(3) In any case where the board has knowledge or reasonable grounds to believe that any vehicle is transporting vapor products in violation of this section or chapter 70.345 RCW, the board is authorized to stop the vehicle and to inspect for contraband vapor products.

NEW SECTION

WAC 314-35-055 Seizure of cannabinoid vapor products. (1) Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW 70.345.030.

(2) Any vapor product offered for sale that is labeled or marketed as containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone may be seized without a warrant by an agent of the board and are subject to forfeiture.

(3) It is prima facie evidence that the vapor product contains a cannabinoid if the packaging or labeling in which it is offered for sale contains language or depictions that the product is or contains a cannabinoid.

NEW SECTION

WAC 314-35-060 Seizure of vapor products. (1) Any vapor products in the possession of a person acting as a distributor or retailer of vapor products, and who is not licensed as required under this chapter, chapter 70.345 RCW or both, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the board. Any vapor products seized under this subsection are deemed forfeiture.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, retailer, or a manufacturer's representative, and who transports vapor products for sale without having provided notice to the board as required under WAC 314-35-053, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or deliv-

ery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the board upon process issued by any superior court or district court having jurisdiction over the property.

(5) Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant; or

(b) The board has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(6) This section may not be construed to require the seizure of vapor products if the board's agent reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(7) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

NEW SECTION

WAC 314-35-065 Forfeiture. (1) In all cases of seizure of any vapor products made subject to forfeiture under this chapter, the board must proceed as provided in RCW 82.24.135.

(2) When vapor products are forfeited under this chapter, the board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the vapor products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board must require the purchaser to pay the proper amount of any tax due. The proceeds of the sale must be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds must be distributed consistent with chapter 70.345 RCW.

(3) The board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

NEW SECTION

WAC 314-35-070 Penalty structure. (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations that create a direct or immediate threat to public health, safety, or both;

(b) Category II: Violations that create a potential threat to public health, safety, or both; and

(c) Category III: Regulatory violations.

(2) For purposes of assessing penalties, only violations occurring in the three-year time period immediately preceding the date of the violation will be considered unless otherwise provided in the chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein consistent with RCW 70.345.180. Such deviations will be determined on a case-by-case basis, considering mitigating or aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a vapor products license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

NEW SECTION

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.

Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. RCW 26.28.080 RCW 70.345.100 WAC 314-35-040	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW 70.345.030 WAC 314-35-055	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	$50 monetary penalty	$100 monetary penalty	$100 monetary penalty	$100 monetary penalty	$100 monetary penalty

NEW SECTION

WAC 314-35-080 Category II—Violations that create a potential threat to public health, safety, or both.

Category II: Violations that create a potential threat to public health, safety, or both.

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Failure to comply with child resistant packaging requirements. RCW 70.345.130	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 and a 12-month license suspension
Failure to comply with product labeling requirements. RCW 70.345.075	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 and a 12-month license suspension
Vapor products purchased from an unlicensed source. WAC 314-35-023	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 and a 12-month license suspension
True party of interest. RCW 70.345.020 WAC 314-35-020 WAC 314-35-027	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 and a 12-month license suspension
Operating without a valid license. RCW 70.345.030	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 and a 12-month license suspension
Transportation violations. WAC 314-35-053	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 and a 12-month license suspension

NEW SECTION

WAC 314-35-085 Category III—Regulatory violations.

Category III: Regulatory Violations.

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Noncompliance with record keeping requirements. WAC 314-35-020 WAC 314-35-030	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension
Failure to post required signs. RCW 70.345.070 WAC 314-35-040	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Selling or distributing vapor products from self-serve displays or without the intervention of a store employee. RCW 70.345.080	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension
Noncompliance with mail or internet sales requirements. RCW 70.345.090	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension
Failure to verify age or accepting unpermitted forms of identification. RCW 70.345.120	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension
Failure to comply with license suspension or revocation. WAC 314-35-050	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension
Giving or distributing vapor products without charge by coupon, unless exempted. RCW 70.345.110	$75 monetary penalty	$150 monetary penalty	$300 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension

WSR 19-21-104
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed October 16, 2019, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-09-059.

Title of Rule and Other Identifying Information: WAC 182-513-1100 Definitions related to long-term services and supports (LTSS).

Hearing Location(s): On November 26, 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 November 27, 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 November 26, 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 November 15, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising the definition of alternate living facility to include staffed residential facility, group care facility for medically complex children, and facility for children and youth twenty years of age and younger where a state-operated living alternative program is operated.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Steve Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

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 changes to the proposed rules apply to clients, so they do not impose any costs on businesses.

October 16, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. See chapter 182-500 WAC for additional definitions.

"Adequate consideration" means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

"Administrative costs" or **"costs"** means necessary costs paid by the guardian including attorney fees.

"Aging and long-term support administration (ALTSA)" means the administration within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) An adult family home (AFH) licensed under chapter 70.128 RCW.

(b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) A ((~~mental~~)) behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

(h) A staffed residential facility licensed under chapter 74.15 RCW.

(i) A group care facility for medically complex children licensed under chapter 74.15 RCW.

(j) A facility for children and youth twenty years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

"Assets" means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

"Clothing and personal incidentals (CPI)" means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

"Community options program entry system (COPES)" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an

entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

"Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Dependent" means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Developmental disabilities administration (DDA) home and community based (HCB) waiver" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCB waivers:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

"Guardianship fees" or **"fees"** means necessary fees charged by a guardian for services rendered on behalf of a client.

"Home and community based (HCB) waiver programs authorized by home and community services (HCS)" means medicaid HCB waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCB waivers: Community options program entry system (COPES), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

"Home and community based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Institutional services" means services paid for by Washington apple health, and provided:

(a) In a medical institution;

(b) Through an HCB waiver; or

(c) Through programs based on HCB waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is legally married to a person who is not in a medical institution.

"Life care community" see continuing care community.

"Likely to reside" means the agency or its designee reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports (LTSS)" includes institutional and noninstitutional services authorized by the department.

"Medicaid personal care (MPC)" means a medicaid state plan home and community based service under chapter 388-106 WAC.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

"Noninstitutional medicaid" means any apple health program not based on HCB waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for thirty days or more under chapter 182-513 WAC.

"Nursing facility level of care (NFLOC)" is under WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

"Penalty period" or **"period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

"Room and board" means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

"Short stay" means residing in a medical institution for a period of twenty-nine days or fewer.

"Special income level (SIL)" means the monthly income standard that is three hundred percent of the supplemental security income (SSI) federal benefit rate.

"Spousal impoverishment protections" means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and

through December 31, 2018, services authorized under 1115 and 1915(k) of the Social Security Act.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

"State spousal resource standard" means the minimum CSRA standard for a CS or SIPC spouse.

"Third-party resource (TPR)" means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

"Transfer" means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

(a) An intentional act that changes ownership or title; or

(b) A failure to act that results in a change of ownership or title.

"Uncompensated value" means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

WSR 19-21-110
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed October 17, 2019, 2:28 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SWCAA 400-025 - Adoption of Federal Rules, new rule section establishing a general adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-046 - Application Review Process for Nonroad Engines, existing rule section identifying requirements for the processing and approval of permit applications for nonroad engines.

SWCAA 400-050 - Emission Standards for Combustion and Incineration Units, existing rule section containing general air emission standards for combustion and incineration units. Additional requirements are provided for specific categories of combustion and incineration units.

SWCAA 400-060 - Emission Standards for General Process Units, existing rule section containing particulate matter emission standards applicable to all general processes.

SWCAA 400-070 - General Requirements for Certain Source Categories, existing rule section containing minimum air emission standards and work practices for selected source categories.

SWCAA 400-072 - Emission Standards for Selected Small Source Categories, existing rule section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of New Source Review for selected small source categories.

SWCAA 400-075 - Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, existing rule section that adopts by reference the federal standards relating to hazardous air pollutant standards contained in 40 C.F.R. Parts 61, 63, and 65.

SWCAA 400-105 - Records, Monitoring and Reporting, existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

SWCAA 400-106 - Emission Testing and Monitoring at Air Contaminant Sources, existing rule section that establishes minimum standards for emission testing and monitoring at air contaminant sources.

SWCAA 400-110 - Application Review Process for Stationary Sources (New Source Review), existing rule section identifying requirements for the processing and approval of Air Discharge Permit applications.

SWCAA 400-111 - Requirements for New Sources in a Maintenance Plan Area, existing rule section identifying requirements specific to new sources located in a Maintenance Plan Area.

SWCAA 400-115 - Standards of Performance for New Sources, existing section that adopts by reference the federal standards for new sources contained in 40 C.F.R. Part 60.

SWCAA 400-171 - Public Involvement, existing section identifying requirements for public notice of agency actions, and the process by which public involvement is to be administered. This section also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice.

SWCAA 400-850 - Actual Emissions - Plantwide Applicability Limitation (PAL), existing rule section adopting by reference the Actuals Plantwide Applicability limit program contained in Section IV.K of 40 C.F.R. 51, Appendix S.

SWCAA 400, Appendix A - SWCAA Method 9 - Visual Opacity Determination Method, existing rule section establishing the agency's required method for determining visual opacity.

Hearing Location(s): On January 22, 2020, at 6:00 p.m., at the Southwest Clean Air Agency (SWCAA) Business Office.

Date of Intended Adoption: February 6, 2020.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email wess@swcleanair.org, fax 360-576-0925, by January 24, 2020.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 x110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by January 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-025 - Adoption of Federal Rules, the proposed rule changes establish a new section identifying a generally applicable adoption by reference date for federal regulations cited in other sections of SWCA [SWCAA] 400.

SWCAA 400-046 - Application Review Process for Nonroad Engines, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-050 - Emission Standards for Combustion and Incineration Units, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025 and add a new federal regulation citation for Hospital/Medical/Infectious Waste Incinerators.

SWCAA 400-060 - Emission Standards for General Process Units, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-070 - General Requirements for Certain Source Categories, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-072 - Emission Standards for Selected Small Source Categories, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-075 - Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-105 - Records, Monitoring and Reporting, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-106 - Emission Testing and Monitoring at Air Contaminant Sources, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-110 - Application Review Process for Stationary Sources (New Source Review), the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-111 - Requirements for New Sources in a Maintenance Plan Area, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-115 - Standards of Performance for New Sources, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-171 - Public Involvement, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-850 - Actual Emissions - Plantwide Applicability Limitation (PAL), the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400, Appendix A - SWCAA Method 9 - Visual Opacity Determination Method, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

Reasons Supporting Proposal: The proposed changes are necessary to support the agency's implementation of affected federal standards.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x126; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x130; and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x122.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: Pursuant to RCW 70.94.141 (1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 17, 2019
Uri Papish
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 19-23 issue of the Register.

WSR 19-21-115
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed October 18, 2019, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-06-046.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-826-0075 and 388-826-0095; repeal WAC 388-826-0090; and create new WAC 388-826-0096, 388-826-0097, and 388-826-0098.

Hearing Location(s): On November 26, 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/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than November 27, 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., November 26, 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 November 12, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration is amending these rules to do the following: Require a voluntary placement services (VPS) client's parent or legal guardian to apply for all benefits available to the client; require a VPS client's parent or legal guardian to establish a representative payee if the client receives Social Security income; require a VPS client residing in a licensed staffed residential home, children's state-operated living alternative, or group care facility for medically fragile children to pay client responsibility according to WAC 182-515-1510 or 182-513-1235; require a VPS client residing in a child foster home to pay a fixed monthly rate known as "basic expenses"; require a basic expense agreement for a VPS client residing in a child foster home; and clarify language about a parent or legal guardian's fiscal responsibility to a child receiving VPS.

Reasons Supporting Proposal: These amendments align the calculation of client participation for VPS clients with that of other waiver participants, clarify parent and guardian responsibilities, and require clients receiving VPS in child foster homes to establish a basic expense agreement.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.13.350.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Nichole Jensen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1521.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

October 16, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-23-004, filed 11/7/18, effective 12/8/18)

WAC 388-826-0075 What are a parent or legal guardian's responsibilities when ((~~their~~)) a child is receiving voluntary placement services? (1) When a client is receiving voluntary placement services, the client's parent or legal guardian must:

(((~~(1)~~))) (a) Maintain weekly contact with the child;

(((~~(2)~~))) (b) Comply with the voluntary placement agreement;

(((~~(3) Help~~))) (c) Apply for all income and benefits available to the child ((~~from the Social Security Administration~~)); and

(((~~(4)~~))) (d) Participate in:

(((~~(a)~~))) (i) The shared parenting plan;

(((~~(b)~~))) (ii) Team meetings; and

(((~~(c)~~))) (iii) The DDA annual assessment, including the person-centered service plan.

(2) When the child receives social security income, the child's parent or legal guardian must establish a representative payee to manage the child's income and comply with the client responsibility and basic expenses required in this chapter.

(3) Nonpayment of a child's client responsibility or basic expenses may jeopardize the child's placement with a provider.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0095 ((~~Who pays for a child's care when a child is in out-of-home~~)) What must a client pay toward the cost of voluntary placement services in a licensed staffed residential home, a children's SOLA, or a group care facility? ((~~State funds, federal funds and the child's SSI, that is used for basic maintenance support the cost of the child's care while the child is in licensed out-of-home placement. The parent is encouraged to continue to support their child with typical activities, e.g., presents, clothing, special items, special outings. Licensed providers who care for the child in a licensed setting will be paid directly through a contract with DDD and according to an established rate structure, established within DDD.~~))

(1) To receive voluntary placement services in a licensed staffed residential home, a children's SOLA, or a group care facility for medically fragile children, a client may be required to pay client responsibility as required under this section.

(2) The department determines the amount of client responsibility and room and board a client must pay under:

(a) WAC 182-515-1510 if the client is enrolled on a DDA home and community-based (HCB) waiver under chapter 388-845 WAC; or

(b) WAC 182-513-1235 if the client is enrolled in roads to community living under chapter 388-106 WAC.

NEW SECTION

WAC 388-826-0096 What must a client pay toward the cost of voluntary placement services in a child foster

home? (1) To receive voluntary placement services in a child foster home, a client must pay the provider a fixed monthly amount referred to as basic expenses, which must be outlined in a basic expense agreement.

(2) The written basic-expense agreement must include:

(a) Monthly amounts for rent, utilities, and food costs; and

(b) The day of the month the payment is due to the provider.

(3) The total monthly obligation in the basic-expense agreement must not exceed the client's available income minus the personal needs allowance under WAC 182-513-1105(5).

(4) Before the client moves into the child foster home, the basic-expense agreement must be:

(a) Signed by the client or the client's legal representative;

(b) Signed by the provider; and

(c) Sent to DDA.

(5) Changes to the basic-expense agreement must be reviewed by DDA before implementation.

NEW SECTION

WAC 388-826-0097 What expenses must a parent pay for the child while receiving voluntary placement services? A parent or legal guardian remains financially responsible for all expenses for the child that are not included in voluntary placement services.

NEW SECTION

WAC 388-826-0098 What does the department pay toward voluntary placement services? (1) For a client residing in a licensed staffed residential home, a children's state-operated living alternative (SOLA), or a group care facility, the department pays the cost of the voluntary placement services minus the amount of client responsibility under WAC 388-826-0095.

(2) For a client residing in a child foster home, the department pays the cost of the voluntary placement services minus basic expenses under WAC 388-826-0096.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-826-0090	What does a parent do with the child's Social Security benefits when the parent's child lives outside the parent's home?

WSR 19-21-116
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 18, 2019, 9:00 a.m.]

Supplemental Notice to WSR 19-11-105.

Preproposal statement of inquiry was filed as WSR 19-03-013.

Title of Rule and Other Identifying Information: The department is proposing to create new WAC sections in chapter 388-76 WAC, Adult family home minimum licensing requirements, on requirements for notifying the department of information changes and creating a succession plan. The department is also proposing to amend WAC 388-76-10000 Definitions, 388-76-10003 Department access, 388-76-10020 License—Ability to provide care and services, 388-76-10035 License requirements—Multiple family home providers, 388-76-10037 License requirements—Multiple adult family homes—Additional homes, 388-76-10060 Application—Department orientation class—Required, 388-76-10063 Application—General training requirements, 388-76-10064 Adult family home administrator training requirements, 388-76-10074 Application—Waiver of fees, 388-76-10085 Application—Individual or coprovider, 388-76-10090 Application—Entity application, 388-76-10095 Application—Identification of landlord—Required, 388-76-10105 Application—Change of ownership, 388-76-10106 Change of ownership—Notice to department and residents, 388-76-10107 Priority processing—Change of ownership and relocation, 388-76-10120 License—Must be denied, 388-76-10125 License—May be denied, 388-76-10129 Qualifications—Adult family home personnel, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager, and 388-76-10950 Remedies—History and actions by individuals.

Hearing Location(s): On December 10, 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/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than December 11, 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., December 10, 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 November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal came from concerns raised by representatives of the adult family home industry regarding barriers to entry for certain provider and entity types. The proposed rule changes are intended to address these issues and clarify other requirements for licensure that have been ambiguous. The antici-

pated effect is to reduce regulatory burdens for new qualified providers, increase access to the adult family home industry, and to access beds for residents.

Reasons Supporting Proposal: The expected outcome is increased access to the adult family home market, an increased number of available adult family home beds both for those who are and are not clients of home and community services, decreased application processing wait times, and improved compliance due to better clarity of the regulations. These all fit into the goals and the mission of DSHS. Together, these proposed changes will improve the quality of care for residents and ensure protection of their rights.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: None.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, 253-234-6061.

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 Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, phone 253-234-6061, fax 253-395-5073, email wagnee@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. The department looked at costs of training, applications, and time spent on administrative training, and consulted with stakeholders. After examining all the costs, the department determined that costs are either less than minor, optional for a business, or rare, and that the changes will cause more savings than increased costs.

A copy of the detailed cost calculations may be obtained by contacting Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, phone 253-234-6061, fax 253-395-5073, email wagnee@dshs.wa.gov.

October 16, 2019
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 19-22 issue of the Register.

WSR 19-21-117
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 18, 2019, 9:07 a.m.]

Supplemental Notice to WSR 19-17-065.

Preproposal statement of inquiry was filed as WSR 19-03-150.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-76-10401 Home and community-based setting requirements. This new section requires homes to comply with federal Home and Community Based Services requirements.

Hearing Location(s): On November 26, 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/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than November 27, 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., November 26, 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 November 12, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal incorporates the federal requirements for home and community-based settings. This will help adult family home providers understand their obligations and improve their ability to comply with them. The proposal will also ensure that residents are receiving care in a homelike setting and reducing their dependence on institutions or isolating settings. These regulations improve quality of life in adult family homes by giving residents greater opportunities to make decisions about their lives and care. Subsequent to filing a CR-102 Proposed rule making on August 20, 2019, as WSR 19-17-065, the department determined this new rule should be proposed as a significant legislative rule. This supplemental filing opens the proposed rule to a new public comment period as a significant legislative rule.

Reasons Supporting Proposal: DSHS has a funding waiver from Centers for Medicaid and Medicare Services through the home and community-based settings program. As part of the agreement for this waiver, the department must adopt these rules. Failure to do so could result in the loss of the waiver and the funding source, which would result in fewer homes, fewer beds, and fewer people to regulate this setting. This proposal benefits residents, adult family home providers, and the department.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: 42 C.F.R. § 441.530.

Rule is necessary because of federal law, 42 C.F.R. § 441.530.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, 253-234-6061.

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 Libby Wagner, 20425 72nd Avenue South, Kent,

WA 98032, phone 253-234-6061, email libby.wagner@dshs.wa.gov.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 42 C.F.R. § 441.530. These regulations apply to home and community-based settings, which includes adult family homes. If this proposed rule is not adopted, the adult family home program would be out of compliance with medicaid rules.

October 17, 2019
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-76-10401 Home and community-based setting requirements. (1) The home must ensure that the following conditions are present for each resident:

(a) Privacy in each resident's bedroom, including lockable doors when chosen, with only the resident or residents who live in the room and appropriate staff having the key;

(b) Choice of roommates;

(c) Freedom to decorate and furnish their room within the terms of the notice of rights and service agreement;

(d) Freedom and support to control their own schedule;

(e) Access to food and water at any time; and

(f) Having visitors at any time, although nothing in this section requires an adult family home to provide a visitor with food or a place to sleep.

(2) When conditions under subsection (1) of this section cannot be met, the home must ensure the following elements are in place before implementing a modification:

(a) The specific assessed need for the modification is identified in the resident's assessment and negotiated care plan;

(b) The resident's negotiated care plan documents less intrusive methods and interventions that were tried prior to the modification but did not work;

(c) The details of the modification are clearly described in the resident's assessment and negotiated care plan, including how the modification addresses the resident's specific assessed need;

(d) The modification is agreed to by the resident or the resident's legal representative; and

(e) The modification must not cause the resident harm.

(3) All modifications must be reviewed annually with the assessment and negotiated care plan, and evidence of its effectiveness or lack thereof must be documented in both.

(4) Any modification must be discontinued if there is no longer a need for it or it is no longer effective.

WSR 19-21-125
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed October 18, 2019, 2:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-124.

Title of Rule and Other Identifying Information: Concerning the efficient administration of campaign finance and public disclosure reporting. Amending chapters 390-19 and 390-20 WAC to implement SHB 1195, chapter 428, Laws of 2019.

Hearing Location(s): On December 5, 2019, at 9:45 a.m., at 711 Capitol Way South, Suite 206, Olympia, WA 98504.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: Sean Flynn, P.O. Box 40908, email pdc@pdc.wa.gov.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, email pec@pdc.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are being adopted in order to synchronize the rules with SHB 1195, chapter 428, Laws of 2019.

Reasons Supporting Proposal: In order to comply with the passage of SHB 1195, the current Title 390 WAC must be amended, repealed and new sections added.

Statutory Authority for Adoption: RCW 42.17A.110(1).

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

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Flynn, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111; Implementation and Enforcement: Barbara Sandahl, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111.

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 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 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.

October 18, 2019
B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-010 Intent of electronic filing. (1) The public disclosure commission (PDC) was created and empowered by initiative of the people to provide timely and meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to insure compliance with contribution limits and other campaign finance restrictions.

(2) Full and prompt access to the political finance data filed by persons subject to the law is best realized through wide-spread use of electronic filing ((~~alternatives~~)). The Washington state legislature has mandated that ((~~certain~~)) filers submit their PDC reports electronically where the commission has made an electronic filing method available. The PDC makes available to all candidates, public officials, lobbyists, lobbyist employers, and political committees that are required to file reports under this chapter electronic filing ((~~alternatives~~)) for submitting reports((~~, and encourages all persons required to report under the disclosure law to utilize the electronic filing alternatives provided by the PDC~~)).

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-020 Electronic filing—Mandatory filing. (1) ((~~RCW 42.17A.245 mandates that persons meeting the qualifying criteria in that section file all contribution and expenditure reports by electronic means.~~

~~(2) Persons filing by electronic means shall register with the PDC and receive a filer identification number and password. Filers must have a current C-1 Candidate Registration Statement or a C-1pc Committee Registration Statement on file with the PDC prior to receiving a filer identification number.~~

~~(3) A filer subject to RCW 42.17A.245 shall file all PDC C-3 and C-4 reports and all appropriate schedules electronically in compliance with subsection (5) of this section.~~

~~(4)~~)) All persons required to provide the commission with electronic contact information, may provide an email address or other electronic format, if such alternate format has been approved by the PDC.

(2) Any filer required to file electronically, but who files on paper, is in violation of RCW ((~~42.17A.245~~)) 42.17A.055 and may be subject to enforcement action unless the filer is a candidate who has sought and been granted an exception from electronic filing under WAC 390-19-050.

(((~~5~~))) (3) A filer subject to electronic filing shall file reports using ((~~one of the following:~~

~~(a) The ORCA software (Online Reporting of Campaign Activity) provided free of charge by the PDC; or~~

~~(b) Any other~~)) the electronic filing application provided or approved by the PDC.

(((~~(6) Pursuant to RCW 42.17A.055, state agencies reporting their legislative activities under RCW 42.17A.635 are required to file electronically.~~)))

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-040 ((~~Electronic~~)) Filing—Date of receipt, verification and amendments. (1) An electronic report is filed when it is received and validated by the PDC computer system. The PDC shall notify the filer that the electronic report has been received.

(2) An electronic report is timely filed if received on or before 11:59 p.m. Pacific Time on the prescribed filing date.

(3) An electronic report that is infected with a virus, damaged, or is improperly formatted is not properly filed with the PDC and shall be rejected.

(4) To amend an electronically filed report, the filer shall electronically refile the entire report.

(5) A mailed item may not be substituted for an item required to be electronically filed. However, where no electronic method has been provided, or where the executive director has approved a hardship exemption to the electronic filing requirement, the date of receipt of any properly addressed mailed application, report, statement, notice, payment, or other item required under the provisions of chapter 42.17A RCW is the date shown by the post office cancellation mark on the envelope. Any item mailed to the commission under the provisions of chapter 42.17A RCW that does not include a post office cancellation mark is presumed to be filed timely if received within five business days of the due date.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-050 Electronic filing—Exceptions. (((~~1~~))) The PDC executive director may make exceptions on a case-by-case basis for ((~~candidates whose authorized committees~~)) persons who lack the technological ability to file reports electronically.

(((~~(2) A candidate~~)) A person seeking an exception ((~~under RCW 42.17A.245~~)) shall electronically file with the executive director of the PDC a written statement of reasons why the ((~~authorized committee~~)) person lacks the ability to file reports electronically. The request should be submitted by the tenth day of the month preceding the month in which the report is due so that action on the request can be completed before the filing deadline. The request does not suspend the reporting requirement of any portion of chapter 42.17A RCW. Upon receipt of a filed request, the executive director may request further information from the applicant in consideration of the request. The executive director shall issue a decision to approve or deny a request for an exception to an electronic filing requirement within thirty days of receiving a filed request, which may be extended if further information is provided upon request by the executive director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-19-030 Electronic filing—Reporting threshold.

Chapter 390-20 WAC

((~~FORMS FOR~~)) REPORTING LOBBYING ((~~REPORTS, ELECTED OFFICIALS AND LEGISLATORS~~)) ACTIVITIES

AMENDATORY SECTION (Amending WSR 99-12-069, filed 5/27/99, effective 6/27/99)

WAC 390-20-014 Registration during last calendar quarter of the biennial registration period. (1) The registration of a lobbyist who registers during the last calendar quarter of an even-numbered year is valid until the second Monday of January three years hence, unless it is terminated or suspended before that day.

(2) The lobbyist is required to file monthly expense reports (((~~PDC Form~~)) L-2 Report) for each month in which he or she is registered, even if no reportable lobbying expenditures are made.

(3) The lobbyist employer shall file the employer's report (((~~PDC Form~~)) L-3 Report) for each calendar year or portion thereof in which a lobbyist is registered.

AMENDATORY SECTION (Amending WSR 85-24-020, filed 11/26/85)

WAC 390-20-017 Suspension of registration. A lobbyist by notifying the commission in advance in writing may temporarily suspend his or her registration for any month(s) in which no lobbying will be done, no expenditures will be made for lobbying and no compensation will be received for lobbying.

(((~~a~~))) (1) During the period when the suspension is effective, the commission will not require L-2 Reports to be filed.

(((~~b~~))) (2) The lobbyist may reinstate the registration by notifying the commission in writing. The notification must state the date the reinstatement is to be effective. It must also affirm that information on the original L-1 registration is still correct or include an amended L-1 ((~~Form~~)) Report.

(((~~c~~))) (3) Notification under this rule does not suspend or modify the requirement in RCW 42.17.150(4) for a new registration each odd-numbered year.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-20-020 ((~~Forms for~~)) Reporting lobbyist ((~~report of~~)) expenditures. The official ((~~form for the lobbyist~~)) report of expenditures is designated "L-2," which includes the L-2 Memo Report. ((~~Copies of this form are~~)) This report is available on the commission's website, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington. ((~~Any attachments shall be on 8-1/2" x 11" white paper.~~))

AMENDATORY SECTION (Amending WSR 15-01-064, filed 12/11/14, effective 1/11/15)

WAC 390-20-020A L-2 Reporting guide.

For Entertainment, Receptions, Travel and Educational Expenditures

Typical Expenditures* **(Only permitted if receipt could not reasonably be expected to influence the performance of the officer's or employee's official duties.)**	((~~**Expense Included on Line 5**~~))	**Itemize Expense ((~~Included on Line 15~~))?**	**Give Copy of ((~~L-2 or~~)) Monthly Expense Report or Memo Report to Elected Official?**
Entertaining State Officials, Employees or Their Families:			
□ Any type of entertainment occasion costing $50 or less	((~~Yes~~))	No	No
□ Breakfast, lunch or dinner for legislator or other state official or employee (singly, or in conjunction with family member(s)) and total cost for occasion is:			
º $50 or less	((~~Yes~~	No	No
º More than $50, and amount attributable to legislator/family is more than $50	~~Yes~~))	Yes	Yes
□ Tickets to theater, sporting events, etc.	((~~Yes~~))	Yes	No
□ Golf outing	((~~Yes~~))	Yes	No

Typical Expenditures* (Only permitted if receipt could not reasonably be expected to influence the performance of the officer's or employee's official duties.)	**((~~Expense Included on Line 5~~))**	**Itemize Expense ((~~Included on Line 15~~))?**	**Give Copy of ((~~L-2 or~~)) Monthly Expense Report or Memo Report to Elected Official?**
Receptions:			
□ Reception to which the entire legislature, all members of a chamber, or any of the two largest caucuses recognized in each chamber are invited and is: º Sponsored by a person other than a lobbyist; º Attended by individuals other than legislators, lobbyists, and lobbyist employers; º A social event; and º Does not include a sit-down meal.	((~~Yes~~))	Yes Disclose list of attendees (submitting sign-in sheet is sufficient). A per-person cost is not required	No
□ All other receptions	((~~Yes~~))	Yes	Yes, if the food and beverage cost for the legislator and family members exceeds $50
Travel-Related Expenditures for Officials, Employees:			
□ Travel, lodging, meals for office-related appearance or speech at lobbyist employer's annual conference	((~~Yes~~))	Yes	Yes
□ Travel, lodging, meals for office-related tour of lobbyist employer's manufacturing plant or other facility	((~~Yes~~))	Yes	Yes
Educational Expenditures for Officials, Employees:			
□ Travel, lodging, meals, tuition to attend seminar sponsored by nonprofit organization	((~~Yes~~))	Yes	Yes
Other Lobbying-Related Items:			
□ Flowers costing any amount to officials, staff and/or family	((~~Yes~~))	No	No
□ Candy costing $50 or less per official or employee	((~~Yes~~))	No	No
□ Golf balls, coffee cups or other promotional items	((~~Yes~~))	No	No
□ Fruit baskets costing $50 or less per official or employee	((~~Yes~~))	No	No

Note: References to employees or staff do not constitute authority to provide impermissible items to regulatory, contracting or purchasing employees.

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

WAC 390-20-052 Application of RCW 42.17A.635—Reports of agency lobbying. Pursuant to the authority granted in RCW 42.17A.635(8), the commission adopts the following interpretations regarding the reporting of lobbying by public agencies pursuant to RCW 42.17A.635:

(1) The phrase "in-person lobbying" contained in RCW 42.17A.635 (5)(d)(v)(B) includes activity which is intended to influence the passage or defeat of legislation, such as testifying at public hearings, but does not include activity which is not intended to influence legislation, such as attending a hearing merely to monitor or observe testimony and debate.

(2) The phrase "a legislative request" contained in RCW 42.17A.635 (5)(d)(ii) includes an oral request from a member of the legislature or its staff.

(3)(a) When any subagency (i.e., department, bureau, board, commission or agency) within a state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district (i.e., primary agency) has independent authority to expend public funds for lobbying, that subagency may file a separate L-5 reporting the information required by RCW 42.17A.635(5).

(b) When a subagency elects to file its own, separate L-5, it shall notify the commission and the administrative head of the primary agency of its intentions in writing. The primary agency shall not thereafter include information for the subagency in its L-5, and shall have no legal obligation for the filings of the subagency.

(4) Pursuant to RCW 42.17A.635(6), certain local agencies may elect to have lobbying activity on their behalf reported by their elected officials, officers and employees in the same manner as lobbyists who register and report under RCW 42.17A.600 and 42.17A.615:

(a) Whenever such a local agency makes such an election, it shall provide the commission with a written notice.

(b) After such an election, those who lobby on behalf of such local agency shall register and report all lobbying activity reportable under RCW 42.17A.635(5) in the same manner as lobbyists who are required to register and report under RCW 42.17A.600 and 42.17A.615. Such a local agency shall report pursuant to RCW 42.17A.630.

(c) In order to terminate such an election, such a local agency shall provide the commission with a written notice and it shall report pursuant to RCW 42.17A.635(5) thereafter.

(d) The exemptions from reportable lobbying activity contained in RCW 42.17A.635 (5)(d) apply to all agencies, whether or not they have exercised the election to report in the same manner as lobbyists who report under RCW 42.17A.600, 42.17A.615, and 42.17A.630. The exemptions contained in RCW 42.17A.610 (1), (4) and (5) do not apply to any agency.

(5) Unless an agency has elected to report its lobbying pursuant to RCW 42.17A.635(6) and subsection (3) of this section, an agency shall include the reportable lobbying activity on its behalf by an elected official in its quarterly report. Such an elected official does not file any separate report of that activity.

(6) Reportable in-person lobbying by elected officials, officers and employees:

(a) An elected official does not engage in reportable in-person lobbying on behalf of an agency unless and until that elected official has expended in excess of twenty-five dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington during any three-month period as provided in RCW 42.17A.635 (5)(d)(v)(B).

(b) Other officers and employees do not engage in reportable in-person lobbying on behalf of their agency unless and until they have, in the aggregate, expended in excess of twenty-five dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington or they have, in the aggregate, engaged in such lobbying for more than four days or parts thereof during any three month period as provided in RCW 42.17A.635 (5)(d)(v)(B).

(c) When limits in (a) or (b) of this subsection have been exceeded, the agency shall report such elected official, officer, or employee as a "person who lobbied this quarter" on the front of ((~~PDC Form~~)) L-5 Report and include a listing of those excess expenditures as noted on that ((~~form~~)) report.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-20-110 ((~~Forms~~)) Reporting for lobbyist employers ((~~report~~)). The official ((~~form~~)) report for statement by employers of registered lobbyists as required by RCW 42.17.180 is designated "L-3." ((~~Copies of this form are~~)) This report is available on the commission's website, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. ((~~Any paper attachments shall be on 8-1/2" x 11" white paper.~~))

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-20-111 ((~~Form for~~)) Lobbyist employers ((~~report~~)) reporting of political contributions. The official ((~~form~~)) report entitled "Employer of Lobbyist Monthly Political Contribution Report" as required by RCW 42.17A.-630 (2)(a) is designated "L-3c." Hard copies of this ((~~form~~)) report are available for download on the commission's website, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any attachments must be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-20-120 ((~~Forms for report of~~)) Reporting legislative activity by public agencies. The official ((~~form~~)) report for ((~~the report of~~)) legislative activity by public agencies as required by RCW 42.17A.635 is designated "L-5." ((~~Copies of this form are~~)) This report is available on the commission's website, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. ((~~Any attachments shall be on 8-1/2" x 11" white paper.~~))

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-20-125 ((~~Forms for~~)) Registration and reporting by sponsors of grass roots lobbying campaigns. The official ((~~form~~)) report for registration and reporting by sponsors of grass roots lobbying campaigns as required by RCW 42.17A.640 is designated "L-6." Hard copies of this ((~~form~~)) report are available for download on the commission's website, pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any attachments shall be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-20-130 ((~~Forms for~~)) Statement of employment of legislators, state officers, and state employees. The official ((~~form~~)) report for statement of employment of legislators, state officers, and state employees as required by RCW 42.17A.645 is designated "L-7." Hard copies of this form are available for download on the commission's website, www.pdc.wa.gov, and at the Commission Office, Olym-

pia, Washington. Any paper attachments shall be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-140 Loss of ((~~RCW 42.17A.610~~)) exemption((~~s~~)) from registering and reporting lobbying activities. (1) For the purpose of determining compliance with RCW 42.17A.650, a lobbyist's employer shall be responsible for the applicability of all of the exemptions provided in RCW 42.17A.610 to any lobbyist the employer employs, pays, or agrees to pay.

(2) The commission recognizes that a lobbyist who initially intends in good faith to utilize the "casual lobbying" exemption from registration and reporting which is provided in RCW 42.17A.610(4) may thereafter become ineligible for that exemption, thus violating RCW 42.17A.600 ((~~and/or~~)) or 42.17A.615 by not having registered ((~~and/or~~)) or reported within the prescribed time periods.

(3) The commission shall not commence enforcement proceedings against a lobbyist or his or her employer in circumstances described in subsection (2) of this section if the lobbyist:

(a) Registers pursuant to RCW 42.17A.600 before doing any lobbying in excess of the exemption limitations in RCW 42.17A.610(4); and

(b) Files a report on ((~~Form~~)) the L-2 Report when next due under RCW 42.17A.615, which report includes all reportable information for the lobbying activities cumulatively causing the exemption limitations to be reached.

(4) The duty under RCW 42.17A.655(1) of a person required to register as a lobbyist to obtain and preserve all records necessary to substantiate required financial reports shall include such records of all activities which cumulatively cause the RCW 42.17A.610(4) exemption limitations to be reached and exceeded.

(5) A lobbyist whose only compensation or other consideration for lobbying is payment of or reimbursement for expenditures not required to be reported per RCW 42.17A.-615 (3)(a) through (d), does not qualify for exemption from registration and reporting per RCW 42.17A.610(4).

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

WAC 390-20-143 Application of lobbying provisions to organizations. (1) A lobbyist other than a natural person shall be deemed to have properly restricted its lobbying activities and is eligible for the RCW 42.17A.610(5) "casual lobbying" exemption during any three-month period in which its agents or employees do not make an expenditure of more than thirty-five dollars for or on behalf of legislators, state elected officials, public officers or employees of the state of Washington.

(2) A lobbyist other than a natural person which does sponsor or coordinate or directly make unreported expenditures exceeding thirty-five dollars during a three-month period, as fully described in subsection (1) of this section, must register and report as required by RCW 42.17A.600 and 42.17A.615: Provided, That it can satisfy these requirements by having an individual agent (a) register and reports as a lobbyist, and (b) include ((~~as part of Form L-2~~)) a report of these and all other lobbying expenditures made on behalf of the nonnatural person during that three-month period as part of the L-2 Report.

(3) An entity((~~,~~)) including, but not limited to, a law firm, consulting firm, advertising agency, or other similar organization, which receives or expects to receive compensation for lobbying from any person, must register and report as a lobbyist pursuant to RCW 42.17A.600 and 42.17A.615: Provided, That membership dues or contributions to a nonprofit organization made for the purpose of promoting a general interest and not in return for lobbying on behalf of any specific member or contributor shall not be regarded as compensation for this purpose. Registration statements and reports shall list as the lobbyists both the firm or organization and each individual acting on its behalf. The person paying the compensation shall report under RCW 42.17A.630 as a lobbyist's employer.

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

WAC 390-20-144 Registration and reporting by lobbyist organizations. (1) Any firm, company, association or similar organization required to register as a lobbyist shall file one registration statement (((~~PDC Form~~)) L-1 Report) for each employer for whom the organization will lobby.

(a) The lobbying organization will attach to the registration statement a photo and the biographical information required by RCW 42.17A.605 (((~~page 3 of the L-1 Form~~))) for each individual agent of the organization who is authorized to lobby for that particular employer.

(b) If the agent is authorized to lobby for several employers, only one photo and biographical sheet need be submitted.

(c) The organization will notify the commission in writing when there is any change in the employment or assignment of agents who lobby.

(2) One monthly expenditure report (((~~PDC Form~~)) L-2 Report) shall be submitted showing all expenditures made by the organization and its agents. It is unnecessary to prorate or attribute expenditures to individual agents of the organization. However, expenditures for entertainment exceeding fifty dollars per occasion shall identify the individual agent(s) who were present at the occasion. The L-2 report shall be signed by the president or chief executive officer of the lobbying organization.

(3) If any individual agent of the organization ceases to lobby or the organization terminates that agent's authority to lobby, the organization shall notify PDC in writing or by notation on the L-2 report of the termination.

AMENDATORY SECTION (Amending WSR 85-24-020, filed 11/26/85)

WAC 390-20-145 Reporting of lobbying events. (1) A meeting or other gathering of individuals for which lobbying is a purpose or reasonably foreseeable result shall be reportable by or on behalf of the sponsoring person in accordance with WAC 390-20-143 and other applicable provisions of law: Provided, That the executive director is authorized to

state in writing how all reportable information relative to a particular gathering shall be reported on ((~~Form~~)) the L-2 Report whenever the application of the appropriate provisions of law is unclear to the reporting person, and this interpretation shall be reviewed and approved, modified or rejected by the commission at its next regular or special meeting.

(2) Any other lobbyist reporting such a gathering may incorporate by reference in ((~~his Form~~)) their L-2 ((~~a Form~~)) Report, an L-2 Report which is filed on the sponsor's behalf and which reports the gathering in accordance with applicable provisions of law, including WAC 390-20-143(2) and subsection (1) of this ((~~rule~~)) section.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-146 Reporting of field trips and other excursions. (1) All persons required to file reports pursuant to RCW 42.17A.615 who provide field trips or other excursions to elected and appointed officials, and other individuals required to file the Personal Financial Affairs Statement (((~~PDC Form~~)) F-1 Report) shall file, on the appropriate monthly L-2 or L-2 Memo Report, the identity of persons attending the field trip or other excursion along with the date, pro rata cost, and a brief description of the field trip or other excursion.

(2) All persons required to file pursuant to RCW 42.17A.710 who attend a field trip or other excursion paid for or provided by a lobbyist, lobbyist employer, or other person paying for or providing field trips or other excursions shall report the date, name of the person paying for or providing the field trip or excursion, pro rata cost attributable to the filer, applicable code value, and a brief description of the field trip or other excursion as part of the F-1 statement that covers the date of the field trip or other excursion.

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

WAC 390-20-150 Changes in dollar amounts. Pursuant to the commission's authority in RCW 42.17A.125(((~~(2)~~))) to revise the monetary reporting thresholds found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

Statutory Section	Subject Matter	Amount and Date Enacted or Last Revised	Revision Effective December 1, 2014
.600 (1)(i)	Lobbyist employer's members or funders	$500 (1973)	$1,450
.610(5)	Casual lobbying threshold	$25 (1982)	$35
.615 (2)(a)	Itemize entertainment expenditures	$25 (1978)	$50
.630 (2)(a)	Contributions disclosed by lobbyist employer on monthly report (L-3c)	$100 (1990)	$110
.635 (5)(d)(v)	Nonpublic funds spent on gifts provided by public agency	$15 (1979)	$25
.640(1)	Grass roots lobbying	$500/ $1,000 (1985)	$700/ $1,400

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-20-0101 Forms for lobbyist registration.

WSR 19-21-126
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 18, 2019, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-017 on August 27, 2019.

Title of Rule and Other Identifying Information: Recreation license dealer's fees.

Hearing Location(s): On December 13-14, 2019, at 8:30 a.m. - 5 p.m., at the Holiday Inn & Suites, 4260 Mitchell Way, Bellingham, WA 98226.

Date of Intended Adoption: December 13-14, 2019.

Submit Written Comments to: Jacalyn Hursey, P.O. Box 43200, Olympia, WA 98504-3200, email rules.coordinator@dfw.wa.gov, fax 360-902-2162, by December 10, 2019.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, TTY 360-902-2207, email Dolores.Noyes@dfw.wa.gov, by December 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will implement edits for clarity and a repeal due to an endorsement no longer being available.

Reasons Supporting Proposal: The changes in this proposal are needed to make necessary adjustments to the recreational dealer's fee.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.240, 77.12.800, 77.32.090, and 77.32.470.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.240, 77.12.800, 77.32.090, and 77.32.470.

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

Name of Proponent: [Department of fish and wildlife], governmental.

Name of Agency Personnel Responsible for Drafting: Deirdre Bissonnette, 1111 Washington Street S.E., Olympia, WA, 360-902-2211; Implementation: Peter Vernie, 1111 Washington Street S.E., Olympia, WA, 360-902-2302; and

Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

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

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

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

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

October 18, 2019
Jacalyn M. Hursey
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-19-021, filed 9/11/18, effective 10/12/18)

WAC 220-220-320 Recreational license dealer's fees. The department and license dealers may charge a license issuance fee as follows:

(1) Two dollars for the issuance of any of the following fishing licenses:

(a) A combination license.

(b) A saltwater license.

(c) A freshwater license.

(d) A one-, two-, or three-day temporary fishing license.

(e) A family fishing weekend license.

(f) A shellfish and seaweed license.

(g) A razor clam license.

(2) Two dollars for the issuance of any of the following hunting licenses:

(a) A big game combination license.

(b) A small game license.

(c) A three-consecutive day small game license.

(d) A hunter education deferral for a big game license.

(e) A hunter education deferral for a small game license.

(f) A second animal license.

(g) A special hunt license for mountain goat, bighorn sheep, or moose.

(h) A Western Washington pheasant license.

(i) A three-day Western Washington pheasant license.

(3) Notwithstanding the provisions of this section, if any two or more licenses are issued at the same time, or the fish and wildlife lands vehicle access pass is issued with any recreational license, the license issuance fee for the document is two dollars. Tags or other endorsements are additive to the two-dollar license issuance fee.

(4) Two dollars for the issuance of an annual discover pass.

(5) Two dollars for the issuance of an aquatic invasive species prevention permit.

(6) Fifty cents for the issuance of any of the following:

(a) A deer, elk, bear, cougar, mountain goat, mountain sheep, moose, or turkey transport tag.

(b) An application for a special permit hunt.

(c) Migratory bird harvest report cards issued with a hunt authorization.

(d) A replacement of substitute special hunting season permit.

(e) A migratory bird permit.

(f) Additional fishing catch record cards.

(g) A Puget Sound crab endorsement.

(h) A temporary Puget Sound crab endorsement.

(i) A two-pole endorsement.

(j) ((~~A Columbia River salmon/steelhead endorsement. (k)~~)) A one-day discover pass.

(((~~(l)~~))) (k) Raffle tickets.

WSR 19-21-129
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed October 21, 2019, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-043.

Title of Rule and Other Identifying Information: WAC 182-523-0100 Washington apple health—Medical extension.

Hearing Location(s): On November 26, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at 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 November 27, 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 November 26, 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 November 15, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is striking subsection (2)(iii). The agency does not change eligibility based on incarceration status.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; SSB 6430, chapter 154, 2016 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SSB 6430, chapter 154, 2016 regular session.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Smith, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45534, Olympia, WA 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.

October 21, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-18-024, filed 8/28/17, effective 10/1/17)

WAC 182-523-0100 Washington apple health—Medical extension. (1) A parent or caretaker relative who was eligible for and who received coverage under Washington apple health for parents and caretaker relatives, described in WAC 182-505-0240, in any three of the last six months is eligible, along with all dependent children living in the household, for twelve months' extended health care coverage if the person becomes ineligible for ((~~his or her current~~)) coverage due to increased earnings or hours of employment.

(2) A person remains eligible for apple health medical extension unless:

(a) The person:

(i) Moves out of state;

(ii) Dies; or

(iii) ((~~Becomes an inmate of a public institution; or~~

~~(iv)~~)) Leaves the household.

(b) The family:

(i) Moves out of state;

(ii) Loses contact with the agency or its designee or the whereabouts of the family are unknown; or

(iii) No longer includes an eligible dependent child as defined in WAC 182-503-0565(2).

(3) When a person or family is determined ineligible for apple health coverage under subsection (2)(a)(i) through (iii) or (b)(i) or (ii) of this section during the medical extension period, the agency or its designee redetermines eligibility for the remaining household members as described in WAC 182-504-0125 and sends written notice as described in chapter 182-518 WAC before apple health medical extension is terminated.

WSR 19-21-131
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed October 21, 2019, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-071.

Title of Rule and Other Identifying Information: WAC 182-535-1066 Dental-related services—Medical care services clients.

Hearing Location(s): On November 26, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at 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 November 27, 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 November 26, 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 November 15, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective January 1, 2020, a medical care services (MCS) client may receive the same dental coverage in chapter 182-535 WAC as other eligible clients. The agency is repealing WAC 182-535-1066 which contains limited dental coverage for MCS clients. This section will no longer apply.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1109, section 211(30), chapter 415, Laws of 2019.

Statute Being Implemented: RCW 41.05.021, 41.05.160; ESHB 1109, section 211(30), chapter 415, Laws of 2019.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Smith, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Pixie Needham, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-9967.

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 client coverage and therefore does not impose any costs on businesses.

October 21, 2019
Wendy Barcus
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-535-1066	Dental-related services—Medical care services clients.

WSR 19-21-134
PROPOSED RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed October 21, 2019, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-046.

Title of Rule and Other Identifying Information: WAC 246-935-270 through 246-935-310, veterinary board of governors (board) continuing education for veterinary technicians, the board is proposing multiple changes for veterinary technician continuing education rules.

Hearing Location(s): On December 9, 2019, at 10:00 a.m., at the Washington State Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: December 9, 2019.

Submit Written Comments to: Loralei 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 December 2, 2019.

Assistance for Persons with Disabilities: Contact Loralei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov, by December 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will modernize veterinary technician continuing education (CE) rules and streamline requirements. Proposed changes to the rule include decreasing the reporting period (without increasing the per-year requirement); clarifying expectations when a veterinary technician is audited; setting a minimum requirement of fourteen scientific or clinical hours; allowing a maximum of six hours to be obtained through teaching; designating live, web-based coursework to be equivalent to in-person coursework; and expanding the approved provider list.

Reasons Supporting Proposal: The board's intent is to increase access and flexibility for CE rules, while maintaining a high standard for continuing education. They propose to do this by setting a minimum standard for scientifically supported educational programs, as well as discontinuing the board's review and approval of courses not approved by rule. To add options and flexibility for veterinarians to meet these new standards, the board proposes to remove the ten-hour limit for qualifying live and interactive webinars, to allow credit options for teaching, and expand the approved CE provider list using input from multiple stakeholders.

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: Loralei 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 Loralei 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.

October 21, 2019
Elizabeth C. Davies, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

WAC 246-935-270 Purpose. The standards established in WAC 246-935-270 through 246-935-310 may be cited as the "veterinary technician continuing education rules." The purpose of these rules is to establish standards of continuing education for licensed veterinary technicians. The rules ((~~designate approved~~)) provide for qualifying training methods, ((~~identify~~)) designating approved continuing education providers and ((~~set~~)) setting minimum continuing education credit requirements.

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

WAC 246-935-280 ((~~Basic requirement—Amount.~~)) Continuing education requirement. ((~~Continuing education consists of programs of learning which contribute directly to the advancement or enhancement of the skills of licensed veterinary technicians. Beginning with license renewals on or after July 23, 2007, licensed veterinary technicians must complete thirty hours of continuing education every three years. No more than ten hours can be earned in practice management courses in any three-year reporting period. Licensed veterinary technicians must comply with chapter 246-12 WAC relating to continuing education requirements.~~)) (1) Beginning January 1, 2020, a licensed veterinary technician shall complete twenty hours of continuing education every two years. Licensed veterinary technicians shall comply with chapter 246-12 WAC, Part 7 relating to continuing education requirements.

(2) A veterinary technician shall complete the continuing education requirements as follows:

If continuing education is due on the veterinary technician's renewal date in:	The next continuing education due date is on the veterinary technician's renewal date in the year below and every two years thereafter:
2020	2022
2021	2023
2022	2024

(3) The board may audit up to twenty-five percent of veterinary technicians after the license is renewed and may audit a veterinary technician for cause.

(a) Upon request by the board, the veterinary technician is responsible for submitting documentation of completed continuing education. Documentation must include, at a minimum:

(i) The name and credentials or qualifications of the continuing education provider;

(ii) The date of attendance or completion;

(iii) Course title or subject; and

(iv) The number of hours earned.

(b) Documentation for continuing education earned pursuant to WAC 246-935-295 (2)(b) must include, in addition to (a)(i) through (iv) of this subsection, a list of attendees, and materials that sufficiently describe the content of the presentation.

(c) Failure by a veterinary technician to cooperate with an audit or provide the requested proof of continuing education to the board is grounds for disciplinary action.

NEW SECTION

WAC 246-935-285 Approval of courses. The board will not authorize or approve specific continuing education courses or materials. All continuing education courses must be provided by organizations, institutions, or individuals in WAC 246-935-290 and contribute to the professional knowledge and development of the practitioner, enhance services provided to patients, and contribute to the practitioner's ability to deliver current standards of care. The board will accept continuing education that reasonably falls within these criteria, and relies upon the integrity of each individual practitioner, as well as that of program sponsors, in complying with this requirement. Courses cannot be exclusively for product promotion. The board reserves the right to not accept credits from any area for any practitioner if, upon auditing, the board determines that a course or material did not provide appropriate information or training.

AMENDATORY SECTION (Amending WSR 16-16-070, filed 7/28/16, effective 8/28/16)

WAC 246-935-290 ((~~Qualified organizations approved by the veterinary board of governors.~~)) Organizations, institutions, or individuals approved by the veterinary board to provide continuing education courses. ((~~Courses offered by the following organizations qualify as continuing education courses for veterinary technicians.~~

~~(1) The Washington State Association of Veterinary Technicians.~~

~~(2) National Association of Veterinary Technicians in America.~~

~~(3) All veterinary technician specialty academies recognized by the National Association of Veterinary Technicians in America.~~

~~(4) The American Association of Veterinary State Boards (AAVSB).~~

~~(5) The American Veterinary Medical Association (AVMA).~~

~~(6) The Washington State Veterinary Medical Association.~~

~~(7) Any board approved college or school of veterinary medical technology.~~

~~(8) Any board approved college or school of veterinary medicine.~~

~~(9) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.~~

~~(10) The American Animal Hospital Association.~~

~~(11) Veterinary specialty boards recognized by the American Veterinary Medical Association.~~

~~(12) Regional veterinary conferences and allied organizations recognized by AAVSB.~~

~~(13) The Registry of Approved Continuing Education (RACE).~~

~~(14) Other courses as approved by the board.~~)) The board approves veterinary technician continuing education courses provided by organizations, institutions, or individuals (providers) including, but not limited to, the following:

(1) Any board approved college or school of veterinary medical technology.

(2) Any international, national, state, provincial, regional or local veterinary technician association.

(3) National Association of Veterinary Technicians in America (NAVTA).

(4) A veterinary technician specialist who is certified by a veterinary technician specialty (VTS) academy recognized by NAVTA when teaching a course within his or her area of specialty.

(5) All veterinary technician specialty academies recognized by NAVTA.

(6) The Washington state association of veterinary technicians (WSAVT).

(7) Organizations, institutions, or individuals approved for veterinarians in WAC 246-933-460.

NEW SECTION

WAC 246-935-295 Categories and methods of continuing education activities. (1) Categories of continuing education:

(a) Scientific or clinical. A minimum of fourteen scientific or clinical credit hours must be earned in any two-year reporting period. Credits must be obtained through education offered by an approved provider listed in WAC 246-935-290.

(b) Practice management or professional development. A maximum of six practice management or professional development credit hours may be claimed in any two-year reporting period.

(2) Methods by which continuing education may be obtained:

(a) Live attended courses. There is no limit for credit hours earned through live courses attended remotely, provided that attendees have the documented opportunity to question the instructor, hear the questions of other attendees, and receive responses in real time. The course must be obtained through education offered by an approved provider listed in WAC 246-935-290.

(b) Teaching. A maximum of six teaching credit hours may be claimed in any two-year reporting period. Qualifying courses must either meet the criteria under WAC 246-935-290 or must be presented through an accredited health care learning institution. Courses must be presented to veterinary technicians, other credentialed health care providers, or students of health care professions. Three credit hours will be granted for each course hour taught. Credit will be granted for only the first time a course is taught.

(c) Preprogrammed materials. Preprogrammed educational materials are noninteractive and may be presented in any form of printed or electronic media. A maximum of six credit hours may be claimed in any two-year reporting period for completion of preprogrammed educational materials. The materials must be obtained through education offered by an approved provider listed in WAC 246-935-290, and must require successful completion of an examination or assessment.

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

WAC 246-935-310 Exceptions. The board may excuse from or grant an extension of continuing education requirements to a licensed veterinary technician due to illness or other extenuating circumstances.

Licensees seeking an extension must petition the board, in writing, at least ((~~forty-five~~)) thirty days prior to the end of the reporting period.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-935-300 Self-study continuing veterinary technician education activities.

WSR 19-21-135
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed October 21, 2019, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-095.

Title of Rule and Other Identifying Information: WAC 246-817-907 Patient notification, secure storage, and disposal, the dental quality assurance commission (commission) is proposing amending WAC 246-817-907 to establish patient notification, documentation, counseling requirements, and the right to refuse an opioid prescription for those prescribing opioids, as directed by section 4, codified as RCW 18.32.810, and section 17, codified as RCW 69.50.317, of SSB 5380 (chapter 314, Laws of 2019) for licensed dentists. The commission is also proposing exemptions to clarify when patient notification, documentation, and counseling requirements for opioid prescribing is needed.

Hearing Location(s): On December 6, 2019, at 9:35 a.m., at the Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: December 6, 2019.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by November 27, 2019.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5380 requires the commission, along with the Washington medical commission, podiatric medical board, board of osteopathic medicine and surgery, and nursing care quality assurance commission to adopt or amend rules establishing additional patient notification and right to refuse requirements.

Section 4 of SSB 5380, codified as RCW 18.32.810 directs the commission to adopt or amend the opioid prescribing rules by January 1, 2020, to establish the requirement for licensed dentists to notify patients of their right to refuse an opioid prescription or order and to document any refusal.

Section 17 of SSB 5380, codified as RCW 69.50.317 requires the prescribing practitioner, prior to the first opioid prescription, to discuss with the patient risks of opioids, pain management alternatives to opioids, and provide the patient a written copy of the warning language. The proposed rule includes alternatives in the patient notification.

In addition, the proposed rule clarifies situations where the notification requirements would not apply. Specifically, notification requirements that would not apply to emergent care, situations where pain represents a significant health risk, procedures involving administration of medications, when a patient is unable to grant or revoke consent, or for medication assisted treatment for substance use disorders. The exemptions are included because SSB 5380 only applies to prescriptions and these exemptions clarify settings in which direct administration is occurring.

The intent of SSB 5380 is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Reasons Supporting Proposal: The proposed rule is necessary to restate patient notification and patient right to refuse related to opioid prescribing requirements for dentists, and to clarify situations when notification is not required. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of SSB 5380. The goal of this legislation is to further reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Statutory Authority for Adoption: RCW 18.32.810 and 18.32.0365.

Statute Being Implemented: RCW 18.32.810 and 69.50.317.

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

Name of Proponent: Dental quality assurance commission, governmental.

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

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.snatiago@doh.wa.gov [jennifer.santiago@doh.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(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.

October 20, 2019
Julia Richman, DDS, Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 19-02-043, filed 12/26/18, effective 1/26/19)

WAC 246-817-907 Patient notification, secure storage, and disposal. (1) The dentist shall ((~~provide information to~~)) discuss with the patient educating them of risks associated with the use of opioids, including the risk of dependence and overdose. The dentist shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phase of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient written notification must include information regarding:

(a) Pain management alternative to opioid medications;

(b) The safe and secure storage of opioid prescriptions; ((~~and~~

~~(b)~~)) (c) The proper disposal of unused opioid medication including, but not limited to, the availability of recognized drug take-back programs((~~.~~

~~(4) This~~)); and

(d) The patient's right to refuse an opioid prescription or order for any reason. If the patient indicates a desire to not receive an opioid, the dentist shall document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(4) The requirements in this section do not apply to the administration of an opioid including, but not limited to, the following situations:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(5) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or other person identified in RCW 7.70.065, unless otherwise provided by law.

(6) The requirements of this section may be satisfied with a document provided by the department of health.

(7) The requirements of this section may be satisfied by a dentist designating any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

WSR 19-21-143
PROPOSED RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)
[Filed October 22, 2019, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-007.

Title of Rule and Other Identifying Information: WAC 246-919-865 (physicians) Patient notification, secure storage, and disposal and 246-918-815 (physician assistants) Patient notification, secure storage, and disposal, the Washington medical commission (commission) is proposing amendments to establish requirements, and clarifications, for patient notification and refusal when prescribing opioid drugs as directed by SSB 5380 (chapter 314, Laws of 2019).

Hearing Location(s): On December 12, 2019, at 3:00 p.m., at the Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2397, Security Desk.

Date of Intended Adoption: December 12, 2019.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email https://fortress.wa.gov/doh/policyreview, by December 5, 2019.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 360-833-6388 or 711, email medical.rules@wmc.wa.gov, by December 5, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5380 requires the commission, along with the dental quality assurance commission, podiatric medical board, board of osteopathic medicine and surgery, and nursing care quality assurance commission to adopt or amend rules establishing additional patient notification and right to refuse requirements.

Sections 8 and 9 of SSB 5380 direct the commission to adopt or amend the opioid prescribing rules by January 1, 2020, to establish the requirement for allopathic physicians and physician assistants to notify patients of their right to

refuse an opioid prescription or order and to document any refusal.

Section 17 of SSB 5380 adds a new section to chapter 69.50 RCW requiring the prescribing practitioner, prior to the first opioid prescription, to discuss with the patient risks of opioids, pain management alternatives to opioids, and provide the patient a written copy of the warning language. The rules are amended to include pain management alternatives in the patient notification.

In addition, the proposed rule clarifies situations where the notification requirements would not apply. Specifically, notification requirements that would not apply to emergent care, situations where pain represents a significant health risk, procedures involving administration of medications, when a patient is unable to grant or revoke consent, or for medication assisted treatment for substance use disorders because SSB 5380 only applies to prescriptions and these exemptions clarify settings in which direct administration is occurring.

The intent of SSB 5380 is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Reasons Supporting Proposal: The proposed rules are necessary to expand patient notification related to opioid prescribing requirements for allopathic physicians and allopathic physician assistants. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of SSB 5380. The goal is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Statutory Authority for Adoption: RCW 18.71.017, 18.71.810, 18.71A.810.

Statute Being Implemented: RCW 69.50.314, 18.71.810, 18.71A.810.

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2727; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 360-833-6388 or 711, email medical.rules@wmc.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(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.

Explanation of exemptions: The language in this proposal is largely dictated by statute. The language exempting certain settings is a clarification that settings in which direct administration is occurring are exempt from these rules as they are not relating to the issuance of a prescription.

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. WAC 246-919-865 (1)(e) contains exemptions to the new requirements of law, which are not part of the law, in settings where complying with the law would be overly burdensome or impossible for providers. The commission determined the proposed rules do not impose more-than-minor costs on businesses in the industry. These rules impact providers only.

October 21, 2019
Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-815 Patient notification, secure storage, and disposal. (1) The physician assistant shall ((~~ensure~~)) discuss with the patient ((~~is provided~~)) the following information at the first issuance of a prescription for opioids and at the transition from acute to subacute, and subacute to chronic:

(a) Risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) Pain management alternatives to opioids, including nonopioid pharmacological and nonpharmacological treatments, whenever reasonable, clinically appropriate, evidence-based alternatives exist;

(c) The safe and secure storage of opioid prescriptions; ((~~and~~

~~(c)~~)) (d) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs((~~.~~

~~(2)~~)); and

(e) That the patient has the right to refuse an opioid prescription or order for any reason. If a patient indicates a desire to not receive an opioid, the physician assistant must document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(2) The requirements in subsection (1) of this section do not apply to the administration of an opioid including, but not limited to, the following situations as documented in the patient record:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(3) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this

section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(4) The physician assistant shall document completion of the requirements in subsection (1) of this section in the patient's health care record.

(5) The information in subsection (1) of this section must also be provided in writing. This requirement may be satisfied with a document provided by the department of health.

(6) To fulfill the requirements of subsection (1) of this section, a physician assistant may designate any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-865 Patient notification, secure storage, and disposal. (1) The physician shall ((~~ensure the patient is provided~~)) discuss with the patient the following information at the first issuance of a prescription for opioids and at the transition from acute to subacute, and subacute to chronic:

(a) Risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) Pain management alternatives to opioids, including nonopioid pharmacological and nonpharmacological treatments, whenever reasonable, clinically appropriate, evidence-based alternatives exist;

(c) The safe and secure storage of opioid prescriptions; ((~~and~~

~~(c)~~)) (d) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs((~~.~~

~~(2)~~)); and

(e) That the patient has the right to refuse an opioid prescription or order for any reason. If a patient indicates a desire to not receive an opioid, the physician must document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(2) The requirements in subsection (1) of this section do not apply to the administration of an opioid including, but not limited to, the following situations as documented in the patient record:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(3) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(4) The physician shall document completion of the requirements in subsection (1) of this section in the patient's health care record.

(5) The information in subsection (1) of this section must also be provided in writing. This requirement may be satisfied with a document provided by the department of health.

(6) To fulfill the requirements of subsection (1) of this section, a physician may designate any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

WSR 19-21-145
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 22, 2019, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-01-041.

Title of Rule and Other Identifying Information: Proposing to amend chapter 392-139 WAC, Finance—Enrichment levies: WAC 392-139-005 Purposes, 392-139-008 Effective date, 392-139-050 Definition, 392-139-297 General procedures, 392-139-300 Establishment of excess levy authority for school districts—General, 392-139-665 Reporting of certified excess levy amounts, 392-139-900 Notification of amounts calculated, 392-139-902 Requests for review, and 392-139-905 Submission of revised assessed valuation data and recalculation. Also, proposing to repeal WAC 392-139-007, 392-139-051, 392-139-052, 392-139-055, 392-139-058, 392-139-100, 392-139-105, 392-139-110, 392-139-115, 392-139-200, 392-139-205, 392-139-210, 392-139-215, 392-139-230, 392-139-235, 392-139-245, 392-139-310, 392-139-320, 392-139-330, 392-139-340, 392-139-345, 392-139-350, and 392-139-901.

Hearing Location(s): On December 3, 2019, at 11:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington Street S.E., Wanamaker Meeting Room, Olympia, WA 98501. Those planning to comment during the hearing should arrive in the meeting room by 11:00 a.m.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: Michelle Matakas, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email michelle.matakas@k12.wa.us, fax 360-664-3683, by December 3, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to amend or repeal existing rules related to school district levies to create alignment with the revised levy statutes that were implemented on January 1, 2019.

Reasons Supporting Proposal: EHB 2242 (2017) changed OSPI's process and calculations in determining

maximum school district levies starting in 2019. This proposed rule making would update OSPI's levy rules to align with the new levy statutes.

Statutory Authority for Adoption: RCW 58A.150.290.

Statute Being Implemented: RCW 84.52.0531 and chapter 28A.500 RCW.

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

Name of Agency Personnel Responsible for Drafting: Melissa Jarmon, OSPI, 600 Washington Street S.E., Olympia, 360-725-6307; and Implementation: Michelle Matakas, OSPI, 600 Washington Street S.E., Olympia, 360-725-6019.

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

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

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

Is exempt under RCW 19.85.030.

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

October 22, 2019
Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-139 WAC

FINANCE—((~~MAINTENANCE AND OPERATION~~)) ENRICHMENT LEVIES

AMENDATORY SECTION (Amending WSR 00-09-017, filed 4/11/00, effective 5/12/00)

WAC 392-139-005 Purposes. The purposes of this chapter are to define the annual procedures that the superintendent of public instruction shall use to determine for each school district:

(1) The maximum dollar amount which may be levied on its behalf for ((~~general fund maintenance and operation~~)) enrichment support pursuant to RCW 84.52.053 and 84.52.0531; and

(2) The local effort assistance to be allocated to it pursuant to chapter 28A.500 RCW.

AMENDATORY SECTION (Amending WSR 03-21-040, filed 10/8/03, effective 11/8/03)

WAC 392-139-008 Effective date. This chapter applies to levy authority and local effort assistance calculations for the ((~~2005~~)) 2019 calendar year and thereafter. Levy authority and local effort assistance calculations for prior calendar years are governed by rules in effect as of January 1st of the calendar year.

AMENDATORY SECTION (Amending WSR 88-03-007, filed 1/8/88)

WAC 392-139-050 Definition((~~—School year~~)). ((~~As used in this chapter, "school year" means the same as defined in WAC 392-121-031.~~)) (1) As used in this chapter, "calendar year" means the period commencing on January 1st and ending on December 31st. Unless otherwise stated, calendar year references including numeric references (e.g., 1994) are to the calendar year for which levy authority and local effort assistance are being calculated pursuant to this chapter.

(2) As used in this chapter, "certified excess levy" means the amount certified pursuant to RCW 84.52.020 by or on behalf of a school district to the board or boards of county commissioners of the county or counties of the school district for collection in a given calendar year for general fund enrichment support of the school district pursuant to RCW 84.52.053.

(3) As used in this chapter, the term "excess levy authority" means the maximum allowed dollar amount of a school district's certified excess levy for a given calendar year as determined pursuant to this chapter.

(4) "School year" means the same as defined in WAC 392-121-031.

((~~DEFINITIONS FOR EXCESS LEVY AUTHORITY~~))

AMENDATORY SECTION (Amending WSR 89-23-121, filed 11/22/89, effective 12/23/89)

WAC 392-139-297 General procedures. All processes, calculations, and procedures used by the superintendent of public instruction in the administration of this chapter shall be conditioned on the following:

(1) Only data collected and approved by the superintendent of public instruction shall be used.

(2) All calculations((~~, except those related to levy reduction funds,~~)) that are dependent on data which are not final at the time the calculation is ((~~preformed~~)) performed shall be based on estimates prepared by the superintendent of public instruction.

(3) ((~~The calculation of levy reduction funds dependent on data that is not final at the time of the calculation will be calculated using prior school year data.~~

~~(4)~~)) The following rounding procedures shall be used:

(a) Dollars to the nearest whole;

(b) Student enrollments to the nearest two decimal places;

(c) Percentages to the nearest two decimal places;

(d) Ratios to the nearest three decimal places; and

(e) Levy rates to the nearest six decimal places.

(((~~(5)~~))) (4) The superintendent of public instruction shall provide each school district by August 31st of each year with the appropriate procedures for all calculations performed in this chapter.

((~~DETERMINATION OF~~))
EXCESS LEVY AUTHORITY

AMENDATORY SECTION (Amending WSR 01-22-098, filed 11/6/01, effective 12/7/01)

WAC 392-139-300 Establishment of excess levy authority for school districts—General. The maximum dollar amount of any school district's certified excess levy for any given calendar year shall equal the excess levy authority established by the superintendent of public instruction as ((~~follows~~)) the lesser of the following:

(1) ((~~Multiply the school district's excess levy base determined pursuant to WAC 392-139-310 by the school district's maximum excess levy percentage determined pursuant to WAC 392-139-320;~~

~~(2) Adjust the result obtained in subsection (1) of this section by the amount of the school district's excess levy authority transfers determined pursuant to WAC 392-139-330, 392-139-340, and 392-139-901; and~~

~~(3) Subtract the school district's maximum local effort assistance determined pursuant to WAC 392-139-660.~~)) The school district's maximum levy authority as calculated by the superintendent of public instruction pursuant to RCW 84.52.-0531; or

(2) The maximum certified excess levy.

DETERMINATION OF LOCAL EFFORT ASSISTANCE ((~~FOR 1998 AND THEREAFTER~~))

AMENDATORY SECTION (Amending WSR 89-23-121, filed 11/22/89, effective 12/23/89)

WAC 392-139-665 Reporting of certified excess levy amounts. No later than the third Wednesday in December of each year, each educational service district shall report to the superintendent of public instruction the certified excess levies for the next calendar for school districts in the educational service district. ((~~Such~~)) The report shall include copies of the documents used to certify excess levies to the board or boards of county commissioners pursuant to RCW 84.52.-020.

AMENDATORY SECTION (Amending WSR 90-12-080, filed 6/1/90, effective 7/2/90)

WAC 392-139-900 Notification of amounts calculated. The superintendent of public instruction shall provide notice of amounts calculated pursuant to this chapter as follows:

(1) Prior to ((~~October~~)) April 15th of each year, the superintendent of public instruction shall notify each school district of the results of calculations made for the school district for the ((~~next~~)) current calendar year including the following:

(a) Excess levy authority;

(b) ((~~Maximum excess levy percentage;~~

~~(c)~~)) Eligibility for local effort assistance; and

(((~~(d)~~))) (c) If eligible for local effort assistance:

(i) Maximum local effort assistance;

(ii) ((~~State matching ratio;~~)) Local effort assistance per thousand dollars of assessed valuation in the school district;

(iii) Certified excess levy necessary to qualify for maximum local effort assistance; and

(iv) ((~~Projected~~)) Local effort assistance allocation based on the superintendent of public instruction's estimate of certified excess levies for the ((~~next~~)) current calendar year at the time of the notice.

(2) ((~~Prior to November 15 of each year, the superintendent of public instruction shall notify the county assessor and chairman of the board of county commissioners of each county of excess levy authority for the next calendar year for those school districts headquartered in the county.~~

~~(3)~~)) At the time of the ((~~January~~)) April apportionment payment each year, the superintendent of public instruction shall notify each eligible school district of the amount of the school district's local effort assistance allocations for the year.

AMENDATORY SECTION (Amending WSR 93-21-092, filed 10/20/93, effective 11/20/93)

WAC 392-139-902 Requests for review. At any time prior to ((~~October~~)) April 15th of the ((~~prior~~)) current calendar year, a school district may request review of calculations made pursuant to this chapter. The request shall be in writing and shall be signed by the school district superintendent or authorized official. The superintendent of public instruction will review calculations and respond to the district on or before ((~~November 1~~)) May 15th of the current calendar year.

AMENDATORY SECTION (Amending WSR 90-12-080, filed 6/1/90, effective 7/2/90)

WAC 392-139-905 Submission of revised assessed valuation data and recalculation. Within fifteen days from the date of the notice provided pursuant to WAC 392-139-900(1), any school district may submit to the superintendent of public instruction revised assessed valuation data for taxes collected in the current calendar year. Revised assessed valuation data shall be documented in writing by the county assessor or assessors from the county or counties in which the school district is located. The superintendent of public instruction shall recalculate excess levy authority and local effort assistance based on the revised assessed valuation data and shall notify the school district submitting revised assessed valuation data and any other affected school districts of the results of the recalculation prior to ((~~November 1~~)) May 15th.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-139-007 Organization of this chapter.

WAC 392-139-051 Definition—Prior school year.

WAC 392-139-052 Definition—Current school year.

WAC 392-139-055 Definition—Calendar year.

WAC 392-139-058	Definition—Prior year and prior calendar year.
WAC 392-139-100	Definition—Certified excess levy.
WAC 392-139-105	Definition—Excess levy authority.
WAC 392-139-110	Definition—Report 1191.
WAC 392-139-115	Definition—Basic education allocation.
WAC 392-139-200	Definition—Report 1197.
WAC 392-139-205	Definition—F-195.
WAC 392-139-210	Definition—Annual average full-time equivalent (AAFTE) students.
WAC 392-139-215	Definition—P-223H.
WAC 392-139-230	Definition—P-213.
WAC 392-139-235	Definition—Annual average full-time equivalent (AAFTE) resident enrollment.
WAC 392-139-245	Definition—Levy reduction funds.
WAC 392-139-310	Determination of excess levy base.
WAC 392-139-320	Determination of maximum excess levy percentage.
WAC 392-139-330	Determination of excess levy authority transfers for interdistrict cooperation programs.
WAC 392-139-340	Determination of excess levy authority transfers from high school districts to nonhigh school districts.
WAC 392-139-345	Definition—F-196.
WAC 392-139-350	Definition—Revenues in the levy base received as a fiscal agent.
WAC 392-139-901	Petitions for levy base adjustments.

WSR 19-21-148
PROPOSED RULES
OFFICE OF ADMINISTRATIVE HEARINGS

[Filed October 22, 2019, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-047.

Title of Rule and Other Identifying Information: WAC 10-08-110 Adjudicative proceedings—Filing and services of papers.

Hearing Location(s): On November 26, 2019, at 2:00 - 3:00 p.m., at 2420 Bristol Court S.W., Large Hearing Room, Olympia, WA 98502.

Date of Intended Adoption: November 26, 2019.

Submit Written Comments to: Donald Capp, Deputy Chief Administrative Law Judge (ALJ), P.O. Box 42488, Olympia, WA 98504, email rulemaking@oah.wa.gov, fax 360-664-8721, by November 25, 2019.

Assistance for Persons with Disabilities: Contact Johnette Sullivan, assistant chief ALJ and Americans with Disabilities Act coordinator, phone 360-407-2700, fax 360-664-8721, email Johnette.sullivan@oah.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 10-08-110 is being updated to allow for electronic filing of appeal records on existing cases with the office of administrative hearings (OAH). The proposed amendment is intended to implement provisions of the state Administrative Procedures [Procedure] Act, chapter 34.05 RCW, relating to electronic service of notices and orders in administrative adjudications, specifically RCW 34.05.010(19), 34.05.434(5), and 34.05.461 (8)(a).

Statutory Authority for Adoption: RCW 34.12.080.

Statute Being Implemented: Chapter 34.12 RCW.

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

Name of Proponent: OAH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Donald Capp, 2420 Bristol Court S.W., Olympia, WA 98502, 360-407-2700.

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 proposed rule does not involve rules of any of the agencies identified in RCW 34.05.328(5) for which a cost-benefit analysis is required.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This proposed rule making does not result in any economic impact on small business or fiscal impact on school districts.

October 22, 2019
Lorraine Lee
Chief Administrative Law Judge

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-110 Adjudicative proceedings—Filing and service of papers. (1) Filing.

(a) Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at any office of the agency. Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

(b) The following conditions apply for filing papers with the presiding officer by fax or electronically:

(i) As used in this chapter, "fax" means electronic telefacsimile transmission. As used in this chapter, "electronically" means successfully uploading documents through the agency website.

(ii) Papers may be filed by fax or electronically with the presiding officer. Filing by fax is perfected when a complete legible copy of the papers is reproduced on the presiding officer's fax machine during normal working hours, excluding weekends and holidays. If a transmission of papers commences after these office hours, the papers shall be deemed filed on the next succeeding business day. Filing electroni-

cally is perfected when a complete legible copy of the papers is successfully uploaded to the agency portal during normal working hours, excluding weekends and holidays. If uploading of papers commences after office hours, the papers shall be deemed filed on the succeeding business day.

(iii) Any papers filed by fax with the presiding officer should be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the papers relate, and indicating the date of and the total number of pages included in the transmission.

(iv) Papers filed by fax should not exceed fifteen pages in length, exclusive of any cover page.

(v) The party attempting to file the papers by fax or electronically bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the fax or electronic transmission is not received in legible form, it will be considered as if it had never been sent.

(vi) The original of any papers filed by fax should be mailed to the presiding officer within twenty-four hours of the time that the fax was sent. The presiding officer has discretion to require this.

(c) The filing of papers with the presiding officer by electronic mail ("email") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows. Only documents uploaded through the agency's designated portal are deemed filed electronically.

(2) Service.

(a) All notices, pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(b) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial parcel delivery company.

(c) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(3) Proof of service. Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

WSR 19-21-150
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 22, 2019, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-070.

Title of Rule and Other Identifying Information: Chapter 296-14 WAC, Industrial insurance—Pension tables, pension discount rate and mortality tables; amending WAC 296-14-8810.

Hearing Location(s): On December 2, 2019, at 9:00 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Auditorium, Tumwater, WA 98501.

Date of Intended Adoption: January 2, 2020.

Submit Written Comments to: Suzy Campbell, P.O. Box 44250, Olympia, WA 98504-4250, email Suzanne.Campbell @Lni.wa.gov, fax 360-902-9101, by 5:00 p.m., December 2, 2019.

Assistance for Persons with Disabilities: Contact Tara Osuna, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Tara.Osuna@Lni.wa.gov, by November 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pension discount rate (PDR) is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. The purpose of this rule making is to lower PDR for annual investment returns for the reserve funds for self-insured employers.

This rule making is proposing to reduce the self-insured PDR from 6.0 percent to 5.9 percent.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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. Labor and industries is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since

the purpose of this rule making is to set or adjust fees 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.

October 22, 2019
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 19-01-096, filed 12/18/18, effective 4/1/19)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;

(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;

(iii) A pension discount rate of 4.5 percent for state fund pensions;

(iv) A pension discount rate of ((~~6.0~~)) 5.9 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 19-21-156
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 22, 2019, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-076.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2020 and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On December 3, 2019, at 10:00 a.m., at Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501. Copies of draft rules are available for viewing and printing on our website at dor.wa.gov. Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: December 13, 2019.

Submit Written Comments to: Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, email BrentonM@dor.wa.gov, fax 360-534-1606, by December 12, 2019.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply beginning January 1, 2020, through June 30, 2020.

The forest land values have been updated to reflect land values per acre for 2020.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for January 1, 2020, through June 30, 2020, and the forest land values for 2020.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton M. Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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 Brenton M. Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606.

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. Only large businesses are required to use the values contained in the rules, small businesses have other statutory authority for their tax reporting obligations.

October 22, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-069, filed 12/28/18, effective 1/1/19)

WAC 458-40-540 Forest land values—((~~2019~~)) 2020. The forest land values, per acre, for each grade of forest land

for the ((~~2019~~)) 2020 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((~~2019~~)) 2020 VALUES PER ACRE
1	1	$((~~211~~)) 218
	2	((~~209~~)) 216
	3	((~~195~~)) 202
	4	((~~143~~)) 148
2	1	((~~180~~)) 186
	2	((~~173~~)) 179
	3	((~~166~~)) 172
	4	((~~118~~)) 122
3	1	((~~139~~)) 144
	2	((~~135~~)) 140
	3	((~~134~~)) 138
	4	((~~103~~)) 106
4	1	((~~108~~)) 112
	2	((~~104~~)) 107
	3	((~~103~~)) 106
	4	((~~78~~)) 81
5	1	((~~78~~)) 81
	2	((~~69~~)) 71
	3	((~~68~~)) 70
	4	((~~48~~)) 50
6	1	((~~40~~)) 41
	2	((~~38~~)) 39
	3	((~~38~~)) 39
	4	((~~36~~)) 37
7	1	((~~17~~)) 18
	2	((~~17~~)) 18
	3	((~~16~~)) 17
	4	((~~16~~)) 17
8	1	1

AMENDATORY SECTION (Amending WSR 19-14-013, filed 6/21/19, effective 7/1/19)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((~~July 1 through December 31, 2019~~)) January 1 through June 30, 2020:

Washington State Department of Revenue
WESTERN WASHINGTON STUMPAGE VALUE TABLE
((~~July 1 through December 31, 2019~~))
January 1 through June 30, 2020
Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir[2]	DF	1	$((~~452~~)) 365
		2	((~~494~~)) 456
		3	((~~495~~)) 433
		4	((~~577~~)) 502
		5	((~~474~~)) 459
		9	((~~438~~)) 351
Western Hemlock and Other Conifer[3]	WH	1	((~~286~~)) 206
		2	((~~396~~)) 276
		3	((~~384~~)) 280
		4	((~~344~~)) 281
		5	((~~339~~)) 265
		9	((~~272~~)) 192
Western Redcedar[4]	RC	1-5	((~~1045~~)) 892
		9	((~~1031~~)) 878
Ponderosa Pine[5]	PP	1-5	((~~187~~)) 184
		9	((~~173~~)) 170
Red Alder	RA	1-5	((~~655~~)) 552
		9	((~~641~~)) 538
Black Cottonwood	BC	1-5	((~~79~~)) 53
		9	((~~65~~)) 39

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Other Hardwood	OH	1-5	((~~337~~)) 309
		9	((~~323~~)) 295
Douglas-fir Poles & Piles	DFL	1-5	((~~758~~)) 763
		9	((~~744~~)) 749
Western Redcedar Poles	RCL	1-5	((~~1428~~)) 1447
		9	((~~1414~~)) 1433
Chipwood(6)	CHW	1-5	((~~15~~)) 13
		9	((~~13~~)) 11
RC Shake & Shingle Blocks(7)	RCS	1-9	((~~285~~)) 301
Posts(8)	LPP	1-9	0.35
DF Christmas Trees(9)	DFX	1-9	0.25
Other Christmas Trees(9)	TFX	1-9	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
(4) Includes Alaska-Cedar.
(5) Includes all Pines in SVA 1-5 & 9.
(6) Stumpage value per ton.
(7) Stumpage value per cord.
(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
(9) Stumpage value per lineal foot.

Washington State Department of Revenue
EASTERN WASHINGTON STUMPAGE VALUE TABLE
((~~July 1 through December 31, 2019~~))
January 1 through June 30, 2020
Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir(2)	DF	6	$((~~296~~)) 258
		7	((~~310~~)) 272
Western Hemlock and Other Conifer(3)	WH	6	((~~302~~)) 273
		7	((~~316~~)) 287
Western Redcedar(4)	RC	6	((~~1037~~)) 904
		7	((~~1051~~)) 918
Ponderosa Pine(5)	PP	6	((~~173~~)) 170
		7	((~~187~~)) 184
Other Hardwood	OH	6	9
		7	9
Western Redcedar Poles	RCL	6	((~~1373~~)) 1369
		7	((~~1387~~)) 1383
Chipwood(6)	CHW	6	1
		7	1
Small Logs(6)	SML	6	21
		7	23
RC Shake & Shingle Blocks(7)	RCS	6-7	((~~285~~)) 301
Posts(8)	LPP	6-7	0.35
DF Christmas Trees(9)	DFX	6-7	0.25
Other Christmas Trees(9)	TFX	6-7	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
(4) Includes Alaska-Cedar.
(5) Includes Western White Pine in SVA 6-7.
(6) Stumpage value per ton.
(7) Stumpage value per cord.
(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
(9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, ((~~2019~~)) 2020:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
((~~July 1 through December 31, 2019~~))
January 1 through June 30, 2020

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
((~~July 1 through December 31, 2019~~))
January 1 through June 30, 2020

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a $0/ton stumpage value.

WSR 19-21-159
PROPOSED RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)
[Filed October 22, 2019, 1:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-019.

Title of Rule and Other Identifying Information: WAC 246-922-675 Patient notification, secure storage, and disposal, the podiatric medical board (board) is proposing amendments to establish requirements for patient notification and refusal when prescribing opioid drugs as directed by SSB 5380 (chapter 314, Laws of 2019).

Hearing Location(s): On December 5, 2019, at 1:00 p.m., at the Department of Health, Creekside at CenterPoint, Suite 310, Room 307, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by November 27, 2019.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, fax 360-236-2901, TTY 360-833-6388 or 711, email podiatric@doh.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5380 requires the board, along with the dental quality assurance commission, board of osteopathic medicine and surgery, Washington medical commission, and nursing care quality assurance commission to adopt or amend rules establishing additional patient notification and right to refuse requirements.

Section 3 of SSB 5380, codified as RCW 18.22.810, directs the board to adopt or amend their opioid prescribing rules by January 1, 2020, to establish the requirement for podiatric physicians to notify patients of their right to refuse an opioid prescription or order and to document any refusal.

Section 17 of SSB 5380, codified as RCW 69.50.317, requires the prescribing practitioner, prior to the first opioid prescription, to discuss with the patient risks of opioids, pain management alternatives to opioids, and provide the patient a written copy of the warning language. The proposed rule is amended to include pain management alternatives in the patient notification.

In addition, the proposed rule restates when the notification requirements do not apply, as outlined in RCW 69.50.317. The amendment also restates the requirement, also in RCW 69.50.317, that the patient's parent or guardian must be included in the discussion if the patient is under eighteen years of age or is not competent.

The intent of SSB 5380 is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Reasons Supporting Proposal: The purposed rules are necessary to be consistent with the directives of SSB 5380 for rule making.

Statutory Authority for Adoption: RCW 18.22.005 and 18.22.015.

Statute Being Implemented: RCW 18.22.810 and 69.50.317.

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

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

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

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax 360-236-2901, TTY 360-833-6388 or 711, email podiatric@doh.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(3) as the rule content is explicitly and specifically dictated by statute.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses. Minor costs may be imposed on individual providers.

October 22, 2019
Renee Fullerton
Executive Director

AMENDATORY SECTION (Amending WSR 18-20-085, filed 10/1/18, effective 11/1/18)

WAC 246-922-675 Patient notification, secure storage, and disposal. (1) The podiatric physician shall provide information to the patient educating them of risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, the type of patient, and the phase of treatment. The podiatric physician shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phases of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient notification must also include information regarding:

(a) Pain management alternatives to opioid medications as stated in WAC 246-922-680;

(b) The safe and secure storage of opioid prescriptions; ((~~and~~

~~(b)~~)) (c) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs; and

(d) The patient's right to refuse an opioid prescription or order for any reason. In accordance with RCW 18.22.810, if a patient indicates a desire not to receive an opioid, the podiatric physician must document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(4) ((~~The patient notification requirements in this section shall be deemed fulfilled by providing board-approved patient education information.~~)) If a patient is under eighteen years old or is not competent, the discussion required in subsections (1) through (3) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided in law.

(5) As required in RCW 69.50.317 of the Uniform Controlled Substances Act, any practitioner who writes the first prescription for an opioid during the course of treatment to any patient must discuss a written copy of the warning language provided by the department under RCW 43.70.765.

(6) This section does not apply to:

(a) Opioid prescriptions issued for the treatment of pain associated with terminal cancer or other terminal diseases, or for palliative, hospice, or other end-of-life care or where the practitioner determines the health, well-being, or care of the patient would be compromised by the requirements of this section and documents such basis for the determination in the patient's health care record; or

(b) Administration of an opioid in an inpatient or outpatient treatment setting.

(7) To fulfill the requirements in this section, a podiatric physician may designate any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the notification.

WSR 19-21-164
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed October 22, 2019, 3:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-097.

Title of Rule and Other Identifying Information: WAC 415-02-178 May I purchase an annuity?

Hearing Location(s): On December 2, 2019, at 3:30 p.m., at the Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502.

Date of Intended Adoption: December 3, 2019.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by November 27, 2019.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by November 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapter 189, Laws of 2019 (SB 5350), allowing members to purchase a lifetime annuity benefit via the Washington state investment board.

Statutory Authority for Adoption: RCW 41.50.050 and chapter 189, Laws of 2019.

Statute Being Implemented: Chapter 189, Laws of 2019.

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

Name of Agency Personnel Responsible for Implementation: Amy McMahan, Project Management Office Director, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7307.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

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

October 22, 2019
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-021, filed 3/7/17, effective 4/7/17)

WAC 415-02-178 May I purchase an annuity? (1) **Am I eligible to purchase an annuity?** You are eligible to purchase ((~~an~~)) a defined benefit plan annuity at the time of retirement ((~~from your defined benefit plan~~)) if you are a member of TRS (RCW 41.32.067), WSPRS (RCW 43.43.-315), LEOFF Plan 1 (RCW 41.26.105), ((~~or~~)) LEOFF Plan 2 (RCW 41.26.463), PERS (RCW 41.40.131), SERS (RCW 41.35.235), or PSERS Plan 2 (RCW 41.37.295). This annuity provides a lifetime increase to your monthly benefit. (For purchasing an annuity from your Plan 3 defined contribution account, refer to WAC 415-111-320.)

(2) **Can I purchase an annuity if I take a lump sum payment?** You may not purchase an annuity if you elect a lump sum payment instead of a monthly benefit.

(3) **Are there limits to the annuity amount I may purchase?** There is no maximum limit on the purchase amount. If you are a LEOFF or WSPRS member the minimum purchase amount is $25,000. If you are a PERS, SERS, or PSERS member, the minimum purchase amount is $5,000. There is no minimum required for TRS members.

(4) **When can I apply to purchase an annuity?** You must submit your request to purchase an annuity to the department at the time you apply for retirement.

(5) **How much will my monthly benefit increase if I purchase an annuity?** The increase in your monthly benefit will be calculated using the following formula:

Purchase Annuity Amount x Annuity Factor = Increase to Monthly Benefit

The annuity factor is determined by your age on the later of your retirement date or the date your retirement application is submitted to the department.

Example: John is a member of LEOFF Plan 2. He applies for retirement and requests to purchase an annuity for $45,000. For illustration purposes in this example only, we will use 0.0051025 as the corresponding annuity factor (factors change periodically). John's monthly benefit will increase by $229.61 per month, calculated as follows:

Purchase Annuity Amount x Annuity Factor = Increase to Monthly Benefit

$45,000 x 0.0051025 = $229.61

(6) **How and when do I pay for the annuity?** The department will generate a bill to you for the cost of the annuity after we receive your request to purchase.

(a) For all TRS members, payment may be made by making a one-time personal payment (however, IRS regulations limit the amount of after-tax dollars you may use); or you may roll over funds from another tax-deferred retirement account.

(b) For LEOFF ((~~and~~)), WSPRS, PERS, SERS, and PSERS members, the annuity must be purchased by rolling over funds from an "eligible retirement plan" which is a tax qualified plan offered by a governmental employer (like the state of Washington's deferred compensation program).

(c) Payment must be made in full by ninety days after the later of your retirement date or bill issue date. Your annuity will begin once your payment is received and your retirement is processed. The effective date for the start of this benefit is the later of your retirement date or the payment in full date plus one day.

(7) **What are the survivor options for my annuity?** The survivor option you designate for your retirement benefit will also be used for your annuity purchase, with the exception of WSPRS Plan 1 Option A and LEOFF Plan 1.

If you are a WSPRS Plan 1 member who chose Option A or you are a LEOFF Plan 1 member, your annuity will be paid for your lifetime only. Under these two survivor options, even though the retirement benefit may be paid over two lifetimes, there is no actuarial reduction. No actuarial reduction can be applied to the annuity, therefore the annuity can only be treated as if a single life option was chosen.

If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly annuity payment will increase to the amount it would have been had you not selected a survivor option.

(8) **Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the purchased annuity?**

(((~~(a)~~))) If you are eligible for an annual COLA adjustment on your monthly benefit, you will receive the same COLA percentage on this annuity.

(((~~(b) If you retire from TRS Plan 1 you must elect the optional auto COLA in order to receive a COLA on the annuity amount.~~)))

(9) **If I purchase an annuity and then return to work, how will the annuity portion of my benefit be affected?** You will continue to receive the annuity portion of your monthly benefit payment even if you return to work, or return to membership.

(10) **If I retire then return to membership and reretire, may I purchase another annuity?** Yes. You may purchase another annuity when you reretire provided you are reretiring from an eligible plan that allows an annuity purchase.

(11) **May I purchase an annuity from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase an annuity from each dual member plan that allows an annuity purchase.

(b) If you are not a dual member and retire separately from more than one plan you may purchase an annuity from each eligible plan that allows an annuity purchase.

(12) **What happens to my annuity upon my death (and the death of my survivor, if applicable)?**

System Plan	Benefit Option	Annuity Payment Upon Death
TRS 1	Maximum Option	At the time of your death the annuity payment stops.
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2 WSPRS 1 LEOFF 1	Option 1 (single life) Option A Automatic Survivor	At the time of your death the annuity payments stop. The original amount you paid for your annuity, less any payments you have received, will be paid to your designated beneficiary.
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2 WSPRS 1	Option 2, 3, 4 (joint life) Option B (joint life)	At the time of your death, payments will continue to your survivor. At the time of your survivor's death, the original amount you paid for your annuity, less any payments you and your survivor have received, will be paid to your designated beneficiary.

WSR 19-21-170
PROPOSED RULES
ATTORNEY GENERAL'S OFFICE

[Filed October 23, 2019, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-029.

Title of Rule and Other Identifying Information: Public Records Act (PRA), chapter 44-06 WAC, Public records.

Hearing Location(s): On December 10, 2019, at 9:30 to 10:30 a.m., at the Cherberg Building, Room ABC, 304 15th Avenue S.W., Olympia, WA 98501. Oral comments will be accepted at the hearing.

Date of Intended Adoption: On or after December 30, 2019.

Submit Written Comments to: Jennifer Steele, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104, email Jennifer.Steele@atg.wa.gov, written comments may also be submitted through December 9, 2019, through the online comment form available on the website of the office of the attorney general on the rule-making activity page at http://www.atg.wa.gov/rulemaking-activity, by December 9, 2019.

Assistance for Persons with Disabilities: Contact Jennifer Steele, phone 206-389-2106, email Jennifer.Steele@atg.wa.gov, alternate contact Elaine Ganga, rules coordinator, 360-753-9672, Elaine.Ganga@atg.wa.gov, by December 6, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of the attorney general has proposed amendments to eight attorney general's office (AGO) public records rules in chapter 44-06 WAC, and proposed to repeal eight rules. The purpose of the proposal is to update the public records rules to current laws and AGO practices. For example, some rules refer to chapter 42.17 RCW, the prior codification of chapter 42.56 RCW, and some refer to old procedures or former office divisions. The proposed amendments address procedures to make records requests, procedures to process requests, other new PRA requirements, statutory citations, and other topics. All the public records rules in chapter 44-06 WAC are proposed to be amended or repealed, except for WAC 44-06-092 Copying fees—Payments, which was recently updated and will remain unchanged. Some proposed repealed language has simply been moved into other more logical rule locations.

The anticipated effect is to modernize the public records rules so they reflect AGO practices and procedures and to make the rules a better PRA resource for requestors.

Reasons Supporting Proposal: PRA at chapter 42.56 RCW directs agencies to adopt and enforce reasonable rules to provide full public access to public records. The public records rules provide information to records requesters about how to obtain information and public records from AGO. AGO public records rules have not been updated since 1998 (except the Copying fees—Payment rule) and several rules are outdated in part due to changes in AGO procedure and organization, changes in law and case law, or technology developments. Furthermore, due to the passage of time the outdated provisions are currently less useful for public records requestors.

The reasons to support the proposal to amend the public records rules, and to repeal others, include modernizing the rules so they better reflect current laws and so they are a more functional resource about the AGO PRA process.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070(1), 42.56.100, 43.10.110, 34.05.310 - 34.05.395.

Statute Being Implemented: RCW 42.56.100; chapter 42.56 RCW.

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

Name of Proponent: Bob Ferguson, Washington state attorney general, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Steele, Seattle, Washington, 206-389-2106.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section

applicable to the adoption of these rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

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

Is exempt under RCW 42.56.070, 42.56.100, 42.56.120.

Explanation of exemptions: The AGO public record rules apply only to AGO, not small businesses. RCW 42.56.100. To the extent there are costs assessed by public agencies providing records in response to PRA requests by small businesses, the authorized costs are set out in statute and apply to all requestors. RCW 42.56.070, 42.56.120.

October 23, 2019
Bob Ferguson
Washington State Attorney General

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-010 Purpose. The purpose of ((~~this chapter is to provide rules for the Washington state attorney general's office, implementing the provisions of chapter 42.17 RCW relating to public records~~)) these rules is to establish the procedures the attorney general's office (office) will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the office and establish processes for both requestors and the office staff that are designed to best assist members of the public in obtaining such access.

In carrying out its responsibilities under the Public Records Act chapter 42.56 RCW (act), the office will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 98-01-013, filed 12/5/97, effective 1/5/98)

WAC 44-06-030 Function—Organization—Administrative offices—General inquiries to the office. (1) **Function, organization and administrative offices.** The ((~~attorney general's~~)) office is charged by the constitution and statutes with the general obligation of advising and legally representing the state of Washington, its officials, departments, boards, commissions and agencies but not the local units of government. In response to requests from state officers, legislators and prosecuting attorneys, the ((~~attorney general's~~)) office issues attorney general opinions. ((~~The published opinions of the attorney general's office are numbered as AGO (year of issue and number; i.e., AGO 1974 No. 1).~~)) More information about the office's roles is available on the office website at www.atg.wa.gov.

The office is organized into several divisions that provide legal advice to state agencies. Offices are located in cities across the state. The main office is in Olympia. The mailing address and phone number of the Olympia main office is:

Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504-0100
Phone: 360-753-6200

An online form for contacting the main office is also available on the office website. More information about the Olympia main office, and offices outside the Olympia main office is on the office website.

(2) **General inquiries and correspondence unrelated to a Public Records Act request to the office.** Inquiries and correspondence concerning a matter unrelated to a Public Records Act request to the office and where a specific assistant attorney general is identified as representing a specific agency should be directed to ((~~the specifically named~~)) that assistant attorney general, if known; or the appropriate ((~~section~~)) division of the office, if known (example: Washington State University division).

((~~Consumer protection complaints should be directed to the Consumer Protection Division, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012 or to local division offices located in Tacoma, Olympia, or Spokane. Communication concerning the New Motor Vehicles Warranty Act (the lemon law) should be directed to the Lemon Law Administration, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012. Other inquiries, including requests for attorney general's opinions, should be directed to the Attorney General's Office, P.O. Box 40100, State of Washington, Olympia, Washington 98504-0100.~~

~~In addition to the areas mentioned above, the office is divided into several divisions which provide legal advice to state agencies in particular subject matter areas. Because regional office addresses may change from time to time, current division addresses and telephone numbers should be obtained from the local telephone directory or you may obtain an organizational chart and the addresses and telephone numbers of the regional offices of the attorney general by requesting it from the Attorney General's Office, P.O. Box 40100, State of Washington, Olympia, Washington 98504-0100, phone (206) 753-6200. Attorney general offices are located in other cities in the state and are denominated as regional offices.~~)) Other inquiries and correspondence concerning a matter unrelated to a Public Records Act request to the office, including where the relevant attorney, division or regional office is not known, should be sent or directed to the Olympia main office.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-070 Hours for ((~~seeking public records~~)) inspection and copying. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 98-01-013, filed 12/5/97, effective 1/5/98)

WAC 44-06-080 ((~~Requests for~~)) Public Records Act requests to the office. ((~~In accordance with requirements of chapter 42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:~~

~~(1) A request shall be made in writing (or by fax or electronic mail if desired) upon a form prescribed by the office which shall be available at the offices where records are maintained. A request that is made other than upon the form prescribed by the office is permissible, but must provide the information listed in (a) through (f) of this subsection. The form shall be presented to the public records officer; or to a member of the staff designated by him or her, if the public records officer is not available, at the office during the office hours specified in WAC 44-06-070. The request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request was made;~~

~~(c) The nature of the request;~~

~~(d) If the matter requested is referenced within a current index maintained by the records officer, a reference to the requested record as it is described in such current index;~~

~~(e) If the requested matter is not identifiable by reference to a current index maintained by the office, an appropriate description of the record requested.~~

~~(f) If the request is for a list of individuals, the requester shall certify that the request is not for commercial purposes except as provided in RCW 42.17.260(7).~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or designated staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.~~

~~(3) The requester may be required to provide additional information necessary to determine the application of an exemption or other law to the record(s) requested.~~)) (1) **Website records.** Persons seeking public records of the office under the act are strongly encouraged to, before submitting a records request, first review the office's website at www.atg.wa.gov. Indexed records may include formal attorney general's opinions and some orders. Those records are indexed on the website, which is updated as the opinions and orders are issued.

Another website, data.wa.gov, has data about consumer protection complaints to the office. These websites have many records about office business that are free for viewing and downloading at any time, and are accessible without making a Public Records Act request to the office.

(2) **Public Records Act requests.** Public Records Act requests to the office must be sent or submitted only to the public records officer in the Olympia main office, in one of the following ways:

Online form at http://www.atg.wa.gov/request-ago-public-records

Email: publicrecords@atg.wa.gov

U.S. Mail or Delivery:
Public Records Unit
Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504-0100

Requestors are strongly encouraged to make requests in writing. Requestors are encouraged to use the online Public Records Act request form, which, once completed, is automatically submitted to the Olympia main office and to the attention of the public records officer. The office accepts in-person requests at the Olympia main office during normal office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the office is closed. If the office receives an oral request, the office will reduce the request to writing and verify in writing with the requestor that it correctly memorialized the request.

Other office locations outside the Olympia main office, other office email addresses, other office fax or phone numbers, and other office staff are not authorized to accept Public Records Act requests to the office.

Communications seeking office records, but which are sent or provided to unauthorized locations, addresses or staff, will not be accepted as or processed as Public Records Act requests. The office will process such communications as general informal inquiries, general correspondence, general requests for information, or discovery, as appropriate. The requestor may resubmit his/her request to the public records officer at the Olympia main office.

This Public Records Act request procedure provides the fullest assistance to requestors by:

(a) Establishing a uniform point of contact for all Public Records Act requests to the office and related inquiries, consistent with the public records officer contact information published in the Washington State Register, and pursuant to RCW 42.56.580;

(b) Enabling the office to promptly distinguish Public Records Act requests from the high volume of other daily communications to the office on multiple topics, so as to enable appropriate responses and thereby avoid excessive interference with other essential agency functions as provided in RCW 42.56.100; and

(c) Ensuring that records requests submitted under the act are centrally reviewed during business hours by the public records officer or designee, so the office may more efficiently assign a tracking number to the request, log it in, review it, provide an initial or other response within five business days after receipt as provided in RCW 42.56.520, and otherwise timely process the request pursuant to the act and these rules.

(3) **Processing - General.** The public records officer will oversee compliance with the act but a designee may process the request. The public records officer or designee and the office will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions

of the office. More information about submitting public records requests to the office is in this chapter and on the office's website.

AMENDATORY SECTION (Amending WSR 98-01-013, filed 12/5/97, effective 1/5/98)

WAC 44-06-085 Response to Public Records Act requests. (1) **General.** The office shall respond promptly to requests for ((~~disclosure~~)) records made under chapter 42.56 RCW, the Public Records Act. Within five business days of receiving a Public Records ((~~request, the office will respond by:~~

~~(a) Providing the record;~~

~~(b) Acknowledging that the office has received the request and providing~~)) Act request at the main Olympia office, the office will assign the request a tracking number and log it in. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Response.** Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the office's website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon and satisfied, send the copies to the requestor.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available).

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of ((~~the~~)) time the office will require to respond to the unclear request((~~; or~~

~~(c) Denying the public record request. Agency responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld.~~

~~(2)~~)) or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the office need not respond to it. The office will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Additional time to respond.** Additional time for the office to respond to a request may be based upon the need to((~~:~~

~~(a) Clarify the intent of~~)) clarify the request((~~;~~

~~(b)~~)), locate and assemble the ((~~information~~)) records requested((~~;~~

~~(c)~~)), notify third persons or agencies affected by the request((~~; or~~

~~(d)~~)), or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(((~~(3) In acknowledging receipt of a public record request that is unclear, the office may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the office need not respond to it.~~

~~(4)(a) If the office does not respond in writing within five working days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:~~

~~(i) Consider the request denied; and~~

~~(ii) Petition~~)) (4)(a) **Communication encouraged.** If the requestor has not received a response in writing or has questions or concerns regarding the records request, the requestor is encouraged to contact the public records officer ((~~under WAC 44-06-120~~)).

(b) ((~~If the office responds within five working days acknowledging receipt of the request and providing~~)) **Reasonable estimate of time or costs.** The office will provide an estimate of the time required to respond to the request, and ((~~the requester feels~~)) may provide an estimate of copying costs pursuant to a specific request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs stated ((~~is~~)) are not reasonable, the ((~~person seeking disclosure shall be entitled to~~)) requestor may petition the public records officer for a formal review ((~~of the estimate of time. The procedures set out in~~)) under WAC 44-06-120 ((~~shall apply to this review~~)).

(5) **Third-party notice.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure under RCW 42.56.540. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Exemptions from disclosure.** Some records are exempt from disclosure, in whole or in part. If the office believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) **Inspection of records.**

(a) Consistent with other demands, the office shall provide space to inspect public records at a location designated by the office. No member of the public may remove a document from the viewing area or disassemble or alter any docu-

ment. The requestor shall indicate which documents he or she wishes the office to copy.

(b) The requestor must claim or review the assembled records within thirty days of the office's notification to him or her that the records are available for inspection or copying. The office will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the office to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the office may close the request and refile the assembled records. Multiple public records requests from the same requestor can be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors.

(8) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested by the requestor, the public records officer or designee shall make the requested copies or arrange for copying.

(a) Where the office charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.

(b) Electronic records will be provided as a link to the records on the office's website if the records are located on the website, or in a format used by the office and which is generally commercially available. Records will generally not be provided by email, particularly for larger records responses with multiple records, or where records may not be successfully delivered or received via the office's or the requestor's email systems.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect or pay for the entire set of records or one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the office has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(12) **Later discovered documents.** If, after the office has informed the requestor that it has provided all available records, the office becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-110 Exemptions. (((~~(1) The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 44-06-080 is exempt under the provisions of RCW 42.17.310 or other law.~~

~~(2) Many of the records of the office are protected by the attorney-client privilege and/or the attorney work product doctrine. The office, in the course of representing agencies, may at times have materials or copies of materials from such agencies. A request for such records may be referred by the attorney general to the agencies whose records are being requested. The office may assert exemptions applicable to the agency or agencies which transmitted the material to the office.~~

~~(3) Pursuant to RCW 42.17.260, the office reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.~~

~~(4) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.~~)) (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. The office maintains a list of exemptions commonly applicable to its records which can be found on the office website, www.atg.wa.gov. Requestors should view this list to be aware of some of the exemptions, some of which are outside the Public Records Act, that restrict the availability of some records held by the office including, but not limited to, attorney-client privilege and work product doctrine.

(2) The office is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-120 Review of denials of public records requests, estimates of time, estimates of costs. (1) The requestor is encouraged to communicate with the public records officer or assigned designee regarding denials of public records requests, estimates of time, or estimates of costs. If the requestor remains unsatisfied, the requestor may seek formal review of the issue.

(2) Any person who objects to the office's denial or partial denial of a request for a public record, or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of such decision by ((~~tendering~~)) submitting a written request

for a formal internal administrative review to the public records officer.

(3) The written request for formal review shall specifically refer to the written statement by the public records officer or ((~~other staff member~~)) designee which constituted or accompanied the denial or estimate.

(((~~(2) Immediately after~~)) (4) The request for formal review is to be directed to:

Public Records Unit
Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504-0100
publicrecords@atg.wa.gov

(5) After receiving a written request for formal review of a decision denying a public record or estimate, the public records officer or ((~~other staff member~~)) designee denying the request shall refer it to the ((~~attorney general or his or her~~)) designated deputy attorney general((~~. The attorney general or his or her designee shall immediately consider the matter and either affirm or reverse such denial~~)) or public records counsel. The office will, within two business days following ((~~the~~)) receipt of ((~~the~~)) written request ((~~for review of the denial of the public record.~~

~~(3) Administrative remedies shall not be considered exhausted until the attorney general or the designated~~)), respond with an estimate of time to consider the matter. Following such review, the deputy attorney general ((~~has returned the petition with a decision or until the close of the second business day following receipt of the written request for review of the denial of the public record, whichever occurs first.~~

~~(4)~~)) or public records counsel will either affirm, reverse, or amend the denial or estimate.

(6) For purposes of WAC 44-06-160, the office shall have concluded a public record is exempt from disclosure only after the review conducted under this section has been completed.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-160 Requests for review. ((~~As provided in RCW 42.17.325, "Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the~~)) A person may request ((~~the attorney general to review the matter."~~)) that the office conduct a review pursuant to RCW 42.56.530 of a state agency's denial of records requested by him or her. Requests for such review shall be directed to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100. If the state agency provides the records, the office will not issue a written opinion because the question has become moot. However, if the state agency continues to deny access to the records, the office will provide the person with a written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 44-06-020	Definitions.
WAC 44-06-040	Public records available.
WAC 44-06-050	Index.
WAC 44-06-060	Public records officer.
WAC 44-06-100	Protection of public records.
WAC 44-06-130	Consumer protection complaints.
WAC 44-06-140	Adoption of form.
WAC 44-06-150	Availability of pamphlet.

WSR 19-21-174
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-23—Filed October 23, 2019, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-18-065.

Title of Rule and Other Identifying Information: Service contract providers and protection product guarantee providers.

Hearing Location(s): On November 27, 2019, at 8:30 a.m., at the Insurance Building, 302 Sid Snyder Avenue S.W., #200, Olympia, WA 98504. Check-in at the front desk.

Date of Intended Adoption: November 29, 2019.

Submit Written Comments to: Bode Makinde, P.O. Box 40260, Olympia, WA 98504, email rulescoordinator@oic.wa.gov, fax 360-725-7038, by November 14, 2019.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241 or 360-725-7087, email melaniew@oic.wa.gov, by November 14, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will consider clarifying solvency and financial requirements of service contract providers and protection product guarantee providers, forms of a parental guarantee, the filings these entities submit to the commissioner, and the correction of outdated statutory citations.

Reasons Supporting Proposal: Since the original enactment of chapter 48.110 RCW there have been several amendments to that chapter, including the 2016 legislative session. In addition, over the years there have been issues that have arisen regarding the requirements for solvency and filings required to be made by service contract providers and protec-

tion product guarantee providers to the office of the insurance commissioner (OIC).

Statutory Authority for Adoption: RCW 48.02.060 and 48.110.150.

Statute Being Implemented: Chapter 48.110 RCW.

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: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7038; Implementation: Ron Pastuch, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7211; and Enforcement: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7214.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7038, fax 360-586-3109, TTY 360-586-0241 or 360-725-7087, email rulescoordinator@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(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: Much of this proposed rule simply cites requirements already existent in the RCW. The new inclusions:

(A) Required minimum net worth.

(B) Definitions of how liabilities and assets should be considered for reaching the minimum net worth.

(C) The requirement to use generally accepted accounting principles and include in the application filing the normal financial documents OIC would get along with an audited financial statement; and

(D) The requirement to use an OIC generated guarantee form for parent company guarantees.

All apply to the process of filing for license application or permits to issue products. As such, these are exempted from small business economic impact statement requirements under RCW 19.85.025(3), which exempts such rules as defined in RCW 34.05.310(4).

October 23, 2019
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-12-038, filed 5/30/13, effective 7/1/13)

WAC 284-20C-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Complete filing" means a package of information containing motor vehicle service contracts, supporting information, documents and exhibits.

(2) "Contract" means a service contract covering motor vehicles, as described in chapter 48.110 RCW. Under this definition:

(a) "Motor vehicle" means the same as in RCW 48.110.020(7), and only includes vehicles that are self-propelled by a motor; and

(b) "Service contract" means the same as in RCW 48.110.020((~~(17)~~)) (18).

(3) "Date filed" means the date a complete motor vehicle service contract filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files motor vehicle service contracts with the commissioner.

(5) "Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a motor vehicle service contract under RCW 48.110.073.

(6) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows filers to create and submit rate, rule and form filings electronically to the commissioner.

(7) "Service contract provider" or "provider" means the same as in RCW 48.110.020((~~(19)~~)) (20).

(8) "Type of insurance" means a specific type of insurance listed in the *Uniform Property and Casualty Product Coding Matrix* published by the NAIC and available at www.naic.org.

Chapter 284-110 WAC

SERVICE CONTRACTS ANDPROTECTION PRODUCT GUARANTEES

NEW SECTION

WAC 284-110-010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Most recent financial statements" means a partial fiscal year financial statement to include year-end totals, if available. For start-up applicants, formed less than one fiscal year, partial fiscal year financial statements shall include the months from formation to current.

(2) "Statutory accounting principles" means the current year accounting practices and procedures manual as adopted by the national association of insurance commissioners. Service contract providers and protection product guarantors must follow all statement of statutory accounting principles with a type of issue of "common area" and "property and casualty." Any permitted accounting practices from a domiciliary state regulator shall not be used in determining minimum net worth.

NEW SECTION

WAC 284-110-020 Certified financial statement. (1) RCW 48.110.030 and 48.110.055 permit service contract providers and protection product guarantee providers to submit financial statements certified as accurate by two or more officers of the service contract provider or product guarantee provider in lieu of audited financial statements in certain circumstances. Certified financial statements must be prepared in accordance with generally accepted accounting principles (GAAP) or statutory accounting principles, and include all the financial statements, notes, and information that accurately present the financial position of the provider at the report date. Management is responsible for the preparation and fair presentation of these financial statements in conformity with the accounting practices prescribed or permitted under chapter 48.110 RCW and this chapter.

(2) Service contract providers and protection product guarantee providers must utilize the prescribed certification of financial statements form that is available on the commissioner's web site.

NEW SECTION

WAC 284-110-030 Parental guarantee. Service contract providers must utilize the prescribed parental guarantee forms that are available on the commissioner's web site.

NEW SECTION

WAC 284-110-040 Reporting of material change. RCW 48.110.030(6) (service contract providers) and RCW 48.110.055(7) (protection product guarantee providers) require that these entities registered by the commissioner must keep their information submitted to the commissioner current by reporting all material changes to the information within thirty days after the end of the month in which the change occurs. In addition to material changes to its financial statement, the following are deemed material changes that must be reported:

(1) The service contract provider or protection product guarantee provider does not meet the solvency requirement required by chapter 48.110 RCW and this chapter;

(2) If service contract provider is using parental guarantee to meet its financial obligations and the parent's net worth becomes less than one hundred million dollars;

(3) Service contract providers must utilize the prescribed request to add lines to forms that are available on the commissioner's web site; and

(4) A change in the designation to whom the commissioner must forward the legal process so served upon him or her.

WSR 19-21-176
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed October 23, 2019, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-153.

Title of Rule and Other Identifying Information: WAC 16-201-240 Maintenance and inspection, in response to a petition for rule making, the department is proposing to add pressure testing as an option for inspecting for leaks within the appurtenances of liquid bulk fertilizer storage facilities.

Hearing Location(s): On December 13, 2019, at 1:00 p.m., at the Red Lion Hotel, Design and Project Room, 2525 North 20th Avenue, Pasco, WA 99301.

Date of Intended Adoption: December 20, 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., December 13, 2019.

Assistance for Persons with Disabilities: Contact Maryann Connell, phone 360-902-2012, fax 360-902-2093, TTY 800-833-6388 or 711, email mconnell@agr.wa.gov, by December 6, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule only allows a visual observation for any evidence of leaks, spills, cracks, solar decay or wear of fertilizer bulk storage facilities. Adding pressure testing as another option will allow the fertilizer industry to place liquid fertilizer in appurtenances underground, increasing efficiency and safety, while preserving the original intent of the rule to minimize the risk of a fertilizer release.

Reasons Supporting Proposal: The secondary containment rules (chapter 16-201 WAC) for fertilizers came into effect in 1997. The objective of these rules was to establish guidelines for the protection of ground and surface water by minimizing the risk of a fertilizer release. As with most businesses in production agriculture, the fertilizer industry has changed significantly over time. Economics within the industry have forced manufacturing and distribution facilities to consolidate operations, thus creating fewer but larger facilities. In the past, facilities were geographically located in a company's service area and typically had storage volumes of fifty thousand to one hundred twenty-five thousand gallons of fertilizer. The service area for those locations was commonly twenty-five to forty-five miles from the facility. In an effort to increase efficiency, companies have been replacing many of the smaller facilities with fewer, much larger facilities with storage capacities ranging from two hundred fifty thousand gallons to several million gallons, and extending their service area to one hundred fifty miles or more.

With larger storage capacity needs, facilities that once held storage containers for five or six products in a location now require the same physical area for one container to store a single product. Consequently, facilities with larger storage capacities and a greater number of products significantly increases the distance from the operational area (where trucks are filled) to the storage area of the fertilizer. This requires long runs of pipe to be contained in concrete and metal-grated chases or in elevated pipe racks. Above ground piping creates a hazard to a large facility due to the large number of pipes and the distance between tanks and operational area. This above ground piping can be damaged by heavy or overheight machinery.

Currently, WAC 16-201-240 only allows for a visual observation for any evidence of leaks, spills, cracks, solar decay or wear during an inspection process. This requires all appurtenances (pipes, fittings, etc.) to be above ground so that they can be visually inspected. Placing the appurtenances underground would allow for a safer, more efficient and more economic operation, but complicates the visual inspection requirement. Adding a pressure test option as a form of inspection to check for leaks in the underground lines would not only preserve the original intent of the rule to minimize the risk of a fertilizer release, but also improves safety and efficiency for fertilizer facilities. The intent of adding the option for pressure testing is not to test the burst rate of the pipe itself, but to provide evidence of a leak.

Statutory Authority for Adoption: RCW 15.54.800.

Statute Being Implemented: Chapter 15.54 RCW.

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

Name of Proponent: Far West Agribusiness Association, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Kelle Davis, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1851; and Enforcement: Brent Perry, 222 North Havana, Spokane, WA 99202, 509-995-2876.

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).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any additional costs on businesses. There is no cost to comply with the rule, because the proposed rule is adding another option as a form of inspection. Fertilizer facilities may choose to continue using visual observation as a form of inspection. Those companies who would prefer to install appurtenances underground for liquid bulk fertilizer would be able to meet inspection requirements by utilizing pressure testing.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

October 23, 2019
R. Schoen-Nessa
Assistant Director

AMENDATORY SECTION (Amending WSR 00-23-075, filed 11/17/00, effective 12/18/00)

WAC 16-201-240 Maintenance and inspection. (1) The operator of a fertilizer bulk storage facility shall inspect and maintain storage containers, appurtenances, secondary containment and operational area containment to minimize the risk of a fertilizer release.

(2) The inspection shall include a visual observation for any evidence of leaks, spills, cracks, solar decay or wear. Pressure testing may be used in lieu of visual observation for leaks in liquid bulk fertilizer facilities.

For the purpose of this section, "pressure testing" means a test sufficient to determine the presence or absence of a leak within the appurtenances of a liquid bulk fertilizer storage facility. Such pressure testing must be conducted at a pressure rate exceeding the standard operating pressure of the liquid bulk fertilizer storage facility, and must be conducted in accordance with standards established for the materials of the appurtenances, if such standards have been established.

(((~~(2)~~))) (3) Maintenance of the fertilizer bulk storage facilities shall be performed as needed to ensure that the integrity of the bulk fertilizer storage containers, secondary containment and operational area containment is maintained.

(((~~(3)~~))) (4) Bulk fertilizer storage containers and appurtenances shall be inspected at least once per month when in use. Secondary containment and operational area containment shall be inspected at least once per month when in use.

(((~~(4)~~))) (5) All secondary and operational area containment shall be maintained free of debris and foreign matter.

(((~~(5)~~))) (6) A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance and kept at the storage site or at the nearest local office from which the storage site is administered.

(((~~(6)~~))) (7) Inspection records shall contain the name of the person making the inspection, the date of the inspection, conditions noted and maintenance performed.

WSR 19-21-178
PROPOSED RULES
CRIMINAL JUSTICE TRAINING COMMISSION
[Filed October 23, 2019, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-06-19 [19-06-019].

Title of Rule and Other Identifying Information: Chapter 139-12 WAC, Law Enforcement Training and Community Safety Act—Independent investigations criteria.

Hearing Location(s): On November 26, 2019, at 10:00 a.m., at 19010 1st Avenue South, Burien, WA 98148, public hearing.

Date of Intended Adoption: December 5, 2019.

Submit Written Comments to: Zola Campbell or Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email zcampbell@cjtc.wa.gov or dzable@cjtc.wa.gov, by December 4, 2019.

Assistance for Persons with Disabilities: Contact Zola Campbell, phone 206-835-7366, email zcampbell@cjtc.wa.gov; or Derek Zable, phone 206-835-7356, email dzable@cjtc.wa.gov, by December 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal carries out the mandates of RCW 10.114.011 and 10.114.021, which requires the criminal justice training commission to adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.

Reasons Supporting Proposal: This proposal is necessary to meet the mandates of RCW cited above.

Statutory Authority for Adoption: Washington state criminal justice training commission is named in the relevant RCW.

Statute Being Implemented: RCW 10.114.011, 10.114.-021.

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

Name of Proponent: Washington state criminal justice training commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sue Rahr, 19010 1st Avenue South, Burien, WA 98148, 206-835-7300; Implementation and Enforcement: Dan Christman, 19010 1st Avenue South, Burien, WA 98148, 206-835-7300.

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.

October 23, 2019
Derek Zable
Human Resource and
Government Affairs Manager

Chapter 139-12 WAC

LAW ENFORCEMENT TRAINING AND COMMUNITY SAFETY ACT—INDEPENDENT INVESTIGATIONS CRITERIA

NEW SECTION

WAC 139-12-010 Purpose. In 2015 the U.S. Department of Justice issued a final report from the 21st Century Task Force on Policing. A core focus of that report addressed strategies for improving relationships, increasing community engagement, and fostering cooperation. The report recommended clear and comprehensive policies on the use of force, training on the importance of de-escalation, crisis intervention and mental health, the provision of first aid, and recommended external and independent investigations in officer involved shootings resulting in injury or death. Initiative 940 and SHB 1064 incorporated those recommendations and these WAC implement the requirement of an independent investigation that is completely independent of the involved agency. The goal of this requirement is to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

Ultimately, this is about the sanctity of all human life; the lives of police officers and the lives of the people they serve and protect. The preservation of life has always been at the heart of American policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The independent investigation is a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

NEW SECTION

WAC 139-12-020 Definitions. Best practices - For the purpose of this chapter, best practices are defined as methods, techniques, and procedures that have consistently shown by research and experience to produce superior results and are established or proposed as a standard, suitable for widespread adoption in the law enforcement profession.

Complete investigation - The final work product of the IIT for the purpose of informing the prosecuting attorney's charging decision. An independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.

Deadly force - As set forth in RCW 9A.16.010, "deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

Evanescent evidence - Physical evidence that may be degraded or tainted by human or environmental factors if left unprotected or unpreserved for the arrival of the independent investigation team (IIT); identification and contact information for witnesses to the incident; photographs and other methods of documenting the location of physical evidence and location/perspective of witnesses.

Good faith standard - As set forth in RCW 9A.16.040, ""good faith" is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual."

Great bodily harm - As set forth in RCW 9A.04.110, "great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

Independent investigative team (IIT) - A team of qualified and certified peace officer investigators that operates completely independent of any involved agency to conduct investigations of police deadly force incidents. An IIT is created when multiple law enforcement agencies enter into a written agreement to investigate deadly force incidents in their geographical regions. The IIT will have at least two nonlaw enforcement community representatives directly participating in the vetting and selection of investigators and review conflict of interest statements submitted by investigators at the beginning of each investigation, and additional

tasks as set out in this WAC. Each agency that enters into the agreement is considered a "member agency."

Initial incident response - This is the period in time immediately following a deadly force incident when involved agency personnel on scene and other first responders immediately take actions to render the scene safe and provide or facilitate life-saving first aid to persons at the scene who have life threatening injuries. Then the involved agency will immediately call the IIT and the primary focus of the involved agency shifts to the protection and preservation of evanescent evidence in order to maintain the integrity of the scene until the IIT arrives. Once the IIT arrives, and the IIT commander has the appropriate resources on scene, the involved agency will relinquish control of the scene to the IIT.

Involved agency - The agency that employs or supervises the officer(s) who used deadly force. There can be more than one "involved agency."

Necessary - As set forth in RCW 9A.16.010, "necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to affect the lawful purpose intended.

Prosecutor's review - The period of time when the IIT presents a completed investigation to the prosecutor, who then reviews all the facts and makes a charging decision.

Substantial bodily harm - As set forth in RCW 9A.04.110, "substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

NEW SECTION

WAC 139-12-030 Independent investigation criteria. There are five factors that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:

- Independence;
- Transparency;
- Communication;
- Credible process; and
- Credible investigators.

Standards are necessary for the public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that builds public trust.

At a future date, in order to create accountability, it is necessary to establish a process to gather and review data about uses of deadly force, and subsequent investigations, and to report data so the public can determine if the standards for independent investigations are being met and are improving public trust.

(1) **Independence.**

(a) Independence is essential to integrity and objectivity of the investigation. Maintaining independence is achieved through compliance with rules and regulations designed to prohibit undue influence, and the appearance of undue influence, by the involved agency in the investigation.

(b) Standards for an investigation completely independent of the involved agency:

- No member of the involved agency may participate in any way in the investigation conducted by the IIT.
- No information about the ongoing independent investigation will be shared with any member of the involved agency, except limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation so that they can manage the internal administrative investigation and communicate with their community about the progress of the investigation.
- If the chief or sheriff of the involved agency requests that the IIT release the body cam video or other investigation information of urgent public interest, the IIT commander should honor the request with the agreement of the prosecutor of jurisdiction.
- No specialized equipment belonging to the involved agency may be used by the independent investigative team unless no reasonable alternative exists, and the equipment is critical to carrying out the independent investigation. If the equipment is used, the nonlaw enforcement community representatives on the IIT must be notified about: 1 - why it needs to be used; and 2 - the steps taken to strictly limit the role of any involved agency personnel in facilitating the use of that equipment.

(2) **Transparency.**

(a) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed factors.

(b) Standards for the transparency of an independent investigation:

- The policies and operating procedures of the IIT will be available to the public.
- The names of the members, supervisors, commanders, and nonlaw enforcement community representatives on the IIT will be available to the public.
- A minimum of two nonlaw enforcement community representatives will be assigned to each IIT to participate in the vetting, interviewing, and selection of IIT investigators; review conflict of interest statements; be present at the briefings with the involved agency(s) chief or sheriff; have access to the investigation file when it is completed; review all press releases and communication to the media; and review notification of equipment use of the involved agency.

- The nonlaw enforcement community representatives must sign a binding confidentiality agreement at the beginning of each deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded.

- If the confidentiality agreement is violated, the representative may be subject to prosecution under RCW 9A.76.020 (Obstructing a law enforcement officer) and chapter 10.97 RCW, Washington State Criminal Records Privacy Act.

- The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.

• When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.

(3) **Communication.**

(a) Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication leads to suspicion and damages trust.

(b) Standards for communication during an independent investigation:

• A family member of the person against whom deadly force has been used will be notified as soon as they can be located by either the involved agency or the IIT, whichever is faster.

• A member of the IIT team will be assigned as a family liaison within the first twenty-four hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.

• Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.

• If the person against whom deadly force is used is, or is believed to be a member of a federally recognized tribe:

- The involved agency will notify the governor's office of Indian affairs (GOIA) in accordance with RCW 10.114.021.

- A member of the IIT will be assigned as a tribal liaison within the first twenty-four hours and keep the tribe (or a representative of the tribe's choice) apprised of all significant developments of the investigation.

(4) **Credibility.**

(a) In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices for homicide investigations, with particular attention focused on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Significant requirements are set for the selection of investigators for the IIT. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.

(b) Standards for a credible independent investigative process:

• After life-saving first aid has been provided, members of the involved agency and other first responders at the scene will:

- Secure the incident scene and maintain its integrity until the independent investigative team arrives.

■ The perimeter should be clearly marked and protected.

■ Evanescent evidence must be located and preserved, consistent with best practices published annually by the criminal justice training commission.

• The independent investigation will follow accepted best practices for homicide investigations published and annually updated each year by the WSCJTC.

• An involved agency conducting a timely internal administrative investigation for compliance with department policy and procedures is critical to maintaining public trust and is separate and distinct from the independent investigation required by the law enforcement training and community safety act. To allow the involved agency to move forward with the administrative investigation in a timely fashion, the independent investigation required by LETCSA must be conducted in a manner that does not inhibit the involved agency from doing so. To accomplish this:

• The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no member of the IIT receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements.

• The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish "prohibited content" to the IIT.

• If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to the supervisor and the member. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.

• These requirements also apply to any "public safety" statements compelled from involved officers.

(c) The standards for credible investigators include:

(i) Appointed Members.

The chiefs and sheriffs who sign a written agreement to support and participate in the IIT shall appoint:

• The IIT leadership team, which includes an IIT commander, assistant or co-commander, and the logistics/administrative commander.

• At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force.

• All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.

• The IIT supervisors shall be recommended by their agency to the IIT commander.

(ii) Selection Process for IIT Members.

The IIT commander shall make written notification to the member agency's leadership, soliciting personnel from their respective agencies for assignment to IIT.

The IIT leadership shall:

• Ensure all applicants meet all time, rank, and training prerequisites described in chapter xxx WAC.

• Ensure that qualified applicants are interviewed by a review board, which includes the nonlaw enforcement community representative advisor and other members of the IIT selected by the IIT commander.

• All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.

• At the conclusion of the review board the IIT commander shall consider the recommendations of the board and select those best suited for the needs of the IIT.

(iii) Requirements for IIT Investigators.

• Applicants for the position of investigator must be employed by a member agency of the IIT.

• The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.

• The applicant must have the written recommendation from their immediate supervisor.

• The agency and applicant must commit to three years of service to the IIT (excludes promotion or exigent circumstances).

• The agency and applicant shall commit to ongoing advanced investigative training.

• The agency and applicant must commit to eight hours of semiannual IIT training.

• The applicant must be willing to be on call and reasonably available for call-out.

• The applicant should meet the basic training requirements identified in this chapter.

(iv) Periodic Appointment Review.

The chief or sheriff of a member agency, and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.

(v) Training Requirements.

The CJTC will issue an "IIT qualified investigator certificate" to ensure that those who are entrusted with investigating officer involved use of deadly force incidents meet a basic training requirement listed below prior to joining an IIT. Each of the classes listed below must contain at least forty hours of instruction approved by WSCJTC. To obtain a basic IIT certificate candidates must:

• Provide proof of at least three years of uninterrupted experience as a certified peace officer.

• Provide proof of successful completion of the basic training classes listed in this chapter.

(A) Basic training classes:

• Basic homicide investigation;

• Crime scene investigation;

• Interviewing and interrogation;

• Crime scene photography/videography; and

• Violence de-escalation and mental health.

(B) Advanced training classes.

Advanced training develops and maintains competence, which improves the credibility of the team. The advanced training classes, taken before and/or during appointment to an IIT, are desirable and member agencies should make reasonable efforts to provide this training. A minimum of twenty-four hours of training annually may include, but is not limited to, the following criminal investigation topics:

• Advanced homicide investigation techniques;

• Advanced interviewing and interrogation;

• Officer-involved shooting investigation;

• In-custody death investigation;

• Excited delirium and positional asphyxia;

• Bloodstain pattern analysis; and

• Other related training, seminars, and conferences or ongoing training as offered by WSCJTC or other training venues on an as available basis.

(C) In-service training.

• All IIT members shall receive priority registration to LETCSA training as well as recertification every three years.

• The IIT shall train as a unit at least semiannually.

(vi) Demonstrated History of Honorable Behavior.

Investigators assigned to an IIT must have a work history free of sustained serious misconduct and/or a pattern of complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the deadly force incident.

Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to:

• Discrimination of any type, based on protected classes identified by the equal employment opportunity commission.

• Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.

• Dishonorable behavior including, but not limited to: Harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.

(vii) Conflicts of Interest.

Prior to each independent investigation, investigators must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated. The assessment (created by WSCJTC) will include questions about the investigator's prior interaction or relationship with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and approved by the nonlaw enforcement community representatives and the IIT commander.