

WSR 19-24-006
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed November 21, 2019, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-053.

Title of Rule and Other Identifying Information: WAC 192-04-180 Decisions—Disposition other than by hearing on the merits—Petition for review; and new WAC 192-04-185 Orders of default—Motion to vacate—Petition for review.

Hearing Location(s): On January 10, 2020, at 9:00 a.m., at the Employment Security Department (ESD), 212 Maple Park Avenue, Commissioner's Conference Room, Olympia, WA 98501.

Date of Intended Adoption: January 17, 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 January 9, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by January 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To permit appellants who have received an order of default to file a motion to vacate the order of default directly with the office of administrative hearings (OAH).

Reasons Supporting Proposal: Giving appellants who received an order of default the option to file a motion to vacate the order of default directly with OAH will allow for more timely review of orders of default, which, if the order of default is vacated, will also lead to more timely resolution of the merits of the underlying appeal.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the ESD. RCW 50.32.060 provides authority for rule making for hearings and appeals. RCW 34.05.440 provides rule-making authority for establishing time limits for filing motions to vacate default orders.

Statute Being Implemented: RCW 34.05.440, 50.32.070, 50.32.080.

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

Name of Proponent: ESD, OAH, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, 360-890-3448; Implementation: Donald Capp, Olympia, 360-407-2713; and Enforcement: Don Westfall, Lacey, 360-507-9709.

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 "procedural rules" and not "significant legislative rules," as those terms are defined in RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the 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.

November 21, 2019

Dan Zeitlin

Employment Security Policy Director

AMENDATORY SECTION (Amending WSR 89-24-030, filed 11/30/89, effective 1/1/90)

WAC 192-04-180 Decisions—Disposition other than by hearing on the merits—Petition for review. (1) The presiding administrative law judge may dispose of any appeal or petition for hearing ~~((by))~~ through:

(a) An order approving a withdrawal of appeal((:));

(b) An order approving a withdrawal of a petition for hearing((:));

(c) A consent order;

(d) An order of default.

(2) There shall be no petition for review rights from:

(a) An order approving a withdrawal of appeal((:));

(b) An order approving a withdrawal of a petition for hearing; or

(c) A consent order.

~~((Any interested party aggrieved by the entry of an order of default may file a petition for review from such order by complying with the filing requirements set forth in WAC 192-04-170: Provided, however, That the default of such party shall be set aside by the commissioner only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, the commissioner shall remand the matter to the office of administrative hearings for hearing and decision.))~~

NEW SECTION

WAC 192-04-185 Orders of default—Motion to vacate—Petition for review. (1) Any interested party aggrieved by the entry of an order of default may:

(a) File a motion to vacate that order with the office of administrative hearings within seven days of the date of the order; or

(b) File a petition for review with the commissioner pursuant to the filing requirements in WAC 192-04-170. Once a petition for review is filed, the office of administrative hearings no longer has jurisdiction to vacate its order of default.

(2) The filing of a motion to vacate an order of default suspends the appeal period for filing a timely petition for review until the office of administrative hearings rules on the motion to vacate. If the motion to vacate is denied, the petitioner shall have thirty days from the issuance of denial in which to file a timely petition for review of the order of default.

(3) Under subsection (1)(b) of this section, an order of default will be set aside by the commissioner's review office only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. If that order of default is set aside, the commissioner will remand the matter to the office of administrative hearings for hearing and decision.

WSR 19-24-017
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed November 22, 2019, 7:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-22-122.

Title of Rule and Other Identifying Information: WAC 468-63-070 contains commute trip reduction (CTR) voluntary and exemption policies that describe the criteria and process through which jurisdictions and employers may volunteer or be exempted out of the CTR program.

Hearing Location(s): On January 21, 2020, at 2:30 p.m., at the Transportation Building, Nisqually Room 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: March 30, 2020.

Submit Written Comments to: Ricardo Gotla, 401 2nd Avenue South, Seattle, WA 98104, email gotlar@wsdot.wa.gov, fax 206-716-1114, by January 20, 2020.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email Engleka@wsdot.wa.gov, by January 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update to WAC 468-63-070. This change will streamline and provide flexibility in local commute trip reduction program implementation. Regions and jurisdictions will be able to propose exemptions from the program, providing potential cost and labor savings, and will support the local entities to develop a program that best meets their needs. The opt-out program will require working with regional transportation planning organizations/metropolitan planning organizations to concur the current proposal and identify a best path forward.

Reasons Supporting Proposal: CTR affected jurisdictions have expressed interest in the changes proposed by the updated rule. This proposal also aligns with the program's new strategic plan that contains goals and strategies to streamline and provide flexibility in local program implementation.

Statutory Authority for Adoption: RCW 70.94.537.

Statute Being Implemented: RCW 70.94.537.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Pamela Vasudeva, 401 2nd Avenue South, Seattle, WA 98104, 206-716-1142.

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 for the amended rule, as the rule does not meet the criteria established in subsection (5) of 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(5).

Explanation of exemptions: Small businesses will not be impacted by the rule changes per the definition of CTR affected business in RCW 70.94.524(1).

November 20, 2019

Kara Larsen, Director

Risk Management and Legal Services

AMENDATORY SECTION (Amending WSR 07-05-065, filed 2/20/07, effective 3/23/07)

WAC 468-63-070 Opt-in, additions, and exemptions.

(1) **Criteria and process for opt-in.** RCW 70.94.537 (2)(h) requires WSDOT to establish criteria and a process to determine whether jurisdictions that voluntarily implement CTR are eligible for state funding. Jurisdictions that are not required to implement CTR may volunteer to participate in the program. The state CTR board is not required to provide state CTR program funding to jurisdictions that opt-in. WSDOT shall provide technical assistance to opt-in jurisdictions that meet the requirements of these rules. The state intends for each jurisdiction participating in CTR to implement a consistent set of requirements for employers. Therefore, jurisdictions that opt-in to the CTR program shall follow the requirements of the rules, with the following exceptions listed below.

(a) **Local CTR plan.** Voluntary jurisdictions may, instead of developing a stand-alone CTR plan meeting the planning requirements described in these rules, develop an amendment to the transportation element of the local comprehensive plan. The amendment shall contain the following:

(i) Goals and numerical targets for reductions in the proportion of single-occupant vehicle commute trips and vehicle miles traveled per CTR commuter for the area established by the jurisdiction;

(ii) An assessment of current conditions and how attainment of the program goal can help the jurisdiction meet its broader growth and transportation goals;

(iii) A description of local services that will help the jurisdiction and its employers meet the goals and targets;

(iv) A description of the requirements for employers;

(v) A determination of the base year value and how progress toward meeting the program goal will be measured, consistent with the measurement guidelines issued by WSDOT; and

(vi) A description of how the program will be funded and administered.

The jurisdiction must adopt the comprehensive plan amendment and adopt an ordinance implementing the CTR requirements described in the comprehensive plan to be considered an opt-in CTR jurisdiction.

(b) **State technical assistance.** After an opt-in jurisdiction provides confirmation to the CTR board that a CTR ordinance has been adopted and the jurisdiction has updated its comprehensive plan to include CTR plan information, the jurisdiction shall be eligible to receive a comparable level of technical assistance that WSDOT provides to other jurisdictions required to adopt and implement CTR plans.

(2) **Criteria and procedure for RTPOs to propose to add urban growth areas.** RCW 70.94.537 (2)(f) requires WSDOT to establish criteria and procedures for RTPOs in

consultation with local jurisdictions to propose to add urban growth areas. In their regional CTR plans, RTPOs may propose to add urban growth areas to the CTR program. The proposal shall list the jurisdictions in the urban growth area proposed to be added, and shall include documentation of the jurisdiction's consent to be added to the CTR program. If the proposed additions are accepted by the CTR board, the identified, consenting jurisdictions in the added urban growth areas shall be considered as opt-in jurisdictions. The opt-in jurisdictions shall be eligible to receive a comparable level of technical assistance that WSDOT provides to other jurisdictions required to adopt and implement CTR plans. The state CTR board is not required to provide state CTR program funding to jurisdictions that opt-in.

The CTR board shall consider proposed additions to the CTR program as part of its review of the regional CTR plan. In order for a jurisdiction to be approved as an opt-in jurisdiction through the regional CTR plan, the regional CTR plan shall include the following elements for each opt-in jurisdiction:

(a) Goals and numerical targets for reductions in the proportion of single-occupant vehicle commute trips and vehicle miles traveled per CTR commuter established by the proposed jurisdiction for the urban growth area and its employers;

(b) An assessment of current conditions and how attainment of the program goal can help the proposed jurisdiction meet its broader growth and transportation goals;

(c) A description of local services that will help the proposed jurisdiction and its employers meet the goals and targets;

(d) A description of the requirements for employers;

(e) A determination of the base year value and how progress toward meeting the program goal will be measured, consistent with the measurement guidelines issued by WSDOT; and

(f) A description of how the program will be funded and administered.

(3) Criteria and procedure for ~~((RTPOs to propose to exempt urban growth areas))~~ worksites and grantees opt-out. ~~((RCW 70.94.537 (2)(f) requires WSDOT to establish criteria and procedures for RTPOs in consultation with local jurisdictions to propose to exempt urban growth areas.~~

(a) ~~Exemption criteria. In order for their urban growth area to be exempted, jurisdictions must document in the submittal of their local CTR plan that they meet the following criteria:~~

~~(i) Development of a local CTR plan that meets the requirements in these rules;~~

~~(ii) The jurisdiction is not currently experiencing any problems with traffic congestion or traffic safety; and~~

~~(iii) The jurisdiction has not received any state transportation funding, including grant funding, for transportation improvements in the urban growth area within two years of the submittal of the local CTR plan;~~

~~(b) **Exemption application process.** A jurisdiction that seeks an urban growth area exemption shall notify its RTPO as part of the submittal of its local CTR plan. If the RTPO concurs with the urban growth area exemption request, the RTPO will submit the urban growth area exemption request~~

~~with the regional CTR plan to the CTR board. The urban growth area exemption request shall describe why the exemption is justified.~~

~~RTPOs shall submit any urban growth area exemption requests to the CTR board by October 1, 2007, or by March 31 every two years thereafter. The CTR board may consider urban growth area exemption requests at other times.~~

~~The CTR board shall consider the proposed urban growth area exemption while reviewing the regional CTR plan, and approve or deny the urban growth area exemption. The CTR board shall state the reasoning for its decision and communicate the information in writing to the RTPO.~~

~~If the CTR board grants the urban growth area exemption, the jurisdiction is exempt from the requirements of the CTR law until the regional CTR plan is updated and the exemption is reevaluated.~~

~~If the CTR board denies the urban growth area exemption, the jurisdiction may appeal the decision to the secretary of transportation or his/her designee within sixty days of the board's decision by submitting a written request for appeal to the secretary of transportation or his/her designee. The secretary of transportation or his/her designee shall consider the appeal within sixty days of the jurisdiction's request. If the secretary of transportation or his/her designee grants the appeal, the exemption shall be granted by the CTR board. If the secretary of transportation or his/her designee denies the appeal, the jurisdiction is required to follow the CTR requirements and the regional CTR plan must reflect the inclusion of the jurisdiction's CTR plan.~~

~~(e) **Reevaluation of exemption.** As part of the regional CTR plan update, RTPOs, in consultation with local jurisdictions, shall reevaluate any exempted urban growth areas to assess whether the conditions that qualified the area for the exemption have changed. For each proposed urban growth area, the RTPO shall discuss its reasoning for a continued exemption or removal of exemption with the CTR board, and the CTR board will decide whether or not a change is warranted.)~~ Criteria and process for employer/worksites opt-out. RCW 70.94.537 (2)(e) provides governance to develop an exemption process for CTR affected employer/worksites to opt-out of the CTR program if they are unable to meet the requirements of the commute trip reduction program criteria. Refer to WSDOT's TDM Guidebook for the worksites/ employer opt-out process.

(4) **Criteria and process for grantee/jurisdictions opt-out.** RCW 70.94.537 (2)(f) provides governance to replace original language in subsection (3) of this section with a simpler process for CTR affected urban growth areas and grantee/local agencies to opt-out of the traditional CTR program if they are unable to meet the commute trip reduction program criteria. Refer to WSDOT's TDM Guidebook for the grantee/jurisdictions opt-out process.

WSR 19-24-038

PROPOSED RULES

BATES TECHNICAL COLLEGE

[Filed November 26, 2019, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-052.

Title of Rule and Other Identifying Information: Amending chapter 495A-141 WAC to update with current state statutes and clarify parking and traffic language at Bates Technical College.

Hearing Location(s): On January 8, 2020, at 10:30 a.m.-12:00 p.m., at Clyde Hupp Room, Building A, Room A329, Downtown Campus Location, 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

Date of Intended Adoption: February 6, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by December 27, 2019.

Assistance for Persons with Disabilities: Contact Ms. Karey Bryson, phone 253-680-7100, fax 253-680-7101, email kbryson@batestech.edu, by December 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 495A-141 WAC to align with state rules and statutes and improve the clarity of the language.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapters 28B.10, 34.05 RCW.

Statute Being Implemented: RCW 34.05.250, chapter 28B.50 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163, Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

November 26, 2019

Dr. Jean Hernandez
Special Assistant to the President

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-010 Purpose for adopting parking and traffic regulations. Pursuant to the authority granted RCW 28B.50.140(10), the board of trustees of Bates Technical College, District 28, or (~~their~~) designee(;;) is granted authority to adopt rules and regulations for pedestrian and vehicular traffic upon public lands devoted to, operated by, or maintained by the college. The objectives of these regulations are:

- (1) To protect and control pedestrian and vehicular traffic.
- (2) To assure ingress and egress at all times for emergency traffic.
- (3) To minimize traffic disturbances during class hours.
- (4) To facilitate the work of the college by assuring access to its vehicles and by assigning limited parking space for the most efficient use by all.
- (5) To regulate the use of parking spaces.
- (6) To protect students, staff, and state-owned property.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-012 Enforcement. The president or designee shall be responsible for the enforcement of the parking and traffic regulations. (~~(Parking and traffic regulations will be enforced at all times.)~~)

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-014 Definitions. As used in this document, the following words and phrases shall mean:

- ~~((1) "Board" — The board of trustees of Bates Technical College~~
- ~~(2) "Campus" — All lands and buildings devoted to, operated by, or maintained by Bates Technical College~~
- ~~(3) "Campus security officer" — Employee of the college who is responsible to the vice president of business & finance, or designee, for campus traffic control, parking, security, and safety.~~
- ~~(4) "College" — Bates Technical College~~
- ~~(5) "Safety & security supervisor" — The college's vice president of business and finance, or designee~~
- ~~(6) "Employee" — An individual appointed to the faculty, staff, or administration of the college~~
- ~~(7) "Guests/visitors" — Person or persons who come upon the campus as guests and person or persons who lawfully visit the campus~~
- ~~(8) "Continuing permits" — Permits issued to employees for an indefinite period of time~~
- ~~(9) "President" — President of Bates Technical College~~
- ~~(10) "President's designee" — Vice president of business and finance~~

~~(11) "Student permits" - Permits issued to students which are valid from the date of issue and for as long as the student is enrolled~~

~~(12) "Temporary permits" - Permits which are valid for a specific period designated on the permit~~

~~(13) "Vehicle" - Automobile, truck, motor-driven cycle, scooter, or any vehicle otherwise powered))~~

(1) "Board" - The board of trustees of Bates Technical College, District 28;

(2) "Campus" - All lands and buildings devoted to, operated by, or maintained by Bates Technical College;

(3) "Campus public safety officer" - Employee of the college who reports to the campus safety sergeant or designee and is responsible for campus traffic control, parking, security, and safety;

(4) "Campus safety and health administrator" - The college's safety and health director or designee;

(5) "College" - Bates Technical College, District 28;

(6) "Continuing permits" - Permits issued to employees for an indefinite period of time;

(7) "Employee" - An individual appointed to the faculty, staff, or administration of the college;

(8) "Guests or visitors" - Person or persons who come upon the campus as guests and who lawfully visit the campus;

(9) "President" - President of Bates Technical College, District 28;

(10) "President's designee" - The vice president of finance and administrative services will normally serve as the designee unless another designee has been appointed by the president or vice president of finance and administrative services;

(11) "Safety and security immediate supervisor" - The college's campus safety sergeant or designee;

(12) "Student permits" - Permits issued to students which are valid for a period designated on the permit;

(13) "Temporary permits" - Permits which are valid for a specific period designated on the permit; and

(14) "Vehicle" - Automobile, truck, motor-driven cycle, scooter, or any vehicle otherwise powered.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-030 Authorization for issuance of permits. ~~The ((vice president of business & finance,))~~ safety and health director or designee((;)) is authorized to issue parking permits to students, ~~((staff))~~ employees, and guests when the following is provided:

(1) When the employee's or student's vehicle information is properly registered with the college.

(2) When a guest or visitor temporary parking permit is necessary to enhance the business or operations of the college.

~~((Permits are available to))~~ Individuals ~~((who))~~ may ~~((wish to))~~ register additional vehicles. ~~((Only one vehicle registered to an))~~ However, each individual shall only be permitted to park ((on campus)) one registered vehicle on campus at any one time.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-035 Responsibility of person to whom permit is issued. The individual to whom a parking permit is issued shall be responsible for any violations of state, college, or city traffic rules and regulations involving the vehicle. In the event that a vehicle in violation is not registered with the college, the current registered owner will be responsible for the violations of the above stated rules and regulations.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-040 Vehicle parking permits. (1) All employees and students of the college shall obtain and display a currently valid parking permit on all vehicles parked or left standing unattended upon the college campus ~~((for day classes))~~.

(2) All persons parking on the campus shall secure and display a currently valid parking permit. All students will display a valid parking permit within five days from the student's date of registration ~~((or))~~. All employees will display a valid parking permit from the first day of employment.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-045 Visitor permits. All ~~((guests/visitors))~~ guests and visitors (including salespersons, vendors, etc.) may park in appropriate ~~((staff))~~ visitor parking and student parking areas after obtaining a temporary permit from the ~~((business))~~ office of campus public safety or appropriate department.

Visitors from other state or governmental agencies or institutions may display their business card on the dashboard (or other clearly visible location) in lieu of obtaining a temporary permit for short-term business at the college.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-050 Display of permits. The parking permit ~~((issued by the college))~~ shall be visibly ~~((affixed on the inside of the rear window of the vehicle for which the permit was issued, on the lower left hand corner of the window as viewed from the rear of the vehicle. If this is not feasible then the permit shall be affixed to the driver's side windshield lower corner. Motorcycle permits must be affixed in a conspicuous place))~~ displayed in accordance with all instructions provided when the parking permit is issued by the college.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-055 Transfer of permits. Parking permits are not transferable. Each ~~((new vehicle must be registered))~~ employee or student must register their vehicle(s) with the ~~((business office and be issued a separate parking permit))~~ campus public safety office. An employee or student

may register multiple vehicles under one permit. However, only one registered vehicle, with the parking permit displayed, may be parked on the campus at any one time.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-060 Permit revocation. Permits are licenses ~~((and))~~ for vehicle operators to park on the college grounds, are the property of the college, and may be revoked for any of the following reasons:

- (1) When the purpose for which the permit was issued changes or no longer exists~~((:))~~;
- (2) When a permit is used on an unregistered vehicle or by an unauthorized person~~((:))~~;
- (3) Falsification on the application for parking permits~~((:))~~;
- (4) Continued violations of parking and traffic regulations~~((:))~~; and
- (5) Counterfeiting or altering of the permit(s).

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-065 Right to ~~((refuse))~~ deny permit. The ~~((vice president of business and finance;))~~ safety and health director or designee~~((:))~~ reserves the right to ~~((refuse the issuance of))~~ deny issuing a parking permit to anyone;

- (1) Who has had a previous permit revoked~~((:))~~; or
- (2) Whose driving or parking conduct indicates a disregard for the rights or safety of others.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-070 Right to appeal permit ~~((revocation/refusal))~~ revocation or denial. ~~((When a parking permit has been revoked or has been refused or when a fine or penalty has been levied against a violator of the rules and regulations, such action by the vice president of business and finance;))~~ The following actions by the safety and health director or designee~~((:))~~ may be appealed:

- (1) A parking permit has been revoked or refused; or
- (2) A fine or penalty has been levied against a violator of the rules or regulations.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-080 Designation of parking. The parking spaces available on campus ~~((may))~~ will be allocated and designated by the ~~((vice president of business and finance;))~~ safety and health director or designee~~((; in such a manner as will best achieve the objectives of these rules and regulations)).~~

(1) Special provisions shall be made for physically disabled employees, students, and visitors. Physically disabled individuals utilizing disabled parking spaces must display in that vehicle a valid state-issued disabled parking permit or license plate. Temporary disabled permits will be issued by the ~~((business office))~~ disability support services office. In

addition to the disabled permit, a valid college parking permit~~((s))~~ must be displayed on the vehicle.

(2) Guests who visit the campus for college related business for a maximum time of thirty minutes~~((:))~~ are not required to display a temporary permit ~~((is not required)).~~ Visitors requiring parking for longer than thirty ~~((30))~~ minutes ~~((may))~~ should obtain a temporary parking permit through the ~~((business office when verified by host))~~ appropriate hosting department.

(3) Parking spaces may be designated for special purposes as deemed necessary.

(4) No vehicle shall be parked on the campus except in those areas set aside and designated for parking.

(5) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-090 Regulatory signs, markings, barricades. The ~~((vice president of business and finance;))~~ safety and health director or designee~~((:))~~ is authorized to make and erect signs, barricades, and other structures, and to paint marks and other directions upon the streets, ~~((entry/exits))~~ entry or exits, and roadways for the regulation of traffic and parking upon the various public lands devoted to, operated by, or maintained by the college. Drivers or vehicles shall observe and obey all the signs, barricades, structures, markings and directions given them by the campus ~~((security))~~ public safety officer ~~((in the control and regulation of traffic and parking)).~~

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-100 Speed limit. No vehicles shall be operated on the campus at a speed in excess of posted speed limits~~((:))~~ or ~~((such))~~ at a slower speed as is reasonable and prudent to the circumstances.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-110 Pedestrian right of way. (1) The operator of a vehicle shall yield right of way to any pedestrian.

(2) Pedestrians shall not leave a curb or other place of safety and walk or run into the path of an oncoming vehicle.

~~((2))~~ (3) When a sidewalk or crosswalk is provided, pedestrians shall utilize the sidewalk or crosswalk.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-130 Report of accidents. (1) The operator of any vehicle involved in an accident on campus resulting in injury or death of any person or claimed damage to either or both vehicles exceeding five hundred dollars shall immediately report such accident to the ~~((security))~~ campus public safety officer on duty or ~~((operations))~~ the office of campus public safety. Accidents occurring after the close of

business shall be reported the next working day. The operator shall file a state of Washington motor vehicle report (~~within twenty-four hours~~) by the end of the following business day after such accident.

(2) Other minor accidents may be reported to the (~~security~~) campus public safety officer on duty or (~~operations office~~) the safety and health director for insurance record purposes.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-140 Impounding disabled (~~and~~), inoperative, or abandoned vehicles. (1) Disabled (~~or~~), inoperative, or abandoned vehicles shall not be parked on the campus for a period exceeding twenty-four hours, without authorization from the (~~vice president of business and finance~~), safety and health director or designee.

(2) Vehicles parked over twenty-four hours without authorization may be impounded and stored at the expense of either(;) or both(;) the owner and operator (~~thereof~~) of the vehicle.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-150 Violation of parking and traffic regulations. (1) Operators of illegally operated or parked vehicles shall be warned or cited through appropriate means that they are in violation of these regulations. All fines are payable at the (~~business~~) cashier's office.

(2) In instances where violations are repeated, and in the judgment of the (~~vice president of business and finance~~), safety and health director or designee(;) with appropriate documented evidence, said vehicles may be impounded.

Vehicles parked blocking roadways, driveways, fire lanes, parked in a hazardous way or impeding college operations without authorization may be impounded and stored at the expense of either or both the owner and operator of the vehicle.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-160 Fees. The board of trustees of Bates Technical College, District 28, shall set and review, as necessary, parking permit fees.

(~~(+)~~) Fees shall be levied in accordance with the current published fee schedule.

AMENDATORY SECTION (Amending WSR 99-24-072, filed 11/29/99, effective 12/30/99)

WAC 495A-141-165 Fines and penalties. The (~~vice president of business and finance~~), safety and health director or designee(;) is authorized to impose the following fines and penalties for violation of the regulations:

(1) A schedule of fines shall be set by the board of trustees. The schedule shall be published by the college on its website and included on the traffic parking citation form.

(2) Fines will be assessed in accordance with the schedules (~~as~~) established by the board of trustees for the following violations:

- (a) No valid parking permit displayed;
- (b) Occupying more than one parking space;
- (c) Occupying (~~space/area~~) space or area not designated for parking;
- (d) Parking in an area not authorized by the parking permit;
- (e) Parking in reserved staff space without authorization;
- (f) Disabled parking violation;
- (g) Blocking or obstructing traffic (may be towed if creating a safety hazard);
- (h) Parking adjacent to a fire hydrant (may be towed if creating a safety hazard);
- (i) Parking in fire lane (may be towed if creating a safety hazard);
- (j) Parking in a zone or area marked "no parking;"
- (k) Speeding; or
- (l) (~~Reckless/negligent driving (1) 1st offense - Parking privileges~~) Reckless or negligent driving whereby the first offense may result in parking privileges being revoked on all campuses (~~revoked~~).

(3) At the discretion of the (~~vice president of business and finance~~), safety and health director or designee(;) an accumulation of citations by (~~a staff~~) an employee member may be turned over to a private collection agency (~~for the collection of~~) to collect past due fines. Other appropriate collection procedures may be initiated as deemed necessary.

(4) Vehicles parking in a manner so as to obstruct traffic, including access to and from parking spaces and areas may be subject to a fine and may be impounded. The expenses of such impounding and storage shall be the responsibility of the registered owner or driver of the vehicle.

(5) Vehicles impounded by means of an immobilizing device shall be charged a service fee according to the current fee schedule.

(6) The college shall not be liable for loss or damage of any kind resulting from impounding and storage of vehicles.

(7) Vehicles involved in violations of these regulations may be impounded as provided for in these regulations.

(8) Persons may appeal the issuance of a citation.

(9) In the event a student fails or refuses to pay an uncontested fine which has been outstanding in excess of five days, the vice president of (~~business and~~) finance(;) and administrative services or designee(;) may initiate the following actions:

(a) Student may not be able to obtain a transcript of credits until all fines are paid(;) and

(b) Student may not receive a (~~degree/diploma/certificate~~) degree, diploma, or certificate of completion until all fines are paid.

AMENDATORY SECTION (Amending WSR 97-12-038, filed 5/30/97, effective 6/30/97)

WAC 495A-141-170 Appeal (~~proceedings/appeal~~) proceedings and appeal of fines and penalties. (1) Appeals must be presented in writing, giving full (~~particulars~~);

details of the incident, including listing witnesses, evidence, level of damage, time of day, etc.

(2) Appeals must be submitted to the (~~vice president of business and finance~~) campus safety sergeant or designee within five business days from date of citation. A decision on the appeal shall be issued within X college business days of the sergeant's receipt of the appeal.

(3) If an appeal is not resolved to the satisfaction of the alleged violator, (~~he/she~~) they shall have five additional business days from receipt of decision by the (~~vice president of business and finance~~) campus safety sergeant to appeal to the (~~parking advisory committee~~) safety and health director for a final decision, to be issued within X college business days of the director's receipt of the appeal.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495A-141-180 Parking advisory committee.

WSR 19-24-042

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 26, 2019, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-027.

Title of Rule and Other Identifying Information: Title 308 WAC, Licensing, department of; creating chapter 308-09 WAC, Military service members or spouses—Professional license.

Hearing Location(s): On January 7, 2020, at 10:00 a.m., at 405 Black Lake Boulevard S.W., Room 2108, Olympia, WA 98502. Check in with customer service counter.

Date of Intended Adoption: January 8, 2020.

Submit Written Comments to: Stephanie Sams, 405 Black Lake Boulevard S.W., Olympia, WA 98502, email ssams@dol.wa.gov, by January 6, 2020.

Assistance for Persons with Disabilities: Contact Stephanie Sams, phone 360-664-6567, email ssams@dol.wa.gov, by January 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of licensing is asking for feedback on new rules regarding professional licensure for military service members and military spouses. These rules will codify practices around

- Expedited processing of military service members and military spouse professional license applications;
- Issuance of temporary professional licenses for military spouses awaiting permanent licensure; and
- Changing an active professional license to either military status or inactive status for military service members and military spouses.

Reasons Supporting Proposal: This rule-making effort adopts long-standing policies and implements best practices around services to military service members and military spouses. These rules are in alignment with state statutes and Executive Order 19-01.

Statutory Authority for Adoption: RCW 18.340.020, 43.24.023, 43.24.130.

Statute Being Implemented: RCW 18.340.020, 43.24.130.

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: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1445.

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 subsections (5)(b)(ii) and (v) of RCW 34.05.328 as these rules relate to business and professional licensing application processes and are dictated by statute. Those changes not related to the above exemptions will have no significant cost to the agency to implement as they will be built into the agency's new business and professional licensing system.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

November 26, 2019

Damon Monroe
Rules Coordinator

Chapter 308-09 WAC

MILITARY SERVICE MEMBERS OR SPOUSES— PROFESSIONAL LICENSE

NEW SECTION

WAC 308-09-005 Purpose. (1) This chapter implements requirements for regulated professional or occupational licenses regarding licensing of military service members and military spouses and registered domestic partners.

(2) In addition to the requirements contained in this rule, there may be requirements unique to a particular profession or occupation. The authorizing statutes and rules for each professional or occupational license may provide additional requirements and information.

(3) These rules apply to professions or occupations listed in the Uniform Regulation of Business and Professions Act, chapter 18.235 RCW, RCW 18.235.020 (2)(a), and to profes-

sions or occupations listed in RCW 18.235.020 (2)(b) if adopted by the appropriate board or commission under separate rule, and to the businesses regulated under chapter 46.70 RCW.

NEW SECTION

WAC 308-09-010 Definitions. (1) "Director" means the director of the department of licensing or designee.

(2) "Employment" means self-employment and employment by any other entity.

(3) "Good standing" means the condition of a valid license authorizing a person to engage in a regulated profession or occupation. A license in good standing is not subject to any disciplinary sanctions, terms, conditions, or restrictions by the licensing authority of this state, or the jurisdiction where the licensee is licensed to practice.

(4) "License" means permission to engage in a profession or occupation as defined by chapter 18.235 or 46.70 RCW.

(5) "Licensee" means a person who possesses a license to engage in a regulated profession or occupation.

(6) "Licensing authority" means:

(a) The director of the department of licensing or designee with respect to those occupations or professions identified in chapter 46.70 RCW and RCW 18.235.020 (2)(a); or

(b) A board having licensing authority over those occupations or professions identified in RCW 18.235.020 (2)(b) if the appropriate licensing authority has adopted these rules.

(7) "Military service member" means a person serving in the military.

(8) "Military service" or "serving in the military" means being enlisted or commissioned in the United States Armed Forces (active or reserve components), the United States health service commissioned corps, the United States National Guard, or the Merchant Marines of the United States or a veteran of these branches.

(9) "Military spouse" means any person currently or previously married to or in a registered domestic partnership with a military service member during the military service member's period of active, reserve, or National Guard service.

(10) "Regulated profession or occupation" means a profession or occupation identified in chapter 46.70 RCW or RCW 18.235.020 (2)(a) or (b) if the appropriate board or commission has adopted these rules.

(11) "Standard license" means a license of standard duration and renewal requirements, as established by that program's governing statute.

(12) "Status" means the condition of a license, wherein:

(a) An "active license" status means the licensee is authorized to engage in a regulated profession or occupation;

(b) An "inactive license" status means the licensee has qualified for the license but is not currently authorized to engage in a regulated profession or occupation for nondisciplinary reasons, for example because the licensee has left Washington state as a result of their spouse or partner being deployed or stationed to a location outside of Washington state;

(c) A licensee may place their license in "military status" if they are serving in the military. A license in military status is an active license.

(13) "Substantially equivalent" means the requirements to qualify for the same or similar license in another state are materially similar to Washington requirements in terms of quality, quantity of training, or experience.

(14) "Temporary license" is a license that authorizes the licensee to engage in a regulated profession or occupation for a defined period of time during which the licensee completes additional requirements for Washington licensure that are not related to training or practice standards of the profession as noted in RCW 18.340.020 (2)(c).

(15) "Training or practice standards" means education, experience, Washington specific examination, or a combination thereof, directly relating to the state's interest in regulating a specific profession or occupation to protect the public health, safety, or welfare.

NEW SECTION

WAC 308-09-015 Military spouse requesting expedited processing. (1) A military spouse may request expedited processing when the military spouse:

(a) Holds an active license in good standing issued by another jurisdiction;

(b) Is moving to Washington as a result of their spouse's permanent change of duty station based on military orders; and

(c) Is leaving employment in another state to accompany their spouse to Washington.

(2) To request expedited processing, the military spouse applicant must:

(a) Submit the appropriate license application indicating the applicant is a military spouse, with the appropriate fee(s);

(b) Submit documentation that shows the applicant had an applicable license in good standing issued by another jurisdiction and that shows the applicant is not subject to any disciplinary action by the licensing authority of that jurisdiction;

(c) Upon request, submit any of the following:

(i) A copy of the military service member's service orders;

(ii) A letter from the military service member's commanding officer explaining the military service member's transfer of duty stations;

(iii) A copy of the DD Form 1172-2 DEERS Enrollment;

(iv) Other supporting U.S. Department of Defense or Department of Veterans Affairs documentation.

(d) Upon request, submit a copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

NEW SECTION

WAC 308-09-020 Military spouse licensing—Equivalency to Washington standards and temporary licensing.

(1) The licensing authority must process a request for temporary license as soon as practical after receipt of a completed application. The licensing authority must compare the profession or occupation requirements of the jurisdiction where the

applicant held a license to the requirements associated with the most similar license issued by the licensing authority in Washington. The licensing authority will determine whether the requirements of the jurisdiction where the applicant holds a license meet or are substantially equivalent to the requirements for the requested profession or occupation in Washington.

(2) If the licensing authority determines the Washington requirements are substantially equivalent and have been met, and that the applicant is otherwise eligible for the requested license, the licensing authority may issue a standard license.

(3) If the licensing authority determines the training and practice standards of the state where the applicant holds a license are substantially equivalent and the applicant is otherwise eligible for the requested license, the licensing authority may issue a temporary license to allow the applicant time to complete additional requirements not related to training or practice standards that are necessary to qualify for a standard license in Washington.

(4) A temporary license issued under these rules becomes null and void when any of the following occur:

- (a) A standard license is issued;
- (b) A denial of the standard license application becomes final;
- (c) The temporary license expires.

(5) Prior to the expiration date of the temporary license the temporary license holder may ask the licensing authority in writing to extend the expiration date. The licensing authority will consider extension of the expiration date based on the temporary license holder's need and documented progress toward meeting standard license requirements.

NEW SECTION

WAC 308-09-025 Converting a military spouse's active license to an inactive license. (1) The licensing authority will convert a military spouse's active license in good standing to an inactive license when the licensee:

(a) Submits a written request for the license status to be changed from active to inactive due to the licensee's spouse or registered domestic partner being deployed or stationed in a location outside Washington state.

(b) Submits, upon request, the following:

(i) A copy of service orders verifying the licensee's spouse or domestic partner is a member of the military service areas defined in WAC 308-09-010(8) and has been, or will be deployed or stationed to a location outside Washington state.

(ii) A copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

(2) The licensee must not practice in Washington while the license is in an inactive status.

NEW SECTION

WAC 308-09-030 Military spouses—Inactive licenses. (1) A military spouse may maintain an inactive license as long as the military service member is stationed or deployed in a location outside the state of Washington. Upon

return to Washington, the military spouse has six months to request their license return to active.

(2) To change their license from inactive to active, the military spouse licensee must, within six months of returning to Washington state:

(a) Submit a written request for the change to an active license;

(b) Pay the current renewal fee, if applicable. The licensee should contact the regulatory program directly to determine whether a renewal fee is due; and

(c) Complete any continuing education requirements or other requirements necessary to make the license active and compliant with current program requirements. The continuing education requirements will be determined by the regulatory program's licensing authority, but will not exceed the requirements needed for the current renewal cycle unless required by the regulatory program's authorizing statute or federal guidelines. The licensee should contact the regulatory program directly to determine what requirements must be met.

(3) The director may defer completion of continuing education for the holder of an inactive license and place the license in an active status for a period of ninety days, pending completion of education. If the holder of a license fails to comply with the continuing education requirement within the ninety-day time frame, the license will expire and the licensing authority will follow standard late renewal or cancellation processes.

NEW SECTION

WAC 308-09-040 Licensee with active licenses who enter the military. (1) A person who already holds a license issued by the licensing authority who then enters active military service may notify the department to request their license be assigned military status. This allows the licensee to maintain their license in full force and effect while in military service.

(2) The licensing authority will convert an active licensee whose license is in good standing to military status when the licensee submits all of the following:

(a) A written request for military status due to entering active military service, including the expected duration of their deployment; and

(b) A copy of service orders verifying the licensee is an active duty member of the armed forces of the United States or the other services described in WAC 308-09-010(8).

(3) The licensee may obtain military status at any time the criteria in subsection (2) of this section are met. There is no fee required for military status. Portions of the current renewal fee will not be prorated or refunded.

(4) A military status license remains in full force and effect so long as the service continues and allows practice throughout the state of Washington unless sooner suspended, canceled, or revoked by the licensing authority.

(5) A military spouse or registered domestic partner with power of attorney can act as an agent for the military service member.

NEW SECTION

WAC 308-09-045 Maintaining a military status license. (1) As long as a military service member licensee's military service continues, the licensee is not required to renew their license, but should maintain the license in military status. To maintain a military status license, the licensee should submit to the department an official copy of service orders verifying that they are an active duty member of the United States Armed Forces or other services described in WAC 308-09-010(8).

(2) The department will provide courtesy notices to the licensee's address on file using the license renewal cycles.

(3) A licensee should return the courtesy notice to the department with an official copy of their service orders.

(4) Military status license maintenance requests are accepted by the department no sooner than ninety days prior to the date the license would expire if not in military status.

(5) Continuing education is not required while the license is in military status.

NEW SECTION

WAC 308-09-050 Changing a military status license at completion of active military duty. (1) To change a military status license to an active license, the licensee must:

(a) Provide a written notice of the change in their service status;

(b) Pay the current renewal fee, if applicable. The licensee should contact the regulatory program directly prior to making the request to determine whether a renewal fee is due;

(c) Upon request, provide a copy of the orders showing active duty status has changed within the last six months, or discharge papers or DD-214 issued within the last six months.

(2) The licensee must request the military status be changed to active status within six months of honorable discharge by meeting the requirements of subsection (1) of this section.

(3) Continuing education requirements will apply after the first post-discharge renewal. These requirements will be determined by the regulatory program's licensing authority, but will not exceed the requirements needed for the current renewal cycle unless required by the program's authorizing statute or federal guidelines. The licensee should contact the regulatory program directly prior to making the request to determine what requirements must be met.

(4) If the holder of a license fails to comply with subsection (2) of this section, the licensing authority will follow standard late renewal or cancellation processes.

Preproposal statement of inquiry was filed as WSR 18-17-042.

Title of Rule and Other Identifying Information: WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license?, 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put demarcations around their dedicated dining area(s)?, and 314-03-200 Outside or extended alcohol service.

The above sections were revised to allow options other than a forty-two-inch barrier to designate areas classified as off-limits to minors in beer/wine and spirits/beer/wine restaurants. Revisions also allow licensees to reclassify areas of restaurants as open to minors for regularly scheduled or special events with prior board approval. Requirements for "minor prohibited" signs were updated, and additional technical and clarifying changes were made.

Hearing Location(s): On January 8, 2020, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98504.

Date of Intended Adoption: On or after January 22, 2019 [2020].

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by January 8, 2020.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, Americans with Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by December 30, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules revisions outline several options for designating areas classified as off-limits to minors, update signage requirements, and make additional technical and clarifying changes. Rules revisions will help ensure applicants and licensees operate under applicable statutory provisions and have clear guidelines in place.

Reasons Supporting Proposal: The proposed rules allow beer/wine and spirits/beer/wine licensees to have several alternatives other than a forty-two-inch barrier to designate areas off-limits to minors. The rules revisions will allow licensees to have variations in floor plans, while ensuring areas off-limits to minors and well-defined and have required signage posted.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.44.310.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Janette Benham, Rules Coordinator, 1025 Union Avenue, Olympia, WA, 360-664-1760; Implementation: Becky Smith, Licensing Director, 1025 Union Avenue, Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 1025 Union Avenue, Olympia, WA, 360-664-1726.

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

**WSR 19-24-050
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD**

[Filed November 26, 2019, 12:14 p.m.]

Original Notice.

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) because the rules allow additional, less restrictive options and clarify language without changing the effect of the rule. In addition, the rules relate to process requirements for applying for a license.

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.

Is exempt under RCW 19.85.025(3). RCW 66.44.310 directs the Washington state liquor and cannabis board to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years. Additional changes correct and clarify language and relate to requirements for applying for a license.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not create additional compliance costs, or administrative and regulatory burden for licensees. The rules allow additional, less restrictive options and clarify language without changing the effect of the rules. The less restrictive options are anticipated to result in compliance cost reductions for new licensees, and reduced administrative burden for new and already-established businesses.

November 26, 2019

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license?

(1) The liquor and cannabis board has the responsibility to classify what licensed premises or what portions of the licensed premises are off-limits to minors ~~((--))~~ per RCW 66.44.310(2). ~~((--))~~ Minors may not purchase, possess, or consume liquor, and may not enter any areas that are classified as off-limits to minors ~~((--))~~ per RCW 66.44.290 and 66.44.310. ~~((--))~~ The purpose of this rule is to clarify the ways in which licensees can prevent minors from consuming alcohol or entering ~~((restricted))~~ areas classified as off-limits to minors.

(2) Dedicated dining areas - If a spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee that allows minors chooses to have live music, Karaoke, patron dancing, live entertainment, or contests involving physical participation by patrons in the dedicated dining area after 11:00 p.m., the licensee must either:

(a) Request board approval to reclassify the dining area to a lounge for the period of time that live entertainment is conducted, thus restricting minors during that time; or

~~((board's licensing and regulation division))~~ board in writing at least forty-eight hours in advance that the sale, service, and consumption of liquor will end in the dedicated dining area after 11:00 p.m.

Requests or notifications may cover one event or a series of recurring events over a period of time.

~~((Barriers -- Licensees must place barriers around areas that are classified as off-limits to minors and around game rooms.~~

~~((a) The barriers))~~ A licensed premises must have a clear demarcation between dedicated dining areas and areas that are off-limits to minors.

(a) Demarcation means a dividing line that must clearly separate ~~((restricted areas, and must be at least forty-two inches high.~~

~~((b) The barriers must be permanently affixed (folding or retractable doors or other barriers that are permanently affixed are acceptable). A portable or moveable rope and stanchion is not acceptable. Those licensees that have been approved by the board for moveable barriers prior to the effective date of this rule may keep their moveable barriers until the licensee requests alterations to the premises or the premises change ownership.~~

~~((c) Structures where customers can sit or stand and consume food or liquor are not acceptable as a barrier.~~

~~((d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.~~

~~((e))~~ areas classified as off-limits to minors from dedicated dining areas.

(b) Demarcation options available to applicants and licensees, subject to approval by the board, include:

(i) Visibly different and contrasting flooring;

(ii) Steps or ramps up or down;

(iii) Walls, half-walls, or forty-two inch barriers, where entrances to the restricted areas are not more than ten feet wide;

(iv) Permanently affixed stanchions, pillars, or posts at least six inches wide and placed no more than ten feet apart;

(v) Stationary planters at least six inches wide and placed no more than ten feet apart; and

(vi) Permanently affixed floor lighting or beacons placed no more than ten feet apart.

(c) Other demarcation options may be approved at the board's discretion.

(d) Demarcation does not include tape, paint, or stickers on floors, walls, or ceilings.

(e) Once the floor plan is approved by the board the demarcation cannot be moved or changed without prior board approval.

(f) "Minor prohibited" signs, as required by WAC 314-11-060(1), must be posted ~~((at each entrance to restricted areas.~~

~~((4))~~ and clearly visible to patrons who are:

(i) Approaching the area(s) classified as off-limits to minors; and

(ii) Inside the area(s) classified as off-limits to minors.

(4) A spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee may request the board reclassify their off-limits area(s) as open to minors for regularly scheduled or special events. Reclassifying an off-limits area is considered an alteration to a licensed premises under WAC 314-03-300 and must be approved by the board prior to the event.

(5) If the business allows minors, the business's primary entrance must open directly into a dedicated dining area or into a neutral area, such as a lobby or foyer, that leads directly to a dedicated dining area. Minors must be able to access restrooms without passing through a lounge or other age-restricted area.

~~((5))~~ (6) Floor plans - When applying for a license, the applicant must provide to the ~~(board's licensing and regulation division two copies of)~~ board a detailed drawing of the entire premises. The drawing must:

(a) Be drawn ~~((one foot to one quarter inch))~~ to scale;
 (b) Have all ~~((rooms))~~ areas labeled according to their use; e.g., dining ~~((room))~~, lounge, ~~((game room))~~ gaming, kitchen, etc.; and

(c) Have all ~~((barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.~~

~~((6))~~ demarcations that separate dedicated dining areas from areas off-limits to minors labeled and described in detail.

(7) Convention centers - To qualify ~~((for))~~ as a convention center ~~((there must be))~~ a premises must have two or more rooms that provide space and accommodations for private events only. ~~((Licensees holding a))~~ Convention center licensees may only sell alcohol for private events at the licensed premises.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put ~~((barriers))~~ demarcations around their dedicated dining area(s)? Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times are only required to place ~~((the barriers))~~ demarcations described in WAC 314-02-025~~((2))~~ around dedicated dining areas for the purpose of paying the lower annual license fee (fifty percent to ninety-nine percent dedicated dining area). Restaurants that do not allow minors at any time and do not wish to have ~~((barriers))~~ demarcations around their dining area(s) must pay the higher annual license fee (less than fifty percent dedicated dining area). (See WAC 314-02-020 for an explanation of fees.)

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-03-200 Outside or extended alcohol service. A licensee must request approval from the board's licensing division for ongoing outside or extended alcohol service. The following conditions must be met:

(1) The area must be enclosed with a permanent or movable barrier a minimum of forty-two inches in height~~((and))~~.

(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of

the premises, minors are prohibited in the outside or extended alcohol service area.

(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(4) Must have leasehold rights to the area and have and be connected to the licensed premises.

(5) Openings into and out of the outside area cannot exceed ten feet. If there is more than one opening along one side, the total combined opening may not exceed ten feet.

(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a forty-two inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed ~~((at a minimum of))~~ no more than ten feet apart;

(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;

(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;

(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) **Limited exception.** The board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

WSR 19-24-066

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 27, 2019, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-116.

Title of Rule and Other Identifying Information: WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage, 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization, and 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.

Hearing Location(s): On January 7, 2020, 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 January 8, 2020.

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 January 7, 2020.

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 December 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these rules and the following changes are being made:

WAC 182-535A-0040, the rule is being amended to add language to clarify that all orthodontic services require prior authorization; subsection (5)(d) clarify that case studies must be done in conjunction with interceptive, limited or comprehensive treatment only; subsection (6)(c) remove replacement retainer from the covered list; and subsection (7)(b) add requirement for completion of the new discontinuation of services form.

WAC 182-535A-0050, the rule is being amended to remove subsections (2) and (3) - redundant language.

WAC 182-535A-0060, the rule is being amended in subsection (4)(c) to add [that] the agency may recoup payment for services that are not rendered; subsection (6)(c)(i) and (7)(c)(i) change payment frequency for continuing follow-up treatment to once every three months during treatment; subsection (6)(c)(ii) change requirements from six to three periodic orthodontic treatment visits if extension of time is necessary; and subsection (7)(c)(ii) change requirements from fourteen to eight periodic orthodontic treatment visits if extension of time is necessary.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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: Janice Tadeo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1583.

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.

November 27, 2019

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-11-028, filed 5/7/19, effective 7/1/19)

WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage. (~~Coverage and authorization of covered services is subject to the requirements and limitations in this chapter and other applicable WAC.~~) Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team.

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyrposis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency (~~may~~) covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis (~~and~~) when (~~prior authorized~~) the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary (~~as defined in WAC 182-500-0070~~);

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); or

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC(~~or~~

~~(e) Case studies that do not include a definitive orthodontic treatment plan~~).

(5) The agency covers the following orthodontic treatment and orthodontic-related services ~~((with prior authorization when medically necessary))~~:

(a) Interceptive orthodontic treatment.

(b) Limited orthodontic treatment. ~~((The agency may approve limited orthodontic treatment for treatment of a single impacted tooth.))~~

(c) Comprehensive full orthodontic treatment on adolescent dentition ~~((see subsection (8)(a) of this section for information on limitation extensions))~~.

(d) A case study when done in conjunction with interceptive, limited, or comprehensive orthodontic treatment only.

(e) Other orthodontic treatment subject to review for medical necessity as determined by the agency.

(6) The agency covers the following orthodontic-related services ~~((with prior authorization when medically necessary))~~:

(a) Clinical oral evaluations according to WAC 182-535-1080.

(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.

(c) ~~((Replacement retainer.~~

~~((+)))~~ Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:

(a) ~~((Keep clear documentation))~~ Document in the client's record ~~((explaining))~~ why treatment was discontinued or not completed, or why treatment goals were not achieved.

(b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization. ~~((+)))~~ When the medicaid agency authorizes an interceptive orthodontic treatment, limited orthodontic treatment, full orthodontic treatment, or orthodontic-related services for a client, including a client eligible for services under the EPSDT program, that authorization indicates only that the specific service is medically necessary; authorization

is not a guarantee of payment. The client must be eligible for the covered service at the time the service is provided.

~~((2))~~ For orthodontic treatment of a client with cleft lip, cleft palate, or other craniofacial anomaly, prior authorization is not required if the client is being treated by an agency recognized craniofacial team, or an orthodontic specialist who has been approved by the agency to treat cleft lip, cleft palate, or other craniofacial anomalies.

~~(3)~~ Subject to the conditions and limitations of this section and other applicable WAC, the agency requires prior authorization for orthodontic treatment and/or orthodontic-related services for other dental malocclusions that are not listed in WAC 182-535A-0040(1-))

AMENDATORY SECTION (Amending WSR 19-11-028, filed 5/7/19, effective 7/1/19)

WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment. (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) A provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) Providers must deliver services and procedures that are of acceptable quality to the agency.

~~(4)~~ The agency may recoup payment ~~((for)),~~ not limited to services;

(a) Determined to be below the standard of care; or

(b) Of an unacceptable product quality; or

(c) That are not rendered.

~~((4))~~ (5) **Interceptive orthodontic treatment.** The agency pays for interceptive orthodontic treatment on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.

~~((5))~~ (6) **Limited orthodontic treatment.** The agency pays for limited orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The ~~((replacement of brackets and lost or broken))~~ placement of orthodontic appliances;

(ii) Appliance removal;

(iii) The initial retainer fee; and

(iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every ~~((six weeks))~~ three months during treatment ~~((, beginning three months after the initial appliance placement))~~.

(ii) Payment for treatment provided in addition to the ~~((six))~~ three periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((6))~~ (7) **Comprehensive full orthodontic treatment.**

The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The ~~((replacement of brackets and lost or broken))~~ placement of orthodontic appliances;

(ii) Appliance removal;

(iii) The initial retainer fee; and

(iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every ~~((six weeks))~~ three months during treatment ~~((beginning three months after the initial appliance placement))~~.

(ii) Payment for treatment provided in addition to the ~~((fourteen))~~ eight periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((7))~~ (8) **Case study.** The agency pays for a case study, which includes:

(a) Preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film and panoramic film);

(b) Formation of diagnosis and treatment plan from such records; and

(c) Formal case conference.

~~((8))~~ (9) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

~~((9))~~ (10) Orthodontic providers who are in agency-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((10))~~ (11) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the client's responsibility. The agency does not pay for these services.

~~((11))~~ (12) The agency does not pay for orthodontic treatment provided after the client's twenty-first birthday. Payment for treatment that continues after the client's twenty-first birthday is the client's responsibility ~~((of the client))~~.

~~((12))~~ (13) The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible.

~~((13))~~ (14) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.

WSR 19-24-071

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed December 2, 2019, 8:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-04-024.

Title of Rule and Other Identifying Information: Ignition interlock device security and unlock codes.

Hearing Location(s): On January 9, 2020, at 8:30 a.m., at 106 11th Avenue S.W., Room 4015, Olympia, WA 98504.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Avenue S.W., email wsprules@wsp.wa.gov, by January 8, 2020.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, email wsprules@wsp.wa.gov, by January 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ignition interlock technology has advanced significantly in recent years to accommodate a secure and reliable method of remotely unlocking ignition interlock devices during a lockout condition. This rule would allow ignition interlock manufacturers to utilize this technology while, at the same time, creating a secure and accountable method of testing and oversight of any use by the Washington state patrol (WSP).

Reasons Supporting Proposal: With the proper safeguards in place, lockout override technology is beneficial to all of the parties involved and allows for a more streamlined process while maintaining public safety and accountability.

Statutory Authority for Adoption: RCW 43.43.395, 43.37.005, 46.04.215.

Statute Being Implemented: RCW 43.43.395, 43.37.005, 46.04.215.

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

Name of Proponent: WSP, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: WSP, Ignition Interlock Unit, Seattle, Washington, 206-720-3018.

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.

December 2, 2019

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-090 Ignition interlock device security.

(1) A manufacturer and its vendors, service center(s), and ignition interlock technicians must take all steps necessary to prevent tampering or physical circumvention of an ignition interlock device. These steps must include:

(a) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;

(b) Installation and/or use of all anticircumvention features required under this chapter;

(c) Breath anticircumvention features such as alternating breath flow, hum tone, breath temperature and any other impaired driving section approved anticircumvention features must be activated during all start up and random breath tests;

(d) Changes in software and ignition interlock device configuration, including anticircumvention features and the Washington state configuration profile will only be administered by the manufacturer.

(2) In addition, a service center or ignition interlock technician will affix to the ignition interlock device a label containing the following notation: "Warning - This ignition interlock device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this ignition interlock device may subject you to criminal prosecution. For more information, call (insert manufacturer, vendor or service center's toll free number)."

(3) No owner or employee of a manufacturer, vendor or service center may authorize ~~((or assist with the disconnection of an ignition interlock device, or enable))~~ or employ the use of any ~~((("emergency bypass" mechanism or any other "bypass"))~~) procedure ~~((that))~~ which allows a ~~((person restricted to use the))~~ vehicle equipped with a functioning ignition interlock device~~((;))~~ to start or operate ~~((a vehicle))~~ without providing all required breath samples. ~~((Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's, vendor's, service center, and/or ignition interlock technician's certification under chapter 204-50 WAC.))~~

(4) Except as provided in WAC 204-50-092, the sale or use of any type of ~~((remote code))~~ lockout override allowing ~~((a restricted driver))~~ any user to bypass a lockout condition ~~((or any user to not provide a breath sample on vehicle start up))~~ is prohibited.

(5) All known ignition interlock device circumventions or tampering must be reported to the impaired driving section in an impaired driving section approved electronic format within seven calendar days of determining that an ignition interlock device was circumvented or tampered with.

NEW SECTION

WAC 204-50-092 Lockout override. (1) Except as provided in subsection (2) of this section, the manufacturer may, in its discretion, authorize and provide a lockout override when a lockout occurs.

(a) The lockout override shall deactivate the lockout condition for a period of up to four hours. If the device has not

been serviced by a service center prior to the expiration of the authorized lockout override period, a lockout override shall not be authorized again until the device has been physically inspected and the calibration checked at a service center.

(b) After a lockout override has been authorized by the manufacturer, the lockout override must be activated within a maximum of twenty hours. After twenty-four hours, the lockout override shall no longer be capable of overriding a lockout.

(c) The activation of a lockout override shall not render the interlock device or any attached components inactive. The interlock device must operate in the same manner as required in chapter 204-50 WAC, including all start up and random breath tests.

(d) All lockout override procedures must be randomized or secured to prevent unauthorized duplication during future lockout conditions or on other ignition interlock devices.

(2) A lockout override shall not be authorized in any of the following circumstances:

(a) To allow an ignition interlock technician to override a lockout; or

(b) To override any temporary lockout or mandatory waiting period; or

(c) When the vehicle equipped with an ignition interlock device is located in a state other than Washington or outside the United States, unless a lockout override is authorized by the laws of the jurisdiction in which the vehicle is located.

(3) All lockout override procedures must be tested by the impaired driving section prior to approval and use in Washington.

(a) Annual testing and evaluation of any lockout override method approved for use will be completed by the impaired driving section in accordance with WAC 204-50-040.

(b) Any proposed modification to an approved lockout override procedure must be completed in accordance with WAC 204-50-050.

(4) A manufacturer must notify the impaired driving section if any other lockout override procedures are in use in other jurisdictions and provide safeguards to ensure unapproved lockout override procedures will not be used in Washington.

(5) The authorization and activation of any lockout override must be reported by the manufacturer to the impaired driving section in an approved format within seven calendar days of authorization by the manufacturer.

(6) The activation of any lockout override must be displayed within the data log of the device, which is viewable by the impaired driving section. The data log must display all standard data log information while the lockout override is active.

(7) As used in this section, "lockout override" means a secure and randomized code, randomized procedure, or manufacturer controlled remote connection procedure used to temporarily override or deactivate a lockout condition on a certified ignition interlock device.

WSR 19-24-075
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed December 2, 2019, 12:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-080.

Title of Rule and Other Identifying Information: WAC 182-513-1205 Determining eligibility for noninstitutional coverage in an alternate living facility (ALF).

Hearing Location(s): On January 7, 2020, 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 January 8, 2020.

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 January 7, 2020.

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 December 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-513-1205 to change "department-contracted" to "medicaid-contracted" when referring to alternative living facilities.

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.

December 2, 2019
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility (ALF).

(1) This section describes the eligibility determination for noninstitutional coverage for a client who lives in (~~(a department-contracted)~~) an agency-contracted alternate living facility (ALF) defined under WAC 182-513-1100.

(2) The eligibility criteria for noninstitutional Washington apple health (medicaid) coverage in an ALF follows SSI-related rules under WAC 182-512-0050 through 182-512-0960, with the exception of the higher income standard under subsection (3) of this section.

(3) A client is eligible for noninstitutional coverage under the categorically needy (CN) program if the client's monthly income after allowable exclusions under chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL) defined under WAC 182-513-1100; and

(b) Is less than or equal to the client's assessed state rate at (~~(a department-contracted)~~) an agency-contracted facility. To determine the CN standard: $(y \times 31) + \$38.84$, where "y" is the state daily rate. \$38.84 is based on the cash payment standard for a client living in an ALF setting under WAC 388-478-0006.

(4) A client is eligible for noninstitutional coverage under the medically needy (MN) program if the client's monthly income after allowable exclusions under chapter 182-512 WAC is less than or equal to the client's private rate at (~~(a department-contracted)~~) an agency-contracted facility. To determine the MN standard: $(z \times 31) + \$38.84$, where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(5) For both CN and MN coverage, a client's countable resources cannot exceed the standard under WAC 182-512-0010.

(6) The agency or the agency's designee approves CN noninstitutional coverage for twelve months.

(7) The agency or the agency's designee approves MN noninstitutional coverage for a period of months described in WAC 182-504-0020 for an SSI-related client, provided the client satisfies any spenddown liability under chapter 182-519 WAC.

(8) Clients who receive medicaid personal care (MPC) or community first choice (CFC) pay all of their income to the ALF except a personal needs allowance under WAC 182-513-1105.

(9) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the payment under this subsection.

WSR 19-24-077
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed December 2, 2019, 2:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-068.

Title of Rule and Other Identifying Information: WAC 392-172A-05085 Due process hearing request filing and response, 392-172A-05090 Resolution process, 392-172A-05100 Hearing rights, 392-172A-05160 Appeal of placement decisions and manifestation determinations, 392-137-190 through 392-137-200, student transfers appeals, and chapter 392-101 WAC, Superintendent of public instruction—Administrative practices and procedures.

Hearing Location(s): On January 7, 2020, at 10:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 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 10:00 a.m.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Evan Gaffey, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email evan.gaffey@k12.wa.us, fax 360-754-4201, by January 7, 2020.

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 December 31, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Certain appeals submitted to OSPI, including special education due process hearing requests and nonresident student transfer appeals, are assigned to the office of administrative hearings (OAH) for adjudication. Currently, these appeals are filed with OSPI and transmitted to OAH. This proposal would simplify the filing and transmittal process by allowing these appeals to be submitted directly to OAH from the filing party.

Reasons Supporting Proposal: The proposed change would simplify the filing process, clarify service requirements, reduce staff time and resource use for both OSPI and OAH staff, and clarify cited authorities. The impact on filing parties would be a change of filing methods and addresses, adopting federal standards for certain timelines, and clarity on service requirements.

Statutory Authority for Adoption: RCW 34.05.220, 28A.225.230, 28A.155.090; 34 C.F.R. Part 300; 42 U.S.C. 1400.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Evan Gaffey, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6333.

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).

December 2, 2019

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-101-001 Authority. The authority for this chapter is RCW 34.05.220 which authorizes the office of superintendent of public instruction to adopt rules governing the formal and informal procedures prescribed or authorized by chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-101-005 Administrative practices regarding hearings and rule proceedings. (~~The superintendent of public instruction is~~) (1) Administrative practices before and pertaining to the office of superintendent of public instruction are governed by the state Administrative Procedure Act, chapter 34.05 RCW, the Washington State Register Act, chapter 34.08 RCW, and the state office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of ("rule" making proceedings and the conduct of "contested case" hearings) "agency action," "adjudicative proceedings," and "rule making" as these terms are defined in RCW 34.05.010 ((2) and (3). Appearance in representative capacities before the superintendent of public instruction; the procedures and conditions governing petitions for declaratory rulings or the adoption, amendment, or repeal of a rule; and, the standards, procedures and conditions governing the conduct of contested case hearings and proceedings by or before the superintendent of public instruction shall be as set forth in rules of the state code reviser and the office of administrative hearings as now or hereafter amended. The rules of the state code reviser are currently set forth in chapters 1-08 and 1-21 WAC. The rules of the office of administrative hearings are currently set forth in chapter 10-08 WAC)) The rules of the state code reviser provided in chapter 1-21 WAC, and as hereafter amended, and the rules of the office of administrative hearings provided in chapter 10-08 WAC, and as hereafter amended, shall govern procedures and practices before the superintendent of public instruction for the following: Petitions for declaratory rulings; petitions for adoption, amendment, or repeal of a rule; and the conduct of adjudicative proceedings. All other regulatory actions and hearings conducted by the office of superintendent of public instruction may be conducted informally at the discretion of the superintendent.

AMENDATORY SECTION (Amending WSR 15-15-107, filed 7/16/15, effective 8/16/15)

WAC 392-101-010 Conduct of administrative hearings. The office of superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the

authority to render the final decision by the superintendent of public instruction:

- (1) Nonresident transfer appeals pursuant to chapter 392-137 WAC ((392-137-055(2))).
- (2) Special education hearings pursuant to chapter 392-172A WAC or as amended.
- (3) Equal educational opportunity complaints pursuant to WAC ((392-190-075)) 392-190-079.
- (4) Professional certification appeals pursuant to WAC 181-86-150.
- (5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.
- (6) Traffic safety education appeals pursuant to WAC 392-153-001 through 392-153-070.
- (7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.
- (8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.
- (9) Appeals of enforcement actions withholding or recovering funds, in whole or in part, taken as a result of consolidated program reviews of federal programs conducted in accordance with 34 C.F.R. Sections 80.40 and 80.43.

AMENDATORY SECTION (Amending WSR 91-02-095, filed 1/2/91, effective 2/2/91)

WAC 392-101-015 Determination of indigency—Provision of free transcript. A determination of indigency shall be made for all persons wishing the provision of a free transcript of proceedings pursuant to the following standards:

(1) Any ~~((person(s)))~~ person receiving one or more of the following types of public assistance programs: ~~((Aid to families with dependent children, general assistance, poverty related veterans' benefits, food stamps, refugee resettlement benefits, medicaid, or))~~

- (a) Temporary assistance for needy families;
- (b) Aged, blind, or disabled assistance benefits;
- (c) Medical care services under RCW 74.09.035;
- (d) Pregnant women assistance benefits;
- (e) Poverty-related veterans' benefits;
- (f) Food stamps or food stamp benefits transferred electronically;
- (g) Refugee resettlement benefits;
- (h) Medicaid; or
- (i) Supplemental security income.

(2) Any ~~((person(s)))~~ person receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

	ADMINISTRATIVE SERVICES Legal Services Old Capitol Building, FG-11 Olympia, WA 98504-3211
DETERMINATION OF INDIGENCY	

I. APPLICANT INFORMATION

APPLICANT'S NAME	CASE NUMBER
ADDRESS	TELEPHONE NUMBER ()
CITY/STATE/ZIP	SOCIAL SECURITY NUMBER (optional) DATE OF BIRTH
EMPLOYER	OCCUPATION
EMPLOYER ADDRESS	
CITY/STATE/ZIP	
STUDENT'S NAME	

II. SUPPORT OBLIGATIONS

FATHER'S NAME	Total Number of Dependents (include applicant in count) _____
MOTHER'S NAME	MOTHER'S MAIDEN NAME

III. PRESUMPTIVE ELIGIBILITY

YES NO

A. Does applicant receive public assistance. If "yes" then in what form:

<input type="checkbox"/> AFDC ¹	<input type="checkbox"/> Food Stamps	<input type="checkbox"/> Medicaid	<input type="checkbox"/> Refugee Resettlement Benefits
<input type="checkbox"/> SSI ²	<input type="checkbox"/> General Assistance	<input type="checkbox"/> Poverty-Related V.A. Benefits ³	<input type="checkbox"/> Other; specify _____

B. Is the annual income of applicant (after taxes), 125% or less of the current federally established poverty level?
 Specify income amount after taxes \$ _____

If Section III, A or B applies (please provide documentation) and complete Section IX only. If Section III is not applicable, complete all remaining sections.

- 1 Aid to Families with Dependent Children
- 2 Supplemental Security Income
- 3 Veteran's Administration

IV. MONTHLY INCOME

a. Monthly take-home pay (after deductions)	\$
b. Spouse's take-home pay (enter N/A if conflict)	\$
c. Contribution from any person domiciled with applicant and helping to defray his/her basic living costs	\$
d. Interest, dividends, or other earnings	\$
e. Non-poverty based assistance (Unemployment, Social Security, Worker's Compensation, pension, annuities) (do not include poverty-based assistance. See IV a.)	\$
f. Other income (specify)	\$
TOTAL INCOME	\$

AMENDATORY SECTION (Amending WSR 90-19-068, filed 9/17/90, effective 10/18/90)

WAC 392-137-190 Appeal notice—Denial of release or admission. Requests for an appeal shall be addressed to the superintendent of public ~~((instruction))~~ instruction's designee and shall contain the following:

(1) The name, age, grade level, and residence address, if any, of the student.

(2) The name, mailing address, if any, and the legal relationship of the person, if any, filing the notice of appeal on behalf of the student.

(3) In the case of denial of release, documentation indicating the conditions of WAC 392-137-155 have been met and a copy of all documents or other written evidence submitted to the resident district which indicates the grounds for the requested release.

(4) In the case of denial of admission, documentation that the nonresident district has failed to comply with the standards and procedures specified in WAC 392-137-205.

AMENDATORY SECTION (Amending WSR 97-20-003, filed 9/17/97, effective 10/18/97)

WAC 392-137-195 Filing of notices of appeal. ~~((There is no prescribed method for transmitting appeals to the superintendent of public instruction but receipt of such written appeals by the superintendent of public instruction is a condition precedent to jurisdiction. The material may be hand-delivered or mailed to the following address:~~

~~Legal Services~~

~~Office of the Superintendent of~~

~~Public Instruction~~

~~P.O. Box 47200~~

~~Olympia, Washington 98504-7200))~~ The superintendent of public instruction's designee must receive a notice of appeal as a condition precedent to exercising jurisdiction under this chapter. The notice of appeal must be filed via mail, by fax, or electronically directly with the office of superintendent of public instruction's designee, the office of administrative hearings, at the following:

Mail:

Office of Administrative Hearings

600 University Street, Suite 1500

Seattle, WA 98101-3126

Fax: 206-587-5135

Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-137-200 Appeal to SPI—Denial of application by nonresident district.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05085 Due process hearing request filing and response. (1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must ~~((file))~~:

(i) Serve the request, which must remain confidential, directly with the other party; and

(ii) File a copy of the request via mail, fax, or electronically directly with the office of superintendent of public instruction's designee, the office of administrative hearings, at the following:

Mail:

Office of Administrative Hearings

600 University Street, Suite 1500

Seattle, WA 98101-3126

Fax: 206-587-5135

Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.

~~((The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.))~~ Filing of a due process hearing request is perfected on the later of the date the request is served on the other party or the date the copy of the request is received by the office of superintendent of public instruction's designee, the office of administrative hearings.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party ~~((receiving))~~ served with the due

process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice that a parent has

~~((filed))~~ served a due process hearing request ~~((with))~~ on the district and ~~((provided))~~ filed a copy of the due process request ~~((to the OSPI administrative resources section))~~ with the office of administrative hearings, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the parent's filing of the due process hearing request under WAC 392-172A-05085, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-03100(6), the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting within fifteen days as specified in subsection (1) of this section or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 (~~and 392-172A-05165~~).

(1) Any party to a due process hearing has the right to:

(a) Be represented by counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing (~~(, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160)~~);

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section (~~(, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165)~~), each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section, the timelines addressed in WAC 392-172A-05110, and the timelines and procedures for civil actions addressed in WAC 392-172A-05115, the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05146, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of (~~receiving notice of~~) the date the due process hearing request is filed; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the (~~receipt of~~) date the due process hearing request is filed.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

WSR 19-24-080
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2019-03—Filed December 3, 2019,
9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-129.

Title of Rule and Other Identifying Information: Confidential communication.

Hearing Location(s): On January 24, 2020, at 11:00 a.m., at 5000 Capitol Boulevard, Tumwater, WA.

Date of Intended Adoption: January 28, 2020.

Submit Written Comments to: Meg L. Jones, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by January 24, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email melaniew@oic.wa.gov, by January 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner proposes the rules to harmonize the provisions in ESSB 5889 (chapter 56, Laws of 2019) with federal and state requirements governing communication about health care coverage, and establish a form as required for enrollees to use to direct issuers where to send communication to the enrollee about the health services referenced in the law.

Reasons Supporting Proposal: Numerous federal and state laws require issuers to communicate about health care coverage with their members. These laws are constructed around an industry norm that directs these communications to the subscriber. Covered dependents may ask that those communications be sent to a different address than the subscriber's under state and federal law, but for some types of information, specific reasons must be provided, such as domestic violence concerns. ESSB 5889 (chapter 56, Laws of 2019) establishes a specific category of services (sensitive health services) for which communication must be sent to the dependent enrollee when they are a 'protected individual' under the law and not to the subscriber. The business requirements of HIPAA and other laws related to health plan operations are unchanged unless they relate to a communication to

the subscriber or enrollee. These rules are intended to provide guidance for issuers as to how to administer the nondisclosure directive requirements of ESSB 5889 in alignment with information release required to administer coverage effectively on the member's behalf.

Statutory Authority for Adoption: ESSB 5889 (chapter 56, Laws of 2019); RCW 48.02.060.

Statute Being Implemented: ESSB 5889 (chapter 56, Laws of 2019).

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: Meg L. Jones, P.O. Box 40260, Olympia, WA 98504, 360-725-7169; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504, 360-725-7117; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504, 360-725-7050.

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 Tabba Alam, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7170.

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.

December 3, 2019

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-24-003, filed 11/23/16, effective 12/24/16)

WAC 284-04-120 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

Examples.

(a) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(ii) Uses short explanatory sentences or bullet lists whenever possible;

(iii) Uses definite, concrete, everyday words and active voice whenever possible;

(iv) Avoids multiple negatives;

(v) Avoids legal and highly technical business terminology whenever possible; and

(vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(b) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(i) Uses a plain-language heading to call attention to the notice;

(ii) Uses a typeface and type size that are easy to read;

(iii) Provides wide margins and ample line spacing;

(iv) Uses boldface or italics for key words; and

(v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(c) Notices on websites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the website (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

This requirement applies to the nondisclosure directive that issuers must provide to enrollees to comply with RCW 48.43.505 as referenced in WAC 284-04-510 and 284-04-515.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the insurance commissioner of the state.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes and about whom the licensee has nonpublic personal information, or that individual's legal representative.

Examples.

(a) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(b) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(c) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(d) An individual is a licensee's consumer if:

(i) The individual is a beneficiary of a life insurance policy underwritten by the licensee;

(ii) The individual is a claimant under an insurance policy issued by the licensee;

(iii) The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(iv) The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(v) The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under WAC 284-04-400, 284-04-405, and 284-04-410.

(e) Provided that the licensee provides the initial, annual and revised notices under WAC 284-04-200, 284-04-205, and 284-04-220 to the plan sponsor, group or blanket insurance policy holder or group annuity contract holder, workers' compensation plan participant and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under WAC 284-04-400, 284-04-405, and 284-04-410, an individual is not the consumer of such licensee solely because he or she is:

(i) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(ii) Covered under a group or blanket insurance policy or annuity contract issued by the licensee; or

(iii) A beneficiary in a workers' compensation plan.

(f) The individuals described in (e)(i) through (iii) of this subsection are consumers of a licensee if the licensee does not meet all the conditions of (e) of this subsection.

(g) In no event shall such individuals, solely by virtue of the status described in (e)(i) through (iii) of this subsection, be deemed to be customers for purposes of this chapter.

(i) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(ii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in section 603(f) of the Federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote twenty-five percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10) "Customer relationship" means continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

Examples.

(a) A consumer has a continuing relationship with a licensee if:

(i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(b) A consumer does not have a continuing relationship with a licensee if:

(i) The consumer applies for insurance but does not purchase the insurance;

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction;

(iii) The individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

(v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(vi) The customer's policy is lapsed, expired, paid up or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of state or federal authority or promotional materials;

(vii) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(viii) For the purposes of this chapter, if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

Financial institution does not include:

(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(b) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means: Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(a) Relates to the physical, mental or behavioral condition of an individual; or

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(c) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law or a health care facility.

(15) "Health information" means any information or data, except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16) "Insurer" includes health care service contractor, HMO, and fraternal benefit society.

(17) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(18) "Licensee" means all licensed insurers, health care service contractors, HMO's, and fraternal benefit societies, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance law of this state.

(a) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in WAC 284-04-100 through 284-04-400 or the notice and policy development and implementation procedures of WAC 284-04-500 if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and

(ii) The licensee complies with the principal's privacy policies and does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

(b)(i) Subject to (b)(ii) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to chapters 48.15 RCW and 284-15 WAC.

(ii) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in WAC 284-04-100 through 284-04-400 provided:

(A) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under WAC 284-04-405, except as permitted by WAC 284-04-410 and 284-04-415; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW"

(19) "Licensee" shall also include an unauthorized insurer that places business through a licensed excess line broker in this state, but only in regard to the excess line placements placed pursuant to of this state's laws.

(20) "Nonaffiliated third party" means any person except:

(a) A licensee's affiliate; or

(b) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4 (k)(4)(H) or insurance company investment activities of the type described in section 4 (k)(4)(I) of the Federal Bank Holding Company Act (12 U.S.C. 1843 (k)(4)(H) and (I).)

(21) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(22)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on a list described in (a)(i) of this subsection; or

(iii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is

derived without using any personally identifiable financial information that is not publicly available.

Examples of lists.

Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(23) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(24) "Personally identifiable financial information" means any information:

(a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from any transaction involving an insurance product or service between a licensee and a consumer; or

(c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(25)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (i) Federal, state or local government records;
- (ii) Widely distributed media; or
- (iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a website that is available to the general public on an unrestricted basis. A website is not restricted merely because an internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

AMENDATORY SECTION (Amending WSR 01-03-034, filed 1/9/01, effective 2/9/01)

WAC 284-04-510 Right to limit disclosure of health information. (1) Notwithstanding other provisions of this chapter, a licensee shall limit disclosure of any information, including health information, about an individual who is the subject of the information if the individual clearly states in writing that disclosure to specified individuals of all or part of that information could jeopardize the safety of the individual. Disclosure of information under this subsection shall be limited consistent with the individual's request, such as a request for the licensee to not release any information to a spouse to prevent domestic violence.

(2) For licensees that offer health benefit coverage, the licensee must make the nondisclosure directive form specified by the commissioner clearly and conspicuously available on its website. The form must also be accessible through a mobile friendly configuration of the licensee's website. The form must be presented so that it can be completed online and submitted. A licensee must also accept printed hard copies of

the form and must make staff available by phone to complete a protected individual's directive over a recorded line.

(a) A licensee offering health benefit coverage must post clear instructions about how an enrollee may provide the same directive by calling the licensee on a recorded phone line.

(b) The opportunity to complete a nondisclosure directive must be made available to anyone who qualifies as a protected individual. When receiving a directive over a recorded phone line, the carrier must take reasonable steps to confirm the caller is a protected individual. A protected individual is an adult who is covered as a dependent, including as a registered domestic partner, under the licensee's health plan or a minor who may obtain health care without the consent of a parent or legal guardian pursuant to state or federal law, and who is competent to provide informed consent for care.

(c) For purposes of this requirement, in addition to non-public personal health information, when a request is made, a health carrier must apply the protected individual's restriction to the following associated types of communication:

(i) Bills from and attempts to collect payment by the licensee;

(ii) A notice of adverse benefit determination;

(iii) Explanation of benefit notices;

(iv) Requests for additional information regarding a claim for sensitive health care services;

(v) A notice of a contested claim; and

(vi) The name and address of a provider, a description of services provided or other visit information.

(d) A licensee offering health benefit coverage must apply a protected individual's directive to the entirety of the individual's nonpublic health information and associated communication if the protected individual makes such a request. For sensitive health services information, regardless of the address associated with the enrollee, a carrier must ensure that the protected individual is the addressee, and must not address the communication to the subscriber.

(3) Notwithstanding any insurance law requiring the disclosure of information, a licensee shall not disclose nonpublic personal health information concerning health services related to reproductive health, sexually transmitted diseases, chemical dependency and mental health, including mailing appointment notices, calling the home to confirm appointments, or mailing a bill or explanation of benefits to a policyholder or certificate holder, if the individual who is the subject of the information makes a written request. In addition, a licensee shall not require an adult individual to obtain the policyholder's or other covered person's authorization to receive health care services or to submit a claim.

~~((3))~~ (4)(a) A licensee shall recognize the right of any minor who may obtain health care without the consent of a parent or legal guardian pursuant to state or federal law, to exclusively exercise rights granted under this section regarding health information; and

(b) Shall not disclose any nonpublic personal health information related to any health care service to which the minor has lawfully consented, including mailing appointment notices, calling the home to confirm appointments, or mailing a bill or explanation of benefits to a policyholder or other covered person, without the express authorization of the

minor. In addition, a licensee shall not require the minor to obtain the policyholder's or other covered person's authorization to receive health care services or to submit a claim as to health care which the minor may obtain without parental consent under state or federal law.

~~((4))~~ (5) When requesting nondisclosure, the individual shall include in the request:

- (a) Their name and address;
- (b) Description of the type of information that should not be disclosed;
- (c) In the case of reproductive health information, the type of services subject to nondisclosure, unless the individual is enrolled in a licensee's health plan, in which case the requirements in subsection (2) of this section apply;
- (d) The identity or description of the types of persons from whom information should be withheld;
- (e) Information as to how payment will be made for any benefit cost sharing;
- (f) A phone number or email address where the individual may be reached if additional information or clarification is necessary to satisfy the request.

AMENDATORY SECTION (Amending WSR 01-03-034, filed 1/9/01, effective 2/9/01)

WAC 284-04-515 Authorizations. (1) A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:

- (a) The identity of the consumer or customer who is the subject of the nonpublic personal health information.
 - (b) A general description of the types of nonpublic personal health information to be disclosed.
 - (c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used.
 - (d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed.
 - (e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making such a revocation.
- (2) An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four months.
- (3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this Article V at any time, subject to the rights of any individual who acted in reliance on the authorization prior to notice of the revocation.
- (4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

(5) Notwithstanding the provisions of this section, a licensee complying with regulations adopted by the U.S. Department of Health and Human Services governing autho-

rization for the release of health information satisfies the provisions of this section. Health carrier licensees must apply the preemption standards in 45 C.F.R. 160.201 through 160.205, and must follow the requirements of RCW 48.43.505 when they are more stringent than the HIPAA standard for purposes of communicating with a protected person or a person legally entitled to receive the information. The licensee must similarly comply with other federal privacy protection laws if they preempt the requirements of subchapter 5 of this chapter. Nothing in this section alters or otherwise affects a licensee's duty to comply with requirements under other applicable state or federal laws, including those governing the accessibility, privacy, or security of information required to be disclosed under this section, or those governing the ability of properly authorized representatives to access participant, beneficiary, or enrollee information held by health plans and health insurance issuers.

(6) A health carrier must annually inform in-network providers about the requirements carriers must follow regarding protected individuals and sensitive health care services. A carrier may comply with this either through a physical mailing, by providing the information online, or through inclusion in a newsletter or other informational portal.

(7) The commissioner shall post the nondisclosure directive form for use as required in this chapter on the office of the insurance commissioner website.

(a) A licensee may brand the form using their health plan or company logo, and may adjust the format for consistency with the company's branding, but must not change its content. Directions to the licensee are in red on the posted form template, and must be replaced with company specific information.

(b) Upon receipt of a nondisclosure directive, the licensee must process the request within three business days of receipt.

(8) The commissioner may, as they deem necessary, evaluate a licensee's business practices for communicating with protected individuals about sensitive health care information. The licensee must provide all information requested for this evaluation and assessment, and must establish its business practices to support the intent to provide an easy to use and understand method for protected individuals to have sensitive health information sent to an address other than the health plan subscriber's address.

WSR 19-24-081

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed December 3, 2019, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-056.

Title of Rule and Other Identifying Information: Hydraulic project approval (HPA) rules to implement chapter 290, Laws of 2019 (2SHB 1579), amending WAC 220-660-050 Procedures—Hydraulic project approvals, 220-660-370

Bank protection in saltwater areas, 220-660-460 Informal appeal of administrative actions, 220-660-470 Formal appeal of administrative actions, and 220-660-480 Compliance with HPA provisions.

Hearing Location(s): On January 17-18, 2020, at 8:00 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: January 31, 2020.

Submit Written Comments to: Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, email HPARules@dfw.wa.gov, fax 360-902-2946, website <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>, by 5 p.m., January 21, 2020.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, fax 360-902-2946, attn: Randi Thurston, TTY 360-902-2207, email adaprogram@dfw.wa.gov, by 5 p.m., January 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule amendments are needed to implement chapter 290, Laws of 2019 (2SHB 1579), codified at RCW 77.55.400 through 77.55.470 to add a mechanism for preapplication determination, implement enhanced civil compliance tools, remove references to repealed statutes, and clarify administrative actions that are subject to informal and formal appeal. Washington department of fish and wildlife (WDFW) also proposes to require benchmarks on plans as part of a complete application for bank protection projects in saltwater areas. WDFW proposes corrections to typographical errors and minor edits that don't change the effect of the rules.

Reasons Supporting Proposal: WDFW is proposing rules implementing sections 4-11, chapter 290, Laws of 2019, now codified at RCW 77.55.400 through 77.55.470. Elements include:

Rule	Proposed Change	Reason
<p>WAC 220-660-050 Procedures—Hydraulic project approvals, 220-660-370 Bank protection in saltwater areas, 220-660-460 Informal appeals of administrative actions, 220-660-470 Formal appeals of administrative actions, and 220-660-480 Compliance with HPA provisions</p>	<p>Incorporate elements of sections 4-11, chapter 290, Laws of 2019 (2SHB 1579) directly or with procedures and language edits without changing intent as follows:</p> <p>WAC 220-660-050 implements RCW 77.55.400, 77.55.460, and strikes language referencing repealed statute (former RCW 77.55.141).</p> <p>WAC 220-660-370 strikes language referencing repealed statute (former RCW 77.55.141).</p> <p>WAC 220-660-460 and 220-660-470 implement elements of RCW 77.55.420, 77.55.430, 77.55.440, 77.55.450, and 77.55.460.</p> <p>WAC 220-660-480 implements RCW 77.55.410, 77.55.420, 77.55.430, 77.55.440, 77.55.450, 77.55.460, 77.55.470.</p> <p>Correct typographical errors and clarify language.</p>	<p>Provides transparency regarding the tools provided in the bill. Adds procedures where necessary to implement bill elements. Eliminates repealed requirements to reduce confusion regarding which rules remain in effect. Improves readability and clarity.</p>
<p>WAC 220-660-370 Bank protection in saltwater areas</p>	<p>Changes provision for benchmarks from discretionary to mandatory.</p>	<p>Habitat program research on compliance with HPA provisions has shown that bank protection projects without benchmarks are impossible to assess relative to compliance with the authorizing HPA. We have changed the benchmark provision from discretionary to mandatory in order to adequately assess compliance with the issued HPA.</p>
<p>WAC 220-660-480 HPA compliance</p>	<p>Pursuant to RCW 77.55.420, stop work order, and RCW 77.55.440, penalties, WDFW proposes:</p> <ul style="list-style-type: none"> • Levels of signature authorities for stop-work and notice of civil penalty; • Penalty schedule. 	<p>RCW 77.55.420 and 77.55.440 direct WDFW to specify in rule the senior [senior] or executive staff levels having signature authority for stop-work orders and notices of civil [penalty]. The bill also directs WDFW to adopt a penalty schedule in rule (RCW 77.55.440).</p>

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, and 77.55.021; 2SHB 1579 (chapter 290 PV, Laws of 2019).

Statute Being Implemented: Chapter 77.55 RCW, Construction projects in state waters; RCW 77.55.400 Determination as to whether construction is a hydraulic project—Pre-application determination—Review and comment period—Written determination, 77.55.410 Violation of chapter, 77.55.420 Stop work order—Notice—Appeal, 77.55.430 Notice to comply—Notice—Appeal, 77.55.440 Penalties—Notice—Appeal—Authority of attorney general to recover penalty—Penalty schedule, 77.55.450 Administrative inspection warrant, 77.55.460 Disapproval of an application—Notice—Review, 77.55.470 Remedies under chapter not exclusive.

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: Not at this time.

Name of Proponent: WDFW, habitat program, protection division, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Randi Thurston, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2602; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-902-2602, fax 360-902-2946, TTY 360-902-2207, email HPARules@dfw.wa.gov, website <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>.

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

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

Explanation of exemptions: Please see discussion under section 1 of the small business economic impact statement included below.

Small Business Economic Impact Statement

1: Describe rule and compliance requirements

1.1: Background: Background on the topic of this rule-making activity is provided in Section 2 of the document entitled *Hydraulic Code Rules Chapter 220-660 WAC - Incorporating elements of 2SHB 1579 into HPA Rules - Regulatory Analysis*. A timeline and actions initiating rule making are provided in subsection 2.3 of that document. Those sections provide detail about the history of and need for the proposal. Section 5 of that document discusses how the proposed rule meets the general goals and specific objectives of the statutes implemented via this rule-making activity. The *Hydraulic Code Rules Chapter 220-660 WAC - Incorporating elements of 2SHB 1579 into HPA Rules - Regulatory Analysis* is available at <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>.

1.2: Compliance requirements of the proposed rule: Most of these rule proposals do not create new compliance requirements (Table 1). Three proposals, the "penalty amount," "penalty schedule" rules in WAC 220-660-480 and "benchmark" rule in WAC 220-660-370 Bank protection in saltwater areas, has potential to impose additional costs on HPA applicants.

Table 1 Rule groups and their status relative to APA and RFA analysis.

Rule Group	Content	WAC	RFA Citation (RCW)
"Provisions of 2SHB 1579"	New tools and requirements copied nearly verbatim from statute into rule.	220-660-050 220-660-370 (except subsection 5) 220-660-460, 220-660-470, 220-660-480 (except subsections (5), (7), (8))	RCW 19.85.025(3) rule described in RCW 34.05.310 (4)(c) and/or (e): "Rules adopting or incorporating by reference without material change ... Washington state statutes" and "Rules the content of which is explicitly and specifically dictated by statute."

Rule Group	Content	WAC	RFA Citation (RCW)
"Signature authority"	Specifies which WDFW staff have authority to issue which compliance tools.	220-660-480 (5), (7)	RCW 19.85.025(3) rule described in RCW 34.05.310 (4)(b): "Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party." RCW 19.85.025(4): Does not affect small businesses.
"Penalty amount"	Specifies WDFW may levy civil penalties of up to \$10,000 for every violation.	220-660-480(7)	Potential costs to comply; Analysis required.
"Penalty schedule"	Schedule for determining penalties, developed by WDFW.	220-660-480(8)	Potential costs to comply; Analysis required.
"Benchmark"	Requires benchmarks to by [be] shown in the plans submitted as part of a complete application.	220-660-370(5)	Potential costs to comply; Analysis required.
"All" See Appendix A	Correct typographical errors and make minor edits that do not change the effect of the rules.	220-660-050 220-660-370 (1), (2)	RCW 19.85.025(4): Does not affect small businesses.

Appendix A: Proposed minor edits that do not change the effect of the rules

WAC Subsection	Description	Reason
WAC 220-660-050 Procedures.		
050	"HPA Permit" and "permit" changed to "HPA."	Improve consistency of terms and/or phrases with other rules, and remove superfluous words.
050 (9)(c)	"fish life and habitat that supports fish life" changed to "fish life."	Remove superfluous words. "Protection of Fish Life" definition WAC 220-660-030 (119) includes fish life and the habitat that supports fish life.
050 (13)(b)	"... these project must meet the mitigation provisions in WAC 220-660-080 and the provisions in WAC 220-660-100 through 220-660-450 that are included in the HPA" is changed to "...these projects must comply with the provisions in this chapter that are included in an HPA."	Simplify language to improve readability and understanding.
050 (13)(d)	Added "or other work."	Improve consistency of language with words used in the definition of a hydraulic project WAC 220-660-030(76).
050 (17)(a)(v)	"application for an HPA" changed to "HPA application."	Improve consistency of words with other rules.
WAC 220-660-370 Bank protection in saltwater areas.		
370 (1)	Changed description of bank protection techniques to better align with (3)(b) in this subsection.	Improve consistency of words with other rules.

WAC Subsection	Description	Reason
370 (2)	Changed fish life concerns language to more clearly explain what the concerns are and to better align with WAC 220-660-320.	Clarify language to improve readability and understanding of intent.
370 (3)	"Bulkheads and other bank protection design" changed to "bank protection design."	Improve conciseness.
370 (3)(a)	Spelled out "ordinary high water line." Specified that this provision applies to "hard" structures. Specified the application is an "HPA" application.	Clarify language to improve readability and understanding of intent.
370 (3)(b)	Added a description of how to determine the least impacting technically feasible bank protection alternative.	Clarify language to improve readability and understanding of intent.
370 (3)(b) 370 (3)(c) 370 (3)(d)	Removed bank protection examples.	Remove superfluous language; these structures are described in WAC 220-660-370(1).
370 (3)(d)	Added "bank protection" structure.	Clarify that the rule applies to a bank protection structure.
370 (3)(d)	Added "prepared."	Clarify a qualified professional must repair this report.
370 (3)(d)	Replaced "project and selected technique" with "method."	Improve consistency of words with other rules.
370 (3)(d)	Added "The applicant must submit a report to the department as part of a complete application for an HPA that includes:"	Clarify this report must be submitted with the application.
370 (3)(d)(iii)	Added "Alternative considered and the."	Improve consistency of words with those used in WAC 220-660-370 (3)(d).
370 (3)(e)	Added "hard" and replaced "projects" with "structures."	Clarify that the rule applies to a hard bank protection structure.
370 (4)(a) 370 (4)(b)	Replaced "bulkhead" with "hard bank protection structure."	Improve consistency of words with those used in WAC 220-660-370(1).
370 (4)(a)	Replaced "stabilization techniques that provide restoration of shoreline ecological functions may be permitted" with "methods that allow beach processes and habitat to remain intact may extend."	Clarify that the rule applies to all soft shoreline methods.
370 (5)(d)	Removed "waterward of the bulkhead footing or base rock."	Clarify that the rule applies to both hard and soft shoreline methods.
WAC 220-660-460 Informal appeal of administrative actions.		
460(1)	Removed "appeal to the department pursuant to" and replaced with "internal department review of a department HPA decision and is conducted under."	Improve informal appeal description.
460(1)	Replaced "the issuance, denial, provisioning, or modification of an HPA" with "a department HPA decision."	Clarify the rule to improve readability.
460(1)	Removed "on the HPA."	Remove superfluous language.
460(1)	Removed "of the problem."	Remove superfluous language.
460(2)	Replaced "aggrieved persons" with "a person aggrieved by a department HPA decision."	Clarify language to improve readability and understanding of intent.
460(2)	Removed "the informal appeal process is not mandatory, and."	Remove superfluous language.
460(2)	Replaced "proceed directly to" with "pursue."	Improve readability.

WAC Subsection	Description	Reason
460(2)	Added "without first obtaining informal review under this section."	Clarify rule to improve understanding of intent.
460(2)	Removed "any provisions in."	Remove superfluous language.
460(4)	Replaced "the date of actual receipt, however, may not exceed forty-five days from the date of mailing" with "up to forty-five days from the date of mailing."	Simplify language to improve readability.
460 (6)(c)	Replaced "issued, denied, provisioned, or modified an HPA, or date the department issued the order imposing civil penalties" with "specific department action being contested."	Simplify language to improve readability.
460 (6)(d)	Removed order imposing civil penalties" and replaced with "specific department action being contested."	Improve understanding and consistency of language with other rules.
WAC 220-660-470 Formal appeal of administrative actions.		
470	Removed "pursuant to" Added "board."	Improve readability.
470(1)	Replaced "the issuance, denial, provisioning, or modification of an HPA" with "a department HPA decision."	Simplify language to improve readability.
470(1)	Removed "of the problem."	Remove superfluous language.
470(2)	Replaced "aggrieved persons" with "a person aggrieved by a department HPA decision."	Clarify rule to improve readability and understanding of intent.
470(2)	Removed "the informal appeal process is not mandatory, and."	Remove superfluous language.
470(2)	Replaced "proceed directly to" with "pursue."	Simplify language to improve readability.
470(2)	Added "without first obtaining informal review under this section."	Clarify rule to improve understanding of intent.
470(2)	Removed "any provisions in."	Remove superfluous language.
470(5)	Removed "pollution control hearings board" and "PCHB" and replaced with "board."	Remove redundant language; improve consistency of language with other rules.
470(5)(b)	Replaced "the date of actual receipt, however, may not exceed forty-five days from the date of mailing" with "up to forty-five days from the date of mailing."	Simplify language to improve readability.
470(6)	Replaced "pursuant to" with "under."	Simplify language to improve readability.
470(6)(c)	Replaced "issued, denied, provisioned, or modified an HPA, or date the department issued the order imposing civil penalties" with "specific department action being contested."	Simplify language to improve readability.
470(9)	Replace "PCHB" with "board."	Improve consistency of language with other rules.
WAC 220-660-480 Compliance with HPA provisions.		
480 (1), (2)	Replaced "pursuant to" with "under."	Simplify language to improve readability.
480(1)	Added "continue to."	Reflect there is currently a program.
480(1)	Removed "HPA provisions."	Remove superfluous language.
480(1)	Removed "provisions of chapter 43.05 RCW require."	Remove superfluous language.
480(1)	Removed "including private companies."	Remove superfluous language.
480(1)	Added "must."	Convey this is a requirement.
480(1)	Replaced "must be" with "is."	Simplify language to improve readability.
480 (2)(b) [and (3)]	Renamed "Notice of violation" and [""]Notice of correction" [to] a correction request.	Simplify language to improve readability and understanding of intent.

WAC Subsection	Description	Reason
480(2)(b), (3)(a)	Moved information required in a correction request to subsection (4).	Simplify language to improve readability and understanding of intent.

2: Small Business Economic Impact Analysis - Penalty Amount and Penalty Schedule

2.1 Cost of Compliance: WDFW presumes that a person who seeks to undertake a hydraulic project, or who undertakes a hydraulic project, will comply with the laws and regulations set forth in chapters 77.55 RCW and 220-660 WAC. Thus, WDFW has determined that its proposed rules at WAC 220-660-480 do not pose costs upon businesses that comply with these laws and regulations. WDFW does not have sufficient data to calculate costs to businesses for noncompliance with chapters 77.55 RCW and 220-660 WAC, nor does it have data sufficient to calculate any disproportionate impacts that noncompliance may have on small businesses. To the extent WDFW's proposed rules at WAC 220-660-480 impose more than minor costs to businesses that do not comply with chapters 77.55 RCW and/or 220-660 WAC, WDFW will mitigate costs to small businesses where doing so is legal and feasible pursuant to RCW 19.85.030, which includes using nonmonetary civil enforcement tools made available under chapter 290, Laws of 2019.

2.1 Steps to Reduce Costs to Individuals and Small Business: When costs to comply exceed the minor cost threshold and costs are disproportionate for small businesses, RCW 19.85.030 compels the agency to reduce costs imposed by the rule on small businesses where it is legal and feasible to do so. The agency must consider, without limitation, each of the methods listed on Table 2.

Table 2 Methods of reducing costs to businesses for noncompliance

Subsection	Method	WDFW Response
(a)	Reducing, modifying, or eliminating substantive regulatory requirements;	The substantive civil compliance and enforcement requirements are specified in the statute.
(b)	Simplifying, reducing, or eliminating record-keeping and reporting requirements;	Recordkeeping and recording requirements set forth in the proposed rules are the minimum necessary to ensure compliance with the permit conditions.
(c)	Reducing the frequency of inspections;	Follow-up compliance inspections are limited to those required to confirm that a noncompliant condition has been corrected.
(d)	Delaying compliance timetables;	WDFW must provide a reasonable time to achieve compliance. A violator can request an extension of a deadline for achieving compliance.
(e)	Reducing or modifying fine schedules for noncompliance; or	The penalty schedule considers only those elements defined in statute.
(f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates.	WDFW supports providing an opportunity for voluntary compliance prior to imposing any monetary civil penalty. This was suggested by a business advocate. Small businesses or business advocates have suggested eliminating the notice of civil penalty but the statute requires WDFW to do rule making to adopt a penalty schedule.

2.2.1 Additional steps WDFW has taken to lessen impacts: Additional steps WDFW has taken or will take to reduce costs to business for noncompliance:

1. Access to technical assistance: WDFW provides technical assistance as we advise and consult on permits, conduct inspections, perform on-site technical visits, and provide regulatory guidance materials. WDFW also has a technical assistance webpage. A person may request additional technical assistance from WDFW any time during their project.

2. Opportunity for voluntary compliance: Most people WDFW works with are not experts in environmental permitting. WDFW acknowledges that it has a responsibility to help the regulated community understand how to comply with its

hydraulic code requirements. When violations or potential violations are observed in the field, WDFW will issue a Correction Request that describes the measures the project proponent may take to voluntarily address them. WDFW will use a range of increasingly strict enforcement tools, which could ultimately include monetary civil penalties, only in instances when voluntary compliance cannot be achieved. WDFW will provide an opportunity to correct and compensate for damage that results from a violation before issuing a notice of civil penalty.

3. Waiver for first-time paperwork violations: Under RCW 34.05.110, a small business may be eligible for a waiver of first-time paperwork violations. The business is

given an opportunity to correct the violation(s). This applies to administrative orders, notices and penalties. First time paperwork violations are defined in proposed WAC 220-660-480(12).

4. Staff training: WDFW's administrative enforcement actions must be based in fact and law, well documented, appropriate to the violation, and issued professionally and fairly. Staff authorized to conduct inspections will receive specialized training to ensure they are professional, knowledgeable, and capable of carrying out their duties.

5. Policy and guidelines: WDFW will develop implementation guidelines for the civil enforcement program. The guidelines will provide direction to staff on how to appropriately respond to incidents of noncompliance.

3:0 Small Business Economic Impact Analysis - Benchmarks

3.1: Professional Services Required: Applicants might need technical assistance to establish project benchmarks. WDFW can provide assistance by directing applicants to technical businesses that can provide the service and by providing guidance and training for how applicants and contractors can establish adequate benchmarks. As time allows, WDFW biologists can also offer technical assistance by establishing the benchmarks at no cost to the applicant. When benchmark measurements are needed, they are frequently done by civil engineers, civil engineer technicians, surveyors, or surveyor technicians.

3.2 Identify Businesses - Minor Cost Threshold: WDFW analyzed HPA permits issued in 2018 to determine businesses who received an HPA for marine bank protection construction, maintenance, or replacement. Fourteen percent (thirteen HPAs) of the permittees for marine bank protection projects were identified as businesses. Seventy-two percent (sixty-seven HPA) of permittees were individuals or landowners, and fourteen percent (thirteen HPAs) were governmental entities or nonprofit businesses.

WDFW does not require applicants to identify the person or business that will construct their project. Businesses applying for HPAs to construct projects for landowners can identify as such on the HPA application, and this is how we identified businesses for this analysis. WDFW acknowledges that the rules for bank protection in saltwater areas apply to everyone (including business) applying for this type of HPA, so the business types identified here are not exclusive.

Once businesses were identified, we used the Washington Department of Revenue Business Lookup tool¹ to obtain

their industry code. When no industry code could be found, we identified the applicant as individual.

¹ Available at: https://secure.dor.wa.gov/gteunauth/_/#1

Table 3 provides information about the businesses we identified using this method. We are not able to determine whether businesses are small businesses using this method. This list is not exclusive - anyone who applies for an HPA for bank protection in saltwater areas is subject to the proposed rule. In subsequent analyses, we identified additional businesses under the 237990 NAICS code ("Other heavy and civil engineering construction") who might apply for HPAs to construct marine bank protection projects.

Table 3 NAICS Codes for 2018 Marine Bank Protection Business Applicants

Number of Permits in 2018	NAICS Code	Industry Description
1	236115	New single-family housing construction
0	237990	Other heavy and civil engineering construction
3	238140	Masonry contractors
2	238910	Site preparation contractors
3	238990	All other specialty trade contractors
3	531310	Offices of real estate agents and brokers (and property managers)
1	713930	Marinas

3.3: Minor cost threshold: Industry data for determining minor cost thresholds are provided on Table 4. We used a spreadsheet provided by the Washington state auditor's office to determine these values².

² *Minor Cost Threshold Calculator July 2019.xlsx* provided through the governor's office of regulatory innovation and assistance at https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/Minor%20Cost%20Threshold%20Calculator%20July%202019.xlsx. ORIA RFA support website is https://www.oria.wa.gov/site/alias_oria/934/Regulatory-Fairness-Act-Support.aspx.

Table 4 Washington businesses data for businesses identified under industry classification codes identified for analysis

Industry 4-digit or 6-digit 2012 NAICS Code	Number of Establishments in WA	TOTAL Annual Payroll in WA	TOTAL Annual Revenue in WA	AVG Annual Payroll in WA	AVG Annual Revenue in WA	1% of Annual Payroll	<0.3% of Annual Revenue or Income or \$100
236115	1,261	\$186,272,000	D	\$147,718	D	\$1,477	D
237990	61	\$174,198,000	\$948,293,000	\$2,855,705	\$15,545,787	\$28,557	\$46,637
238140	293	\$74,067,000	\$215,274,000	\$252,788	\$734,724	\$2,528	\$2,204
238910	1,208	\$490,492,000	\$2,047,639,000	\$406,036	\$1,695,065	\$4,060	\$5,085
238990	547	\$182,710,000	\$573,308,000	\$334,022	\$1,048,095	\$3,340	\$3,144
5313	2,852	\$705,915,000	\$1,626,984,000	\$247,516	\$570,471	\$2,475	\$1,711
713930	102	\$17,667,000	\$79,013,000	\$173,206	\$774,637	\$1,732	\$2,324

Source: Washington State Auditor Minor Cost Threshold Calculator July 2019.xlsx, which uses data from the 2012 Economic Census of the United States. Code "D" means the U.S. Census Bureau data are withheld to avoid disclosing data for individual companies.

3.4: Identify the minor cost thresholds for each industry: We chose the minimum of the two indicator figures from Table 3 (1% of Annual Payroll and <0.3% of Annual Revenue/Income/\$100) as the minor cost thresholds for these industries, and identified \$100 as the minor cost threshold for individuals (Table 5). Any costs imposed on a small business that are over these thresholds would be considered for this analysis to be more than minor and potentially disproportionate.

Table 5 Small Business Industry Classification and Minor Cost Thresholds

NAICS Code	Industry Description	Minor Cost Threshold
236115	Residential building construction	\$1,477
237990	Other heavy and civil engineering construction	\$28,557
238140	Masonry contractors	\$2,204
238910	Site preparation contractors	\$4,060
238990	All other specialty trade contractors	\$3,144
531310	Offices of real estate agents and brokers (and property managers)	\$1,711
713930	Marinas	\$1,732
n/a	Individuals/Land-owners	\$100

3.5: Costs of Compliance: Both WDFW biologists and a bulkhead business spokesperson indicated that establishing permanent benchmarks takes approximately ten minutes once a person is on the project site^{3,4}. We assume for this analysis that it takes a person an hour to travel to/from the site. Our business contact suggested that they would hire a civil engineer or a surveyor to conduct the work if they did not already have staff on-board who could establish benchmarks. The benchmarks must be shown on the plans submitted as part of a complete application. We assume for this analysis that it takes a person ten - fifteen minutes to include the benchmarks on the plans. We think that the smallest period of billable hours for a civil engineer or surveyor consultant would be one-half hour. Combined with travel, the total time billed would be 1.5 hours.

³ A. Cook. Pers. Comm. July 29, 2019.

⁴ J. Rotsten, Sea Level Bulkhead Builders. Pers. Comm. October 9, 2019.

Next, we looked at United States Census data from Bureau of Labor Statistics to determine the average hourly wages for these occupations. We looked at wages for these occupations in the professional, scientific, and technical services industry groups in Washington. Wages range from \$32.20 per hour for a civil engineering technician to \$46.47 for a civil engineer⁵. We chose the civil engineer wages as providing a worst-case view for this analysis. Table 6 shows the costs to comply with this proposal.

⁵ May 2018 OES Research Estimates, Occupational Employment Statistics (OES) Survey, Bureau of Labor Statistics, Department of Labor, website <https://www.bls.gov/oes>. Table of OES estimates for the State of Washington downloaded from https://www.bls.gov/oes/2018/may/oes_research_estimates.htm on 10/9/2019.

Table 6 Costs to Comply with the Benchmark Requirement

Who Performs Work	Time Spent	Cost Per Hour	Total Cost to Comply Per Project
Civil engineer in the professional, scientific, or technical consulting services business industry group	1.5 hours	\$46.47 billable	\$69.71

3.5.1: Lost sales or revenues: Income or revenue for each HPA proponent is reduced by \$69.71 to comply with this new requirement. If WDFW can provide technical assistance to the applicant, there is no loss in revenue.

3.5.2: Summary of costs to comply: Based on the methods used to estimate costs to comply with the rule proposals, total cost for each project is estimated at \$69.71, as shown on Table 5.

3.6: More than Minor Costs: Based on the costs of compliance estimated in Section 4, the estimated costs for an indi-

vidual or business to comply with the proposal are less than the minor cost thresholds shown on Table 4.

3.7: Disproportionate Impact on Small Businesses: WDFW used employment data from Bureau of Labor Statistics⁶ to analyze employment by size of company. We used the industry codes identified on Tables 3 and 4, except that data for the 6-digit code 236115 are not available so we used the 4-digit code 2361 instead. We compared the cost-to-comply (\$69.71) to the numbers of employees in three different groups of establishments: Businesses having one through fifty employees ("small businesses"), businesses having more

than fifty employees ("large businesses"), and the best available estimate of the number of employees in the ten percent largest businesses (Table 7).

6 We downloaded data for Washington state for each of the identified industries at U.S. Census Bureau "American FactFinder" available at <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

Table 7 Compare cost/employee for small businesses versus larger businesses

NAICS	Industry	Compliance-Cost Per Employee			Amount costs are higher for Small v. Large
		Small Businesses	Large Businesses	Largest 10% of businesses	
2361	Residential building construction	\$0.003	\$0.02	\$0.01	-\$0.01
237990	Other heavy and civil engineering construction	\$0.10	\$0.05	\$0.05	\$0.05
238140	Masonry contractors	\$0.04	\$0.08	\$0.03	-\$0.04
238910	Site preparation contractors	\$0.01	\$0.02	\$0.01	-\$0.01
238990	All other specialty trade contractors	\$0.02	\$0.07	\$0.01	\$0.06
53131	Real estate property managers	\$0.01	\$0.02	\$0.01	-\$0.01
713930	Marinas	\$0.18	n/a	\$0.70	-\$0.52*

Of these computations, the cost/employee for the largest ten percent of businesses is the least straightforward because, in most cases for these industries, the largest ten percent of businesses in an industry included businesses with fewer than fifty employees. We decided not to use this datum except for the marinas industry* where data for "large businesses" are withheld to avoid disclosing data for individual companies.

The smallest cost/employee is three-tenths of a cent, and the largest is eighteen cents (seventy cents using the "largest 10%" figure for the marinas industry). Costs per employee are smaller for small businesses than for large businesses (or for the largest ten percent of businesses for marinas) with the exception of "other heavy and civil engineering construction" businesses, for which the cost is five cents higher per employee for small businesses. We conclude there is not a disproportionate impact for small businesses in most cases. In the case where small businesses pay more per employee for compliance, that difference represents ten cents per employee for small businesses versus five cents per employee for large businesses.

3.8: Steps to Reduce Costs to Individuals or Small Businesses: The goals and objectives of the statutes that the proposed rule is intended to implement are discussed fully in Section 3 of the document entitled *Hydraulic Code Rules Chapter 220-660 WAC - Incorporating elements of 2SHB 1579 into HPA Rules - Regulatory Analysis*.

3.8.1: Methods to reduce costs: When costs to comply exceed the minor cost threshold and costs are disproportionate for small businesses, RCW 19.85.030 compels the agency to reduce costs imposed by the rule on small businesses where it is legal and feasible to do so. The agency must consider, without limitation, each of the methods listed on Table 8.

Table 8 RCW 19.85.030 (2) required methods of reducing costs imposed by the rule on small businesses

Subsection	Method	WDFW Response
(a)	Reducing, modifying, or eliminating substantive regulatory requirements;	Eliminating the requirement for adequate benchmarks makes it impossible for WDFW to determine whether a project is compliant with provisions of the HPA. This does not meet the objectives of the statute.
(b)	Simplifying, reducing, or eliminating recordkeeping and reporting requirements;	Once benchmarks are established and recorded on the plans, there are no additional recordkeeping or reporting costs.
(c)	Reducing the frequency of inspections;	Not applicable to this proposal. The requirement must be met prior to an HPA being issued.

Subsection	Method	WDFW Response
(d)	Delaying compliance timetables;	This provision is being required currently in most marine bank protection project HPAs. Delaying the compliance time table would not have an effect on businesses.
(e)	Reducing or modifying fine schedules for noncompliance; or	Not applicable to this proposal.
(f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates.	No other mitigation techniques have been suggested by small businesses or business advocates.

3.8.2: Additional steps WDFW has taken to lessen impacts:

Additional steps WDFW plans to take to minimize costs to those who must comply with the new rules:

1. WDFW will provide training to marine bank protection permitting biologists for how to establish adequate benchmarks and how to help the applicant record the benchmarks in their application materials.

2. WDFW will provide outreach and guidance materials to individuals and businesses for how to establish adequate project benchmarks.

3.9: Involving stakeholders in rule development: Stakeholder outreach is described in Section 5 of the document entitled *HPA Rules Chapter 220-660 WAC - Incorporating elements of 2SHB 1579 into HPA Rules - Regulatory Analysis*. One marine bank protection construction business was consulted about this requirement. That business indicated benchmarks are established while they are onsite to take measurements for the structure plans. No additional trips or costs are needed to comply with the new requirement because establishing benchmarks has been a standard practice (WDFW has been requiring them consistently in HPAs) for the past three or more years.

3.10: Number of jobs created or lost: There will likely be no jobs created or lost as a result of this proposal. The time involved to establish benchmarks is small relative to the time required to prepare application materials and structure/site plans. The expertise to establish benchmarks is common to most marine bank protection construction businesses.

3.11: Summarize results of small business analysis: Costs to comply are less than the minor cost thresholds for businesses required to comply. Small businesses generally pay less per employee to comply than large businesses, with one exception. For that exception, the cost is five cents more per employee.

A copy of the detailed cost calculations may be obtained by contacting Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-902-2602, fax 360-902-2946, TTY 360-902-2207, email HPARules@dfw.wa.gov, website <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>, current rule-making website <https://wdfw.wa.gov/about/regulations/development>.

December 3, 2019
Jacalyn M. Hursey
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

WAC 220-660-050 Procedures—Hydraulic project approvals. (1) Description:

(a) There are six categories of HPAs: Standard, emergency, imminent danger, chronic danger, expedited, and pamphlet. These categories are discussed in more detail throughout this section. Most HPAs issued by the department are standard HPAs. Guidance for applying for an HPA is provided on the department's website.

(b) HPAs do not exempt a person from obtaining other necessary permits and following the rules and regulations of local, federal, and other Washington state agencies.

(2) **Fish life concerns:** Construction and other work activities in or near water bodies can kill or injure fish life directly and can damage or destroy habitat that supports fish life. Damaged or destroyed habitat can continue to cause lost fish life production for as long as the habitat remains altered. HPAs help ensure construction and other work is done in a manner that protects fish life.

(3) Standard HPA:

(a) The department issues a standard HPA when a hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. An individual standard HPA is limited to a single project site. Some special types of standard HPAs may cover multiple project sites.

(b) Special types of standard HPAs:

(i) Fish habitat enhancement project (FHPEP) HPA.

(A) Projects must satisfy the requirements in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject an FHPEP proposed under RCW 77.55.181 if the local government raises concerns during the comment period that impacts from the project cannot be mitigated by conditioning the HPA. The department will reject an FHPEP if the department determines that the size and the scale of the project raises public health or safety concerns. If the department rejects a project for streamlined processing, the department must provide written notice to the applicant and local government within forty-five days of receiving the application.

(D) An applicant whose fish habitat enhancement project is rejected may submit a new complete written application with project modifications or additional information required for streamlined processing. An applicant may request that the department consider the project under standard HPA processing procedures by submitting a new complete written application for standard processing.

(ii) Multisite HPA.

(A) A standard HPA may authorize work at multiple project sites if:

(I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area;

(II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and

(III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

(B) The department may make an exception for projects the department has scoped prior to application submittal or when no permit issuance site visits are needed.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple water bodies across a large geographic area.

(B) To qualify for a general HPA, projects must protect fish life:

(I) Technical provisions in the HPA must fully mitigate impacts to fish life;

(II) The projects must be relatively simple so that the HPA provisions are the same across all sites, and can therefore be permitted without site-specific provisions; and

(III) The projects must have little or no variability over time in site conditions or work performed.

(C) The general HPA will include a requirement that notice be given to the department when activities utilizing heavy equipment begin. The department may waive this requirement if the permittee and department meet annually to review scheduled activities for the upcoming year.

(D) The department and the applicant may negotiate the scope and scale of the project types covered. The department and the applicant must agree on the fish protection provisions required before the application is submitted.

(E) The department may reject applications for a general HPA if:

(I) The proposed project does not meet the eligibility requirements described in subsection (3)(b)(iii)(B) of this section; or

(II) The department and the applicant cannot agree on the fish protection provisions.

(F) The department must provide written notice of rejection of a general HPA application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures.

(iv) "Model" HPA.

(A) The department will establish a "model" HPA application and permitting process for qualifying hydraulic proj-

ects. To qualify, an individual project must comply with the technical provisions established in the application. Hydraulic projects that qualify for the model process must:

(I) Fully mitigate impacts to fish life in the technical provisions of the HPA;

(II) Be a low complexity project that minimizes misinterpretation of the HPA provisions allowing the HPA to be permitted without site-specific provisions; and

(III) Meet all of the eligibility requirements described in the model application.

(B) If needed to confirm project eligibility, the department may conduct a site visit before approving or rejecting a model application.

(C) The department may reject applications for model HPAs if:

(I) The plans and specifications for the project are insufficient to show that fish life will be protected; or

(II) The applicant or authorized agent does not fill out the application completely or correctly.

(D) The department must provide written notice of rejection of an application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures under this section, or may submit a new model application if the department rejected the application because the person did not fill out the original application correctly.

(4) Emergency HPA:

(a) Declaring an emergency.

(i) Authority to declare an emergency, or continue an existing declaration of emergency, is conveyed to the governor, the department, or to a county legislative authority by statute. An emergency declaration may be made when there is an immediate threat to life, the public, property, or of environmental degradation;

(ii) The county legislative authority must notify the department, in writing, if it declares an emergency;

(iii) Emergency declarations made by the department must be documented in writing;

(iv) When an emergency is declared, the department must immediately grant verbal approval upon request for work to protect life or property threatened by waters of the state because of the emergency, including repairing or replacing a stream crossing, removing obstructions, or protecting stream banks. The department may also grant written approval if the applicant agrees.

(b) If the department issues a verbal HPA, the department must follow up with a written HPA documenting the exact provisions of the verbal HPA within thirty days of issuing the verbal HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for emergency HPAs.

(d) The department may require a person to submit an as-built drawing within thirty days after the hydraulic project authorized in the emergency HPA is completed.

(e) Within ninety days after a hydraulic project authorized in an emergency HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(5) Imminent danger HPA:

(a) Authority to declare imminent danger is conveyed to the department or county legislative authority by statute. The county legislative authority must notify the department in writing if it determines that an imminent danger exists.

(b) Imminent danger declarations made by the department must be documented in writing.

(c) When imminent danger exists, the department must issue an expedited HPA upon request for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.

(d) When imminent danger exists, and before starting work, a person must submit a complete written application to the department to obtain an imminent danger HPA. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for imminent danger HPAs.

(e) Imminent danger HPAs must be issued by the department within fifteen calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(f) Within ninety days after a hydraulic project authorized in an imminent danger HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(6) Chronic danger HPA:

(a) The department must issue a chronic danger HPA upon request for work required to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property.

(b) Authority to declare when a chronic danger exists is conveyed to a county legislative authority by statute. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(c) The county legislative authority must notify the department in writing when it determines a chronic danger exists.

(d) When chronic danger is declared, and before starting work, a person must submit a complete written application to the department to obtain a chronic danger HPA. Unless the project also satisfies the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii), compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is required. Projects that meet the requirements in RCW 77.55.181 (1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

(7) Expedited HPA:

(a) The department may issue an expedited HPA when normal processing would result in significant hardship for the applicant or unacceptable environmental damage would occur.

(b) Before starting work, a person must submit a complete written application to the department to obtain an HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for expedited HPAs. The department must issue expedited HPAs within fifteen calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(8) Pamphlet HPA:

(a) There are two pamphlet HPAs, *Gold and Fish* and *Aquatic Plants and Fish*, that cover the most common types of mineral prospecting and removing or controlling aquatic plants, respectively. A person must follow the provisions in the pamphlet. If a person cannot follow the provisions, or disagrees with any provision, the permittee must apply for a standard HPA before starting the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is used, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.

(d) All persons conducting the project must follow all provisions of the pamphlet HPA.

(e) The department may grant exceptions to a pamphlet HPA only if a person applies for a standard individual HPA for the project.

(f) Pamphlet HPAs do not exempt a person from obtaining other appropriate permits and following the rules and regulations of local, federal, and other Washington state agencies.

(9) How to get an HPA:

(a) How to get a pamphlet HPA: A person can download and save or print a pamphlet HPA from the department's website. A person may also request a pamphlet HPA from the department either verbally or in writing.

(b) How to get an emergency HPA: Upon an emergency declaration, and before starting emergency work, a person must obtain a verbal or written HPA from the department. A complete written application is not required. However, a person must provide adequate information describing the proposed action. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act), is not required for emergency HPAs. A person may request a verbal or written emergency HPA from the biologist who issues HPAs for the geographic area where the emergency is located Monday through Friday from 8:00 a.m. to 5:00 p.m. If the biologist cannot be contacted or it is after business hours, a person must contact the emergency hotline at 360-902-2537 to request an emergency HPA.

(c) How to get a standard, expedited, or chronic danger HPA:

(i) A person must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

- (A) A pamphlet HPA, subsection (3) of this section; or
- (B) An emergency HPA, subsection (5) of this section.

(ii) When applying for an HPA, a person must submit one of the following application forms to the department:

(A) The electronic online application developed by the department;

(B) The current version of the JARPA;

(C) The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

(D) The most recent version of the model HPA application or other department-approved alternative applications available from the department's public website; or

(E) The current version of the JARPA if applying for approval of a watershed restoration project under RCW 77.55.171. This may be submitted to the department as an attachment to the online application form.

(iii) A complete application package for an HPA must contain:

(A) A completed application form signed and dated by the applicant, landowner(s) or landowner representative(s) of any project site or off-site mitigation location, and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. The property owner, if different than the applicant, or easement holder must consent to the department staff entering the property where the project is located to inspect the project site or any work;

(B) Plans for the overall project;

(C) Complete plans and specifications for all aspects of the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water;

(D) A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life (~~and~~ ~~habitat that supports fish life~~), and plans to mitigate those impacts to ensure the project results in no net loss;

(E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency demonstrating compliance with any applicable requirements of the State Environmental Policy Act under chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW; or the project qualifies for a specific categorical exemption under chapter 197-11 WAC;

(F) Written approval by one of the entities specified in RCW 77.55.181 if the applicant is proposing a fish enhancement project;

(G) For an expedited application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage.

(iv) HPA application submission:

(A) A person must submit the complete application package:

(I) Using the department's online permitting system;

(II) Sending the package via mail to:

Department of Fish and Wildlife

P.O. Box 43234

Olympia, WA 98504-3234;

(III) Email: HPAapplications@dfw.wa.gov;

(IV) Fax: 360-902-2946;

(V) Uploading to a file transfer protocol site acceptable to the department; or

(VI) Hand delivering to the department at 1111 Washington Street S.E., Olympia, WA 98504, Habitat Program, Fifth Floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

(B) Dimensions of printed documents submitted with the application package may not be larger than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

(C) A person must submit applications and supporting documents with a combined total of thirty or more pages as digital files rather than printed documents. All digital files must be in formats compatible with Microsoft Word, Microsoft Excel, or Microsoft Access programs or in PDF, TIFF, JPEG, or GIF formats.

(D) Applications submitted to the habitat program during normal business hours are deemed received on the date the habitat program receives the application. The department may declare applications received by the habitat program after normal business hours as received on the next business day.

(10) Incomplete applications:

(a) Within ten days of receipt of the application, the department must determine whether an application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or emailed notification of an incomplete application to the applicant or authorized agent. This written or emailed notification must include a description of information needed to make the application complete. The department may return the incomplete application to the applicant or authorized agent or hold the application on file until it receives the missing information. The department will not begin to process the application until it receives all information needed to complete the application.

(b) The applicant or authorized agent must submit additional information in response to a written notification of incomplete application through the department's online permitting system or to the department's habitat program, Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.

(c) The department may close any application that has been incomplete for more than twelve months. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(11) Application review period:

(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA (~~(permit)~~) before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

(c) If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record within three days of issuing the written HPA.

(12) Suspending the review period:

(a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized agent must submit a written request for the delay through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by a person other than the applicant or authorized agent.

(b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's concurrence) if:

(i) The site is physically inaccessible for inspection or not in a condition to be evaluated (i.e., snow cover, frozen);

(ii) The applicant or authorized agent remains unavailable or unable to arrange for a field evaluation of the proposed project within ten working days of the department's receipt of the application;

(iii) The applicant or authorized agent submits a written request for a delay;

(iv) The department is issuing (~~(a permit)~~) an HPA for a stormwater discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(v) The department is reviewing the application as part of a multiagency permit streamlining effort, and all participating permitting and authorizing agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(c) The department may close any application if the application has been delayed for processing more than twelve months for any of the reasons identified in subsection (12)(a) or (b) of this section. The department must provide the appli-

cant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(13) Issuing or denying a hydraulic project approval:

(a) Protection of fish life is the only grounds upon which the department may deny or provision an HPA, as provided in RCW 77.55.021. The department may not unreasonably withhold or condition approval of (~~(a permit)~~) an HPA. The HPA provisions must reasonably relate to the project and must ensure that the project provides proper protection for fish life. The department may not impose provisions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) The department may not deny an emergency, imminent danger, chronic danger, or an expedited HPA, as provided in RCW 77.55.021. (~~(In addition, the department may not deny an HPA for a project that complies with the conditions of RCW 77.55.141.)~~) However, these projects must (~~(meet the mitigation)~~) comply with the provisions in ((WAC 220-660-080 and the provisions in WAC 220-660-100 through 220-660-450)) this chapter that are included in an HPA. The department will deny any other type of HPA or request to change an existing HPA when the project will not protect fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant with a written statement of the specific reasons why and how the proposed project would adversely affect fish life, as provided in RCW 77.55.021.

(c) The department may place specific time limitations on project activities in an HPA to protect fish life.

(d) The department may require a person to notify the department before construction or other work starts, upon project completion, or at other times that the department deems necessary while the (~~(permit)~~) HPA is in effect. The department may also require a person to provide periodic written reports to assess (~~(permit)~~) HPA compliance.

(e) The HPA must contain provisions that allow for minor modifications to the work timing, plans, and specifications of the project without requiring the reissuance of the (~~(permit)~~) HPA, as long as the modifications do not adversely affect fish life or the habitat that supports fish life. The permittee should contact the habitat program's Olympia headquarters office through email or the department's online permit application system to request a minor modification.

(f) A person may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must be applied for and permitted under the requirements of chapter 43.21K RCW.

(14) Hydraulic project approval expiration time periods:

(a) Except for emergency, imminent danger, expedited, and pamphlet HPAs, the department may grant standard HPAs that are valid for up to five years. The permittee must

demonstrate substantial progress on construction of the portion of the project authorized in the HPA within two years of the date of issuance.

(b) Imminent danger and expedited HPAs are valid for up to sixty days, and emergency HPAs are valid for the expected duration of the emergency hydraulic project.

(c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.

(d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, a person must notify the department before starting work each year:

(i) Seasonal work that diverts water for irrigation or stock watering; and

(ii) Stream bank stabilization projects to protect farm and agricultural land if the applicant can show that the problem causing the erosion occurs annually or more frequently. Evidence of erosion may include history of permit application, approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

(15) Requesting a time extension, renewal, modification, or transfer of a hydraulic project approval:

(a) The permittee may request a time extension, renewal, modification, or transfer of an active HPA. Before the HPA expires, the permittee or authorized agent must submit a written request through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept requests for delay, renewal, modification, or transfer of an HPA submitted elsewhere or by a person other than the permittee or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the permit number or application identification number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA if requesting a time extension, renewal, or modification, the reason for the requested change, the date of the request, and the requestor's signature. Requests for transfer of an HPA to a new permittee or authorized agent must additionally include a signed, written statement that the new permittee or authorized agent agrees to the conditions of the HPA, that they agree to allow the department access to the project location to inspect the project site, mitigation site, or any work related to the project, and that they will not conduct any project activities until the department has issued approval.

(b) Requests for time extensions, renewals, or modifications of HPAs are deemed received on the date received by the department. The department may declare applications submitted to habitat program after normal business hours as received on the next business day.

(c) Within forty-five days of the requested change, the department must approve or deny the request for a time extension, renewal, modification, or transfer of an approved HPA.

(d) Unless the new permittee or authorized agent requests a time extension, renewal, or modification of an approved HPA, the department may change only the name and contact information of the permittee or authorized agent and must not alter any provisions of the HPA except the project or location start dates when granting a transfer.

(e) A permittee may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded. Requests for changes to emergency HPAs may be verbal, but must contain all of the information in (a) of this subsection.

(f) The department must not modify or renew an HPA beyond the applicable five-year or sixty-day periods. A person must submit a new complete application for a project needing further authorization beyond these time periods.

(g) The department will issue a letter documenting an approved minor modification(s) and a written HPA documenting an approved major modification(s) or transfer.

(16) Modifications of a hydraulic project approval initiated by the department:

(a) After consulting with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.

(b) For hydraulic projects that divert water for agricultural irrigation or stock watering, or when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the department must show that changed conditions warrant the modification in order to protect fish life.

(17) Revoking an HPA.

(a) The department may revoke an HPA under the following conditions:

(i) At the written request of the permittee or authorized agent;

(ii) As the result of an informal or formal appeal decision;

(iii) As the result of a court ruling finding that the department issued the HPA in error;

(iv) Following change of a determination of nonsignificance or mitigated determination of nonsignificance to a determination of significance by a lead agency under chapter 43.21C RCW that applies to the hydraulic project approved by the HPA;

(v) The applicant did not correctly identify compliance with the requirements of chapter 43.21C RCW in the HPA application (~~(for an HPA)~~) and the department was unaware of the error until after the (~~(permit))~~ HPA was issued;

(vi) Changed physical or biological conditions at the site of the hydraulic project have occurred before project initiation such that fish life cannot be protected if the project proceeds under the requirements of the existing HPA;

(vii) The permittee has not demonstrated substantial progress on construction of the hydraulic project within two years of the date of issuance as required in RCW 77.55.021 (9)(a). Substantial progress means initiation of work at any of the project locations identified in the HPA;

(viii) Duplicate HPAs have been issued for the same hydraulic project.

(b) The department must provide the permittee or authorized agent with written notification before revoking the HPA.

(c) The department must notify the permittee or authorized agent in writing immediately upon revoking the HPA.

(18) Requesting a preapplication determination:

(a) A person may request information or a technical assistance site visit from the department prior to submitting an HPA application or at any other time. The department will provide the requested information either verbally or in writing.

(b) If a person is unsure about whether proposed construction or other work landward of (above) the ordinary high water line requires an HPA, they may request a preapplication determination from the department under RCW 77.55.400. The department must evaluate the proposed project and determine if it is a hydraulic project and, if so, whether an HPA from the department is required to ensure proper protection of fish life.

(c) The preapplication determination request must be submitted through the department's online permitting system and must contain:

(i) A description of the proposed project, which must include the location of the ordinary high water line;

(ii) A map showing the location of the project site, which must include the location of the ordinary high water line; and

(iii) Preliminary plans and specifications of the proposed project, if available, which include the location of the ordinary high water line.

(d) The department must provide tribes and local governments a seven calendar day review and comment period. The department must consider all applicable written comments that it receives before it issues a determination as described in this subsection.

(e) The department must issue a written determination, including its rationale for the decision, within twenty-one calendar days of receiving the request.

(f) Chapter 43.21C RCW (state environmental policy) does not apply to preapplication determinations issued under this subsection.

(g) The department's preapplication determination decision may be appealed as provided in WAC 220-660-460 (Informal appeal of administrative action) or WAC 220-660-470 (Formal appeal of administrative action).

(19) Notice of intent to disapprove HPA applications:

(a) The department may disapprove HPA applications submitted by a project proponent who has failed to comply with a stop work order or notice to comply issued under WAC 220-660-480, or who has failed to pay civil penalties issued under WAC 220-660-480. The term "project proponent" has the same definition as in RCW 77.55.410.

(b) The department may disapprove HPA applications submitted by such project proponents for up to one year after the date on which the department issues a notice of intent to disapprove HPA applications, or until such project proponent pays all outstanding civil penalties and complies with all notices to comply and stop work orders issued under WAC 220-660-480, whichever is longer (disapproval period).

(c) The department must provide written notice of its intent to disapprove HPA applications to the project proponent and to any authorized agent or landowner identified in the application, in person or via United States mail, to the mailing address(es) listed on the project proponent's HPA application.

(d) The disapproval period begins on the date the department's notice of intent to disapprove HPA applications

becomes final. The notice of intent to disapprove HPA applications becomes final thirty calendar days after the department issues it, or upon exhaustion of all applicable administrative and/or judicial remedies.

(e) Any project proponent issued a notice of intent to disapprove HPA applications may, within thirty days of the date of the notice, initiate a formal appeal of the notice as provided in WAC 220-660-470 (Formal appeal of administrative actions).

(f) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions consistent with RCW 34.05.110 and WAC 220-660-480(12).

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-370 Bank protection in saltwater areas. ~~((RCW 77.55.141 applies to single-family residence bank protection that will not result in a permanent loss of critical food fish and shellfish habitat. RCW 77.55.021 applies to nonsingle-family residence bank protection and single-family residence bank protection that does not comply with the criteria in RCW 77.55.141. The department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life-))~~ Appropriate methods to design marine bank protection are available in the department's *Marine Shoreline Design Guidelines*, as well as other published manuals and guidelines.

(1) Description: ~~((A bank protection structure is a permanent or temporary structure constructed to protect or stabilize the bank. Bank protection methods are either hard or soft techniques. Soft approaches attempt to mimic natural processes by using biotechnical methods such as live plantings, rootwads and large woody material (LWM), and beach nourishment. Usually, soft approaches are designed to be less impacting to fish life. Hard approaches armor the bank with material such as rock, concrete, or wood intended to prevent erosion of the bank. Some projects use both hard and soft approaches. To be considered soft, at least eighty-five percent of the total project area must be constructed with naturally occurring materials in a manner that mimics the natural shore processes taking place in the vicinity of the project. In addition, the remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach (e.g., must not bulkhead a feeder bluff). The total project area extends cross-shore from MLLW to the OHWL, and long-shore from a line perpendicular to the shoreline at the beginning of one end of construction to the other end.))~~ A broad spectrum of bank protection techniques can be applied to protect property. These range from natural techniques that require minimal or no engineering to engineered soft shore protection to hard shore armor. Natural techniques include planting native vegetation, improving drainage, and relocating structures. Natural techniques typically preserve the natural condition of the shore and have few to no negative impacts on fish life. Soft shore techniques include log placement, beach nourishment, resloping the bank, and revegetation can provide erosion protection using strategically placed natural materials while allowing beach processes and fish habitat to remain intact. Conventional hard techniques

include bulkheads, seawalls, revetments and retaining walls, which are designed to preclude shoreline migration and bank erosion. Each type of approach has varying degrees of impact. In general, natural techniques result in the fewest impacts to fish life and hard armor have the most impacts.

(2) **Fish life concerns:** ~~((Bank protection structures))~~ Conventional hard techniques as well as some soft shore techniques can physically alter the beach and disrupt ~~((near-shore ecosystem))~~ beach processes ~~((and physical conditions))~~. This alteration can cause a loss of the beach spawning habitat for Pacific sand lance and surf smelt ~~((and a loss of migration, feeding, and rearing habitat for juvenile salmon))~~. These forage fish species are a primary food source for some adult salmon species. This alteration can also reduce beach complexity, the presence of marine riparian vegetation including overhanging vegetation alongshore that produces terrestrial insects that are eaten by juvenile salmon. To protect fish life, the department protects ~~((the))~~ both beaches where ~~((critical food fish or shellfish habitat))~~ saltwater habitats of special concern occur and the ~~((nearshore zone geomorphie))~~ beach processes that form and maintain this ~~((critical))~~ habitat.

(3) **~~((Bulkheads and other))~~ Bank protection design:**

(a) If the ordinary high water line (OHWL) ~~((is))~~ has changed since an existing hard bank protection structure was built, and OHWL reestablishes landward of ~~((a bulkhead protection))~~ the structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If an HPA application ~~((for an HPA))~~ is submitted for repairs within three years of the breach, the bank protection structure may be repaired or replaced in the original footprint.

(b) A person must use the least impacting technically feasible bank protection alternative. A person should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an alternatives analysis. The common alternatives below are in order from most preferred to least preferred:

- (i) Remove the bank protection structure;
- (ii) ~~((No action--))~~ Control upland drainage;
- (iii) Protect, enhance, and replace native vegetation;
- (iv) Relocate improvements or structures;
- (v) Construct a soft structure ~~((by placing beach nourishment and large woody material))~~;
- (vi) Construct upland retaining walls;
- (vii) Construct ~~((a))~~ hard structure ~~((such as bulkhead and rock revetment))~~ landward of the OHWL; and
- (viii) Construct ~~((a))~~ hard structure ~~((such as a bulkhead and rock revetments))~~ at the OHWL.

(c) ~~((Upon receipt of a complete application, the department will determine the applicable RCW under which to process the application.~~

(i) A new, replacement, or repaired single family residence bulkhead in saltwater areas must not result in the permanent loss of critical food fish or shellfish habitat to be processed under RCW 77.55.141.

(ii) ~~If construction of a new single family residence bulkhead or other bank protection project, or replacement or repair of an existing single family residence bulkhead or~~

~~other bank protection project waterward of the existing structure will result in the permanent loss of critical food fish or shellfish habitat, the department must instead process the application under RCW 77.55.021. However,))~~ The construction of all ~~((bulkheads or other))~~ bank protection must not result in a permanent loss of surf smelt or Pacific sand lance spawning beds.

(d) An HPA application for ~~((a))~~ new ~~((bulkhead or other))~~ bank protection ~~((work))~~ or the replacement or rehabilitation of ~~((a bulkhead or other))~~ bank protection ~~((structure))~~ that extends waterward of ~~((the))~~ an existing bank protection structure must include a site assessment, alternatives analysis and design rationale prepared by a qualified professional ~~((such as a))~~ e.g., coastal geologist, geomorphologist ~~((etc.))~~ for the proposed ~~((project and selected technique))~~ method. The department may grant an exemption depending on the scale and nature of the project. ~~((In addition, this requirement does not apply to projects processed under RCW 77.55.141. This report must include))~~ The applicant must submit a report to the department as part of a complete application for an HPA that includes:

- (i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;
- (ii) Evidence of erosion and/or slope instability to warrant the stabilization work;
- (iii) Alternatives considered and the technical rationale specific to the ~~((design developed))~~ bank protection technique proposed;
- (iv) An analysis of the benefits and impacts associated with the chosen protection ~~((technique))~~ method; and
- (v) An explanation of the ~~((technique))~~ method chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.

(e) The department may require the design of hard bank protection ~~((projects))~~ structures to incorporate beach nourishment, large woody material or native vegetation as mitigation.

(4) **~~((Single family residence bulkhead projects processed under RCW 77.55.141:~~**

~~(a) Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no more than six feet waterward of the OHWL.~~

~~(b) Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least impacting type of structure and construction method.~~

~~(5))~~ **Bank protection ~~((projects processed under RCW 77.55.021))~~ location:**

(a) Locate the waterward face of a new ~~((bulkhead))~~ hard bank protection structure at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the ~~((bulkhead))~~ hard bank protection structure

may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no greater than six feet. Soft shoreline ~~((stabilization techniques that provide restoration of shoreline ecological functions may be permitted))~~ methods that allow beach processes and habitat to remain intact may extend waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired ~~((bulkhead))~~ hard bank protection further waterward than the structure it is replacing. Where removing the existing ~~((bulkhead))~~ hard bank protection will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement ~~((bulkhead))~~ bank protection to extend waterward of, but directly abutting, the existing structure. In these instances, ~~((the design))~~ a person must use the least-impacting type of structure and construction method.

~~((6) Bulkhead and other))~~ **(5) Bank protection construction:**

(a) The department ~~((may require a person to establish))~~ requires that plans submitted as part of a complete application show the horizontal distances of the structure(s) from ~~((a))~~ permanent benchmark(s) (fixed objects) ((before starting work on the project)). Each horizontal distance shown must include the length and compass bearing from the benchmark to the waterward face of the structure(s). The benchmark(s) must be located, marked, and protected to serve as a post-project reference for at least ten years from the date the HPA application is submitted to the department.

(b) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(c) No stockpiling of excavated materials containing silt, clay, or fine-grained soil is approved waterward of the OHWL.

(d) The department may allow stockpiling of sand, gravel, and other coarse material waterward of the OHWL. Place this material within the designated work corridor ~~((waterward of the bulkhead footing or base rock)).~~ Remove all excavated or stockpiled material from the beach within seventy-two hours of construction.

(e) Backfill all trenches, depressions, or holes created during construction that are waterward of the OHWL before they are filled by tidal waters.

AMENDATORY SECTION (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

WAC 220-660-460 Informal appeal of administrative actions. An informal appeal is an ~~((appeal to the department pursuant to))~~ internal department review of a department HPA decision and is conducted under chapter 34.05 RCW (Administrative Procedure Act).

(1) The department recommends that a person aggrieved by ~~((the issuance, denial, provisioning, or modification of an HPA))~~ a department HPA decision contact the department employee responsible for making the decision ~~((on the HPA))~~ before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution ~~((of the problem))~~ without the need for an informal appeal.

(2) The department encourages ~~((aggrieved persons))~~ a person aggrieved by a department HPA decision to take advantage of the informal appeal process before initiating a formal appeal. However, ~~((the informal appeal process is not mandatory, and))~~ a person may ~~((proceed directly to))~~ pursue a formal appeal under WAC 220-660-470 without first obtaining informal review under this section.

This rule does not apply to ~~((any provisions in))~~ pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection under WAC 220-660-480.

(3) Requesting an informal appeal.

(a) Any person with legal standing may request an informal appeal of ~~((the following department actions:~~

~~((a)))~~ the issuance, denial, provisioning, or modification of an HPA ((or)), the rejection of a fish habitat enhancement project application, or a preapplication determination.

(b) ~~((An order imposing civil penalties.))~~ Issuance of a stop work order or notice to comply may be informally appealed only by the project proponent who received the notice or order or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be informally appealed only by the person incurring the penalty.

(4) A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision ~~((or)),~~ order, or notice. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. ~~((The date of actual receipt, however, may not exceed forty-five days from the date of mailing.))~~

(5) A request for informal appeal must be submitted in one of the following ways:

(a) Mailed to the:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
P.O. Box 43234
Olympia, WA 98504-3234;

(b) Email: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, email address (if available), and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department ~~((issued, denied, provisioned, or modified an HPA, or the date the department~~

issued the order imposing civil penalties)) action being contested;

(d) The log number or a copy of the HPA, or a copy of the ~~((order imposing civil penalties))~~ specific department action that the appellant contests;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The attorney's name, address, email address (if available), and phone number, if the appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.

(8) Informal conference. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the HPA appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-660-470. Formal review must be requested within the time periods specified in WAC 220-660-470.

AMENDATORY SECTION (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

WAC 220-660-470 Formal appeal of administrative actions. A formal appeal is an appeal to the pollution control hearings board ~~((pursuant to))~~ (board) under chapters 34.05 RCW and 371-08 WAC.

(1) The department recommends that a person aggrieved by ~~((the issuance, denial, provisioning, or modification of an))~~ a department HPA decision contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution ~~((of the problem))~~ without the need for a formal appeal.

(2) The department encourages ~~((aggrieved persons))~~ a person aggrieved by a department HPA decision to take advantage of the informal appeal process under WAC 220-660-460 before initiating a formal appeal. However, ~~((the informal appeal process is not mandatory, and))~~ a person may ~~((proceed directly to))~~ pursue a formal appeal under this section without first completing the informal appeal process under WAC 220-660-460.

This rule does not apply to ~~((any provisions in))~~ pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection, under WAC 220-660-480.

(3) Requesting a formal appeal.

(a) Any person with standing may request a formal appeal of the ~~((following department actions:~~

~~(a) The))~~ issuance, denial, provisioning, or modification of an HPA; ~~((or~~

~~(b) An order imposing civil penalties.~~

~~(4) As required by the Administrative Procedure Act, chapter 34.05 RCW, the department must inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.)~~ the rejection of a fish habitat enhancement project application for streamlined processing; a notice of intent to disapprove HPA applications; or a preapplication determination.

(b) Issuance of a stop work order, notice to comply, or notice of intent to disapprove HPA applications, may be formally appealed only by a person who received the order or notice from the department or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be formally appealed only by the person incurring the penalty.

(4) The recipient of a stop work order must comply with the order immediately upon receipt. However, the board may stay, modify, or discontinue the order upon motion, under such conditions as the board may impose.

(5) A request for formal appeal must be in writing and must be filed with the clerk of the ~~((pollution control hearings))~~ board ~~((PCHB))~~ and served on the department within thirty days from the date of receipt of the decision ~~((or))~~, order, or notice. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence ~~((The recipient's)),~~ up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. ~~((The date of actual~~

receipt; however, may not exceed forty-five days from the date of mailing.)

(6) The request must be plainly labeled as "Request for Formal Appeal" and, ~~((pursuant to))~~ under WAC 371-08-340, must include the following:

(a) The appellant's name, mailing address, email address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department ~~((issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties))~~ action being contested;

(d) A copy of the decision, notice, order, or ~~((permit))~~ HPA you are appealing, and if appealing a permit decision, a copy of the ~~((permit))~~ HPA application;

(e) A short and plain statement explaining why the appellant considers the department action, notice, or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The signature of the appellant or his or her representative.

(7) Service on the department must be submitted in one of the following ways:

(a) Mailed to:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
P.O. Box 43234
Olympia, WA 98504-3234;

(b) Email: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(8) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within thirty days from the date of receipt of the department's written decision in response to the informal appeal.

(9) The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the ~~((PCHB))~~ board. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal ~~((to the PCHB))~~, the appellant may apply to the ~~((PCHB))~~ board for a stay of the decision or order, or removal of a stay imposed by the department.

(10) If there is no timely request for an appeal, the department action will be final and nonappealable.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-480 Compliance with HPA provisions. A project proponent must comply with all provisions of chapter 77.55 RCW, this chapter, and the HPA. If a project proponent violates chapter 77.55 RCW or this chapter or deviates from any provision of an HPA issued by the department, the department may issue a correction request, a stop work order, a notice to comply, or a notice of civil penalty. The term "project proponent" has the same definition as in RCW 77.55.410. This section does not apply to a project, or to that portion of a project, that has received a forest practices HPA from the department of natural resources under chapter 76.09 RCW.

(1) **Technical assistance program:** ~~((Pursuant to))~~ Under chapter 43.05 RCW, the department will continue to develop programs to encourage voluntary compliance ~~((with HPA provisions))~~ by providing technical assistance consistent with chapter 43.05 RCW. The programs include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods for the delivery of technical assistance. In addition, ~~((provisions of chapter 43.05 RCW require))~~ the department ~~((to))~~ must provide, upon request, a list of organizations ~~((, including private companies,))~~ that provide technical assistance. This list ~~((must be))~~ is compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department of any organization.

(a) Technical assistance is defined in chapter 43.05 RCW as including:

(i) Information on the laws, rules, and compliance methods and technologies applicable to the department's programs;

(ii) Information on methods to avoid compliance problems;

(iii) Assistance in applying for permits; and

(iv) Information on the mission, goals, and objectives of the program.

(b) "Technical assistance documents" means documents prepared to provide information specified in (a) of this subsection that is labeled a technical assistance document by the department. Technical assistance documents do not include ~~((notices of correction, violation,))~~ correction requests or civil or criminal enforcement actions. "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW. Technical assistance documents do not impose mandatory obligations or serve as the basis for a citation.

(2) **Technical assistance visit:**

(a) ~~((Pursuant to))~~ Under RCW 43.05.030, a technical assistance visit is defined as a visit by the department to a project site or other location that:

(i) Has been requested or is voluntarily accepted; and

(ii) The department declares to be a technical assistance visit at the start of the visit.

(b) ~~((Notice of violation,))~~ During a technical assistance visit, or within a reasonable time thereafter, the department must prepare a ~~((notice of violation))~~ correction request to inform the ~~((person))~~ project proponent of any violations of

law or department rules identified by the department ((as follows:

(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the project must achieve compliance;

(iv) Notice of the means to obtain any technical assistance services provided by the department or others; and

(v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(e) A notice of violation is not a formal enforcement action and is not subject to appeal.

(3) Notice of correction:

(a) ~~Procedures for correction of violations~~). "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW.

(c) As provided in RCW 43.05.050, the department may issue a civil penalty under this section without first issuing a correction request when a violation is observed during a technical assistance visit only if:

(i) The project proponent has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice for the same or similar type of HPA violation; or

(ii) The violation has a probability of causing more than minor harm to fish life.

(3) Compliance inspection:

(a) If, during any inspection or visit that is not a technical assistance visit, the department becomes aware of conditions that do not comply with applicable laws and rules enforced by the department and are not subject to penalties as provided for in ((subsection (4) of) this section, the department may issue a ((notice of) correction request to the ((responsible party that must include:

(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) ~~The date by which the department requires compliance to be achieved;~~

(iv) ~~Notice of the means to contact any technical assistance services provided by the department or others; and~~

(v) ~~Notice of when, where, and to who in the department a person may file a request to extend the time to achieve compliance for good cause.~~

(b) ~~A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.~~

~~(e)) project proponent.~~

(b) If the department issues a ((notice of) correction request, it must not issue a civil penalty for the violations identified in the ((notice of) correction request unless the ((responsible party) project proponent fails to comply with the notice((-

(4) Civil penalties:

(a) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of chapter 77.55 RCW or this chapter. The department must impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice must describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify the process for informal and formal appeals of the penalty. If the violation is an ongoing violation, the penalty may accrue for each additional day of violation.

(b) The department may issue a civil penalty without first issuing a notice of correction, as provided in RCW 43.05.110) request.

(c) As provided in RCW 43.05.050, the department may issue a civil penalty under this section without first issuing a correction request when a violation is observed during a compliance inspection only if:

(i) The ((person)) project proponent has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice of the same or similar type of HPA violation; or

(ii) Compliance for the current violation is not achieved by the date set or modified by the department in a ((previously issued notice of) previous correction((- if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date) request for the current violation; or

(iii) The violation has ((a probability of placing a person in danger of death or bodily harm, has)) a probability of causing more than minor ((environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or

(iv) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

(e) Appeal of a civil penalty. If a civil penalty order is not appealed in a timely manner under WAC 220-660-460 or 220-660-470, the civil penalty order is final and nonappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable.-

(d) Payment of a civil penalty. The penalty imposed is due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty is due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW 77.55.291 and 34.05.578.

(e) Unpaid civil penalty. If the amount of any penalty is not paid within thirty days after it is due and payable, the attorney general, upon the request of the director, must bring an action in the name of the state of Washington in the superior court of Thurston County or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence must be the same

as an ordinary civil action. All penalties recovered under this section must be paid into the state's general fund.

(f) The department must comply with the requirements of RCW 34.05.110 before issuing a civil penalty to a small business as defined in that statute.

(5) **Time for compliance:** The department must provide for a reasonable time to achieve compliance. Any person receiving a notice of correction under subsection (3) or (4) of this section may request an extension of time for good cause to achieve compliance. The person must request an extension from the department in writing and follow the procedures specified by the department in the notice. The department must respond in writing within ten calendar days.

(6)) harm to fish life.

(4) **Correction request:**

(a) "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW. A correction request is not a formal enforcement action and is not subject to appeal under state law or WAC 220-660-460 Informal appeal of administrative actions or WAC 220-660-470 Formal appeal of administrative actions.

(b) If during a technical assistance visit or compliance inspection, the department discovers a violation of any provisions within chapter 77.55 RCW, this chapter, or an HPA issued by the department, it must, during the visit or within a reasonable time thereafter, issue a correction request to the project proponent detailing steps needed to bring the project into compliance.

(c) Contents of a correction request: A correction request must indicate whether it originates from a technical assistance visit or a compliance inspection. A correction request must include:

(i) A description of what is not in compliance with chapter 77.55 RCW, this chapter, or the HPA;

(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;

(iii) A statement of what is required to achieve compliance;

(iv) The date by which the project proponent must achieve compliance;

(v) Notice of the means to obtain technical assistance services provided by the department or others; and

(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the correction request.

(d) The department must provide for a reasonable time to achieve compliance.

(e) Time extension to comply: A request for an extension of the deadline for achieving compliance with the correction request must be submitted to the department in writing within ten calendar days of receiving the correction request. "Date of receipt" is defined in WAC 220-660-460 (4)(b) and 220-660-470 (5)(b). The department must respond in writing to a request for extension of the deadline.

(5) **Stop work order:**

(a) The department may issue a stop work order if:

(i) A violation of chapter 77.55 RCW or this chapter occurs or a deviation from any provisions of an HPA occurs.

To qualify for a stop work order, the violation must be serious enough that it could cause significant harm to fish life; and

(ii) Immediate action is necessary to prevent continuation of harm, or to avoid more than minor harm, to fish life.

(b) Stop work orders are effective immediately upon issuance. Project proponents must therefore comply with stop work orders immediately upon receipt.

(c) Scope of a stop work order: A stop work order may require that any person stop all work connected with the project until corrective action is taken and the department has indicated that work may resume. A stop work order may also require that the project proponent take corrective action to prevent, correct, or compensate for adverse impacts to fish life caused by the violation.

(d) Contents of a stop work order. The stop work order must include:

(i) A description of the condition that is not in compliance with chapter 77.55 RCW, this chapter, or the HPA;

(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;

(iii) A statement of what is required to achieve compliance;

(iv) The date by which the department requires compliance with the corrective actions identified in the order;

(v) Notice of the means to contact any technical assistance services provided by the department or others;

(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order;

(vii) Means for contacting the department to schedule an inspection to assess compliance; and

(viii) The right to appeal the order.

(e) Signature authority for a stop work order: A stop work order for hydraulic projects conducted without an HPA must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director. A stop work order for permitted hydraulic projects must be authorized by the regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.

(f) Providing notice of a stop work order: A stop work order may be issued and provided directly and immediately to the person whose actions are in violation of chapter 77.55 RCW, this chapter, or the HPA, regardless of whether that person is the project proponent. Upon receipt of the stop work order, that person must immediately comply with it. Within five business days of issuing a stop work order, the department must mail a copy of the order to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives notice of the stop work order.

(g) Consequences of noncompliance: Failure to comply with a stop work order can result in subsequent civil or criminal enforcement actions, and can also cause the project pro-

ponent to be disapproved for future HPA applications as set forth in WAC 220-660-050.

(h) Appealing a stop work order: A stop work order may be appealed within thirty days from receipt of the order by a person who received a copy of the order or by the owner of the land on which the hydraulic project is located. Informal appeals must be filed in the form and manner provided in WAC 220-660-460, and formal appeals must be filed in the form and manner provided in WAC 220-660-470.

(6) Notice to comply:

(a) The department may issue a notice to comply if a violation of chapter 77.55 RCW or this chapter occurs, a deviation from any provisions of an HPA occurs, or damage or potential damage to fish life occurs, and the department determines that a stop work order is not necessary to prevent continuation of or avoid more than minor harm to fish life.

(b) Scope of a notice to comply: A notice to comply must specify the corrective action to be taken, and may also require additional action to prevent, correct, or compensate for adverse impacts to fish life caused by the violation.

(c) Contents of a notice to comply. A notice to comply must include:

(i) A description of the condition that is not in compliance;

(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;

(iii) A statement of what is required to achieve compliance;

(iv) The date by which the department requires compliance to be achieved;

(v) Notice of the means to contact any technical assistance services provided by the department or others;

(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order; and

(vii) The right to appeal the notice.

(d) The department must provide for a reasonable time to achieve compliance.

(e) Providing notice: Within five business days of issuing a notice to comply, the department must mail a copy of the notice to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives the notice.

(f) Consequences of noncompliance: Failure to comply with a notice to comply can result in subsequent civil or criminal enforcement actions, and can also cause the project proponent to be subject to disapproval of future HPA applications as set forth in WAC 220-660-050.

(g) Appealing a notice to comply: A notice to comply may be appealed within thirty days from the date of receipt of the notice by a person who received the notice or by the owner of the land on which the hydraulic project is located. Informal appeals must be filed in the form and manner provided in WAC 220-660-460 and formal appeals must be filed in the form and manner provided in WAC 220-660-470.

(7) Civil penalties:

(a) The department may levy civil penalties of up to ten thousand dollars for every violation of chapter 77.55 RCW, this chapter, or provisions of an HPA. Each and every violation is a separate and distinct civil offense. Penalties are issued in accordance with the penalty schedule provided in subsection (8) of this section.

(b) Notice of civil penalty: The department must issue written notice of any civil penalty imposed under this section. At a minimum, the notice must include:

(i) The factual and legal basis for the penalty, including a description of the violation(s) for which the penalty is imposed and the text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for those violation(s);

(ii) The amount of the penalty; and

(iii) The right of the person incurring the civil penalty to appeal it.

(c) Signature authority for a notice of civil penalty: Civil penalties must be authorized by the regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director. Civil penalties of two thousand five hundred dollars or more must be authorized by the habitat program director, habitat program deputy director, or department director.

(d) Service of notice: The department must serve a notice of civil penalty as follows:

(i) By certified mail to:

(A) The last known address of the person incurring the penalty; and

(B) The local jurisdiction in which the hydraulic project is located; or

(ii) By personal service to:

(A) The person incurring the penalty; and

(B) The local jurisdiction in which the hydraulic project is located.

Within five business days of issuing a penalty, the department must mail a copy of the notice of civil penalty to the last known address of any project proponent and the owner of the land on which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives notice of the penalty.

(e) Effective date of penalty: The penalty imposed becomes due and payable thirty days after receipt of a penalty notice unless an appeal is filed. Whenever an appeal is filed, the penalty becomes due and payable only upon completion of all review proceedings and the issuance of a final notice or order confirming the penalty in whole or in part.

Failure to pay a civil penalty can result in disapproval of future HPA applications as set forth in WAC 220-660-050. When a penalty becomes past due, it is also subject to interest at the rate allowed by RCW 43.17.240 for debts owed to the state.

Unpaid penalties may also be subject to enforcement under RCW 77.55.440 and other applicable laws and regulations under RCW 77.55.470.

(f) Right to appeal civil penalty: Any person incurring a civil penalty issued under RCW 77.55.440 and this section may appeal the civil penalty informally or formally within

thirty days of receiving the notice of civil penalty. Informal appeals are conducted under WAC 220-660-460, and formal appeals are conducted under WAC 220-660-470.

(g) Civil penalties received or recovered under RCW 77.55.440 must be deposited into the state's general fund, except that the department is authorized to retain any attorneys' fees and costs it may be awarded in connection with an action brought under RCW 77.55.440 to recover a civil penalty.

(8) Civil penalty schedule:

(a) The department may levy a civil penalty, as defined in this section, in any of the following circumstances:

(i) The project proponent fails to complete actions required to be completed in a correction request, stop work order or notice to comply within the time period required for completion contained in the request or notice. Unless the project proponent has previously been subject to an HPA enforcement action or the violation has a probability of more than minor harm to fish life, the department will make a reasonable attempt to achieve voluntary compliance before issuing a civil penalty.

(ii) A project proponent is conducting or has conducted a hydraulic project without having an active HPA or without first obtaining an HPA for the project.

(b) The department's decision to issue a civil penalty under RCW 77.55.440 is based upon consideration of the following:

(i) Previous violation history of the person who will be incurring the penalty;

(ii) Severity, timing, and repairability of the impact of the violation(s) on fish life;

(iii) Whether the violation(s) was intentional;

(iv) The extent, if any, to which the person who would be incurring the penalty has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life; and

(v) If the penalty will be imposed on a person for a violation committed by another, the extent to which the person incurring the penalty was unaware of the violation, and whether that person received a substantial economic benefit from the violation.

(c) Determining civil penalty amounts: When the department issues a civil penalty under this section and based on factors listed in (b) of this subsection, it considers the following in setting penalty amounts independently for each violation upon which the penalty is based:

(i) Previous violation history of the person who will be incurring the penalty, including the frequency and similarity of any previous violations within five years preceding the violation leading to the issuance of the penalty. A history of violations that, under a preponderance of the evidence, shows a pattern of disregard for specific HPA provisions, chapter 77.55 RCW, or this chapter will likely result in a higher penalty amount. In reviewing a person's violation history for purposes of this section, the department may consider previously issued correction requests, stop work orders, notices to comply, notices of civil penalty imposed under chapter 77.55 RCW, criminal convictions imposed under RCW 77.15.300, and any other relevant information that may be available.

(ii) Severity and repairability of impacts, which the department assesses based on harm to fish life caused by the violation(s).

Violations that injure or kill fish life, decrease habitat function, value, or quantity, or cause long term or irreparable damage will likely result in a higher penalty amount.

(iii) Whether the violation(s) was intentional, which the department determines by considering whether the person knew or should have known the action was a violation, whether and to what extent the violation was foreseeable, whether the person to incur the penalty took precautions to avoid committing the violation, and whether the person to incur the penalty had an economic incentive for committing the violation. Violations that are intentional, foreseeable, where economic incentives are clear, or when precautions were not taken to avoid the impact likely result in a larger penalty amount.

(iv) The extent, if any, to which the person who would be incurring the penalty has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life. The department assesses the level of a person's cooperation by examining whether the person reported the violation voluntarily, the time lapse, if any, between when the person discovered the violation and when the person reported it, and how responsive the person to incur the penalty was toward department staff. Evidence of a person's poor or inconsistent cooperation with department staff will likely result in a higher penalty amount.

(d) Adjusting civil penalty amounts:

(i) A penalty for a violation committed by another may be adjusted downward based on the extent, if any, to which a person incurring the penalty was unaware of the violation and did not receive a substantial economic benefit from the violation.

(ii) The department senior or executive level staff person with signature authority for the notice of civil penalty may adjust penalty amounts based on circumstances not listed under (c) of this subsection.

(iii) Where more than one person has committed or contributed to a violation, and the department issues a civil penalty for that violation, the department may allocate penalty amounts to each person having committed or contributed to the violation.

(e) Nothing in this section prevents the department from:

(i) Choosing not to issue a civil penalty;

(ii) Issuing a stop work order or notice to comply in lieu of a civil penalty; or

(iii) Referring a violation to any local, state, tribal, or federal agency with jurisdiction.

(f) Penalties determined under this subsection are administered in accordance with procedures in subsection (7) of this section.

(9) **Criminal penalty:** Under RCW 77.15.300, it is a gross misdemeanor to ((construct)) conduct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or to violate any requirements or conditions of the HPA for such construction or work.

(10) **Remedies not exclusive:** The remedies under this chapter are not exclusive and do not limit or abrogate any

other civil or criminal penalty, remedy, or right available in law, equity, or statute.

(11) Permission to enter property denied - Administrative inspection warrant: If the department is denied entry to a project site for the purpose of ensuring compliance or it has probable cause to believe a violation of chapter 77.55 RCW, this chapter, or the HPA provision(s) has occurred it must obtain landowner consent or an administrative inspection warrant under RCW 77.55.450 before entering the property for this purpose.

(12) First time paperwork violations by small businesses:

(a) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions for first time paperwork violations by a small business, consistent with RCW 34.05.110.

(b) A paperwork violation is limited to:

(i) Failure to have a copy of the HPA, plans, and specifications for a permitted project on-site during construction of, or work on, the project;

(ii) Failure to submit to the department photos or survey results required as a provision in the HPA;

(iii) Failure to notify the department when such notification described in WAC 220-660-050 (13)(d) is required as a provision of the HPA; and

(iv) Failure to submit reports required in the HPA.

(c) A small business may request the waiver by contacting the department and submitting a copy of the business's most recent federal income tax return or most recent return filed with the Washington state department of revenue.

WSR 19-24-082

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 3, 2019, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-065.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0230 What services are available under the individual and family services (IFS) waiver?, 388-845-0415 What is assistive technology?, 388-845-0425 Are there limits to the assistive technology you may receive?, 388-845-0600 What are community access services?, 388-845-0605 Who are qualified providers of community access services?, 388-845-0610 Are there limits to community access services you may receive?, 388-845-0900 What are environmental adaptations?, 388-845-0910 What limits apply to environmental adaptations?, 388-845-1100 What are behavioral health crisis diversion bed services?, 388-845-1110 What are the limits of behavioral health crisis diversion bed services?, 388-845-

1150 What are behavioral health stabilization services?, 388-845-1190 What is peer mentoring?, 388-845-1191 Who are qualified providers of peer mentoring?, 388-845-1192 What limitations are there for peer mentoring?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?, 388-845-1810 Are there limits to the specialized medical equipment and supplies you may receive?, 388-845-2000 What is staff and family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limits to the staff and family consultation and training you may receive?, 388-845-2160 What is therapeutic equipment and supplies?, and 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

Hearing Location(s): On January 22, 2020, 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: January 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 22, 2020.

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 January 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed major changes or new requirements to the chapter include the following: Remove the "three years old" limit from home and community based waiver services; remove therapeutic equipment and supplies from the individual and family services (IFS) waiver; update the service definition of assistive technology; Limit assistive technology to services not otherwise covered under the medicaid state plan, including early and periodic screening, diagnosis, and treatment (EPSDT), and consistent with waiver objectives of avoiding institutionalization; replace "community access" with the service's new name, "community inclusion"; update the service definition of environmental adaptations; add examples of environmental adaptations; replace "home" with "dwelling" to clarify that environmental adaptations can be made to all types of residences; add repairs for property destruction caused by a waiver participant's behavior to the environmental adaptations allowed under the IFS and children's intensive in-home behavioral support (CIIBS) waivers; clarify when an environmental adaptation is excluded; require evidence of required completed inspections be submitted to the developmental disabilities administration (DDA) prior to final payment for work; add deck construction, deck repair, jetted tubs, and saunas to list of items excluded from environmental adaptations; limit environmental adaptations to services not otherwise covered under the medicaid state plan, including EPSDT, and consistent with waiver objectives of avoiding institutionalization; update service definition for behavioral health crisis diversion bed services; add behavioral health cri-

sis diversion bed services to the IFS waiver; replace "individual support plan" with "person-centered service plan"; clarify who determines a participant's need for crisis diversion bed services and who determines the duration and amount of the service the participant may receive; exempt the cost of behavioral health crisis diversion bed services from the annual allocation in the IFS waiver; add behavioral health stabilization services crisis diversion bed to the IFS waiver; clarify the service definition for peer mentoring services and who can provide them (nonsubstantive changes in wording); clarify the limits to peer mentoring services (nonsubstantive changes in wording); update the service definition for specialized medical equipment and supplies; add a service requirement to specialized medical equipment and supplies that applies only to IFS waiver; require providers of specialized medical equipment and supplies being offered through the IFS waiver to be contracted with DDA as providers of specialized goods and services or specialized equipment and supplies; add limits to the service and exclude items under specialized medical equipment and supplies; update the service definition of staff and family consultation and training; add certified teachers to the list of providers of staff and family consultation and training; add a limit to staff and family consultation and training that states the service does not provide training necessary to meet contractual licensing or certification requirements; and remove therapeutic equipment and supplies from the IFS waiver.

Reasons Supporting Proposal: DDA is proposing to amend these rules as part of the administration's waiver renewal process. These changes were approved by the Centers for Medicare and Medicaid Services on July 30, 2019, and are effective September 1, 2019. Many of these changes were enacted by an emergency CR-103E Rule-making order filed as WSR 19-18-048, effective on September 1, 2019. These proposed changes are necessary to enact the emergency rules on a permanent basis and to provide services as approved in DDA's home and community based services waivers.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120.

Rule is necessary because of federal law, 42 C.F.R. 441 Subpart G.

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: Ann Vasilev, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

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.

November 25, 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 20-01 issue of the Register.

WSR 19-24-085
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 3, 2019, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-135.

Title of Rule and Other Identifying Information: Amendments to chapter 296-05 WAC, Apprenticeship rules.

Hearing Location(s): On January 23, 2020, at 10:00 a.m., at the SCC Apprenticeship Center, Room 109, 2110 North Fancher Road, Spokane Valley, WA 99212, for directions <https://scc.spokane.edu/About-Us/Locations/Maps>; or on January 24, 2020, at 10:00 a.m., at the Tukwila L&I Office, Training Room, 12806 Gateway Drive South, Tukwila, WA 98168, for directions <https://lni.wa.gov/agency/contact/#office-locations>.

Date of Intended Adoption: March 3, 2020.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, email Beverly.Clark@lni.wa.gov, fax 360-902-5292, by 5:00 p.m., on January 24, 2020.

Assistance for Persons with Disabilities: Contact Beverly Clark, phone 360-902-6272, fax 360-902-5292, email Beverly.Clark@lni.wa.gov, by 5:00 p.m., on January 15, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The federal update to apprenticeship equal employment opportunity (EEO) guidelines, 29 C.F.R. 30, requires our state system to make updates to EEO guidelines in our rule.

The apprentice utilization requirements take full effect January 1, 2020. EHB 1849 (chapter 244, Laws of 2018) assigns the duty of verifying compliance to the supervisor of apprenticeship and requires the department to adopt rules to implement this process.

In addition, key language was inadvertently omitted during the 2019 revision that needs clarification or to be placed back into the rule to be consistent with current agency practice or interpretation of law.

Reasons Supporting Proposal: The apprenticeship program worked with the Washington state apprenticeship and training council (WSATC), with representation from busi-

ness, labor, and the public, regarding employer compliance with apprenticeship rules. WSATC has endorsed the proposed changes.

Statutory Authority for Adoption: Chapter 49.04 RCW.
Statute Being Implemented: Chapter 49.04 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: None.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jody Robbins, Tumwater, Washington, 360-902-5321.

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 required in accordance with RCW 34.05.328 (5)(b)(iii), rules adopting or incorporating by reference without material change federal regulations, 34.05.328 (5)(b)(v), rules consistent with state statute, and 34.05.328 (5)(v)(iv), rules that correct or clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.061 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: Portions of the proposed rule are being adopted to conform to 29 C.F.R. Part 30. Failure to conform with may result in derecognition of Washington's authority to certify apprenticeship programs for federal purposes.

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.

December 3, 2019

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-003 Definitions. The following definitions apply to this chapter:

Adjudicative proceeding: A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

Apprentice: A worker at least sixteen years of age employed to learn an apprenticeable occupation and registered with a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules. Building and construction trade occupations require an apprentice to be at least

seventeen years of age to register with a sponsor in an approved apprenticeship.

Apprenticeable occupation: A specified occupation which must:

(a) Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand hours of on-the-job learning to attain;

(d) Require a minimum of one hundred forty-four hours of related instruction per program year to supplement on-the-job work experience;

(e) Involve sufficient skill to establish career sustaining employment;

(f) Not be part of an occupation previously recognized by the registering agency as apprenticeable.

Apprenticeship agreement: A written agreement between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment, training and education of the apprentice.

Apprenticeship cohort: The group of individual apprentices registered to a specific program during a one year time frame, not including those whose agreements have been canceled during the initial probationary period.

Apprenticeship committee: A quasi-public entity approved by the WSATC to administer and perform apprenticeship and training services.

Apprenticeship program: A plan for administering an apprenticeship agreement containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices. Apprenticeship programs must include apprenticeship agreements.

Apprenticeship section: The division of the department of labor and industries administering registered apprenticeships for state and federal purposes.

Cancellation: The termination of registration or cancellation of approval for an apprenticeship program at the request of the supervisor or sponsor, or the termination of registration or approval of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

Certificate of completion: A record of the successful completion of a term of apprenticeship issued by the department on behalf of the WSATC. To be eligible for a certificate of completion, an apprentice must have been registered with the department and an active participant of a committee's program for at least six months and have successfully completed their apprenticeship.

Certification: Written approval from the WSATC that:

(a) A set of apprenticeship standards established by an apprenticeship program sponsor substantially complies with standards established by the WSATC; and

(b) An individual is eligible for probationary employment as a registered apprentice as part of an apprenticeship program.

C.F.R.: Code of Federal Regulations.

Competent instructor: An instructor providing related supplemental instruction who has demonstrated satisfactory performance in the occupation for a minimum of three years beyond the customary learning period for that occupation and who:

(a) Meets the requirements of the state board for community and technical colleges for a vocational-technical instructor; or

(b) Is recognized within an industry as having expertise in a specific occupation and is a subject matter expert; and

(c) Has training in teaching techniques and adult learning styles. The training may be acquired before, or within one year after, the competent instructor begins to provide related supplemental instruction.

Competitor: An apprenticeship program providing training in the same or similar occupation as one already existing in a certain geographic area. To determine whether a program provides training in the same or similar occupation, the WSATC may consider:

(a) Approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice;

(f) Scope of work descriptions issued by the department.

Completion rate: The percentage of an apprenticeship cohort receiving a certificate of completion within one year of the projected completion date.

Department: Department of labor and industries.

Employer: Any person or organization with a valid Washington state unified business identifier (UBI) number employing an apprentice.

Federal purposes: Any federal contract, grant, agreement, or arrangement dealing with apprenticeship. Includes any federal financial or other assistance, benefit, contribution, privilege, allowance, exemption, preference, or right pertaining to apprenticeship. See e.g., 29 C.F.R. Part 29.2.

File: To send to:

Supervisor of Apprenticeship and Training
Department of Labor and Industries
Apprenticeship Section
Post Office Box 44530
Olympia, Washington 98504-4530

Or deliver to and receipt at:
Department of Labor and Industries
7273 Linderson Way S.E.
Tumwater, Washington 98501

Filing is complete upon deposit in the United States mail, properly addressed, postage prepaid, or personal service.

First full training cycle: A full training cycle begins with the registration of the first apprentice and continues for one calendar year regardless of completion, cancellation and/or suspension of the apprentice.

Individual agreement: A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

Industry-wide standards: The current, acceptable practices, including technological advancements, being used in the different occupations.

Journey level: An individual having sufficient skills and knowledge of an occupation to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the occupation. An individual can be fully qualified either through formal apprenticeship training or practical on-the-job work experience equal to or greater than the term of apprenticeship.

On-the-job training program: A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC 296-05-013.

Probationary period: A period of time during which the apprentice has not yet reached full status or is subject to corrective action.

(a) Initial probationary period: A period of time in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship, which cannot exceed twenty percent of the apprenticeship term, or one year from the date of registration, whichever is shorter. Apprentices within the initial probationary period may not file apprenticeship complaints with the program sponsor. Apprentices transferring from another program are not subject to additional initial probationary periods.

(b) Disciplinary probationary period: A period of time after the initial probationary period during which the apprentice's progress is not satisfactory. The program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. Apprentices subject to a disciplinary probationary period may file complaints with the program sponsor.

Provisional registration: Initial one-year approval of a registered program meeting the required standards for registration. After one year, the provisional registration may be made permanent or continued as provisional through the first full training cycle, or rescinded following a compliance review.

RCW: Revised Code of Washington.

Registration: Both apprenticeship agreements and apprenticeship program standards are registered.

(a) Apprenticeship agreement registration: The acceptance and recording of an agreement by the apprenticeship section of the department of labor and industries as evidence of the apprentice's participation in a particular registered apprenticeship program.

(b) Apprenticeship program registration: The approval and recording of the program standards by the WSATC and the apprenticeship section as meeting the basic standards and requirements for such approval.

Registration agency: The apprenticeship section of the department of labor and industries responsible for registering apprenticeship programs and apprentices, providing technical assistance, and conducting reviews for compliance with chapter 49.04 RCW and these rules.

Related/supplemental instruction (RSI): An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. It may be provided in any form approved in advance by the WSATC. Apprentices must receive not less than one hundred forty-four hours of RSI per program year.

Secretary: The individual appointed by the director of the department according to RCW 49.04.030.

Sponsor: Any person, firm, association, committee, or organization operating as an apprenticeship and training program and in whose name the program is registered.

Standards: A written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as further defined in WAC 296-05-015.

Supervision: The necessary education, assistance, and control provided by a journey-level employee to an apprentice. Apprentices must be supervised by a journey-level worker on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC.

Supervisor: The individual appointed by the director of the department who acts as the secretary of the WSATC. When these rules create a duty of the supervisor or secretary of the WSATC, the supervisor may designate department of labor and industries' employees to assist in the performance of those duties subject to the supervisor's oversight and direction.

Trainee: An individual enrolled in an on-the-job training program, but who is not registered with a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules.

Training agent: Employer of registered apprentices approved by the program sponsor to furnish on-the-job training. The training agent shall use only registered apprentices to perform work processes in accordance with approved program standards.

Training agreement: A written agreement between a training agent and a program sponsor containing the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

Transfer: A shift of apprenticeship registration from one sponsor to another with a written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

WAC: Washington Administrative Code.

WSATC: Washington state apprenticeship and training council.

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-011 Apprenticeship and training programs—Approval, registration, and objections. (1) The WSATC approves and registers apprenticeship and training programs. At the regular quarterly meeting, the proposed committee and/or standards will be considered by the

WSATC. The WSATC will approve provided the sponsor accepts changes recommended by the WSATC, or disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

(a) Approval: The WSATC may approve an apprenticeship program when:

(i) If applicable, an apprenticeship and training committee is organized consistent with WAC 296-05-009;

(ii) Standards are proposed by the committee consistent with WAC 296-05-015;

(iii) Standards are presented to the WSATC consistent with WAC 296-05-008;

(b) The WSATC approves the following types of apprenticeship and training programs:

(i) Group joint: Sponsored by both a group of employers and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(ii) Individual joint: Sponsored by an individual employer and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(iii) Group nonjoint: A program sponsored only by an employer association and administered only by the employer association.

(iv) Individual nonjoint: A program sponsored and administered by an individual employer with no labor organization.

(v) Group waiver: A program sponsored by an employer association and a labor organization but one group waives participation in administering the program.

(vi) Individual waiver: A program sponsored by an individual person or plant and a labor organization, but one party waives participation in administering the program.

(vii) Plant: A program sponsored by the owner of a plant or plants at a particular location or locations. Plant programs are administered in accordance with chapter 49.04 RCW and these rules.

(c) Registration: If a program is approved, it is registered with the WSATC. An initial registration is provisional and lasts one year.

(i) If a program is not approved, the department will inform the sponsor in writing and explain the reasons for denying approval.

(ii) If a program is not initially approved, the WSATC may ask a sponsor to modify the program. The program may be approved with modifications.

(d) Waiver: A party may seek to waive labor union participation in administering a program when apprentices will be union members.

(i) If a program includes labor union participation, the program sponsor must obtain a written statement, known as a

"no objection" statement, from the union in support of the program.

(ii) When a labor union chooses not to participate in administering the program, the employer or employers' association must furnish copies of the registration application and the proposed program standards to the union serving as the collective bargaining agent of the employees to be trained. Before taking a final action on the application, the supervisor must give the union forty-five calendar days to respond before final action is taken on the registration.

(iii) If the union fails to comment within forty-five days, it will have waived its right to participate in the program and the supervisor will grant the waiver.

(e) Nonjoint and waiver committees - Additional requirements.

(i) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.

(ii) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.

(iii) Unrelated occupations shall be submitted under separate standards.

(f) Related/supplemental instruction: The WSATC may approve apprentice related/supplemental instruction for apprenticeable occupations based on recommendations from the state board for community and technical colleges. Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-05-015 (11).

(2) Objections: If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must:

(a) Provide timely and specific objections in writing to the apprenticeship supervisor twenty calendar days prior to the next regular quarterly WSATC meeting on a form provided by the department;

(b) Upon receipt of a competitor's objections, the apprenticeship supervisor notifies the program sponsor within two business days and forwards the matter to the WSATC.

(c) The WSATC may adjudicate the matter itself or refer the matter to the office of administrative hearings for initial adjudication:

(i) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(ii) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(d) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

(3) Reciprocity: The WSATC may recognize out-of-state apprenticeship programs when:

(a) The program complies with federal requirements; or

(b) The program is recognized by a recognized state apprenticeship agency; and

(c) The program sponsor agrees to comply with Washington wage and hour laws; and

(d) The program sponsor presents reasonably consistent standards of apprenticeship and asks for recognition from the WSATC.

The WSATC may revoke reciprocity agreements at any time.

NEW SECTION

WAC 296-05-217 Apprentice utilization requirements (AUR) verification on public works projects. The supervisor will verify compliance of apprentice utilization requirements on public works projects as required by RCW 49.04.035.

(1) The apprentice utilization requirement on public works is established in accordance with RCW 39.04.320.

(2) The supervisor must verify compliance in the following manner:

(a) The prevailing wage intents and affidavits system will be the primary method used to verify compliance, however, the supervisor may use any appropriate reporting system or method.

(b) The supervisor may coordinate with any appropriate agency or organization to assist in verification of apprentice labor hours.

(c) The supervisor will compile a compliance report by awarding agencies, contractors, and subcontractors.

(3) Compliance reports on completed projects will be made available to the WSATC each quarter and must be used to determine compliance for the purposes of RCW 39.04.350 and 39.12.055.

(4) The WSATC shall accept or reject the report.

~~((PART D — EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP))~~

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-403 Definitions ((for Part D)). The following definitions are to be used with this part.

Underutilization: Enrolling minorities and women in a ratio not proportionate to the participation of minorities and women that is representative of the geographical region served.

Women or female: ((As used in Part D of this chapter)) Refers to minority women and nonminority women.

See 29 C.F.R. 30.2 (December 2016) for definitions of the following:

• Direct threat;

• Disability;

• Genetic information;

• Major life activities;

• Physical or mental impairment;

- Reasonable accommodation;
- Undue hardship.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-405 Exceptions to the requirement for adopting an affirmative action plan and a selection procedure. (1) A sponsor is not required to adopt an affirmative action plan or a selection procedure if:

- (a) It has fewer than five apprentices; or
 - (b) The program is determined by the WSATC to be in compliance with an approved equal employment opportunity program. An approved program is one which:
 - (i) Provides for selection of apprentices;
 - (ii) Provides for affirmative action in apprenticeship;
 - (iii) Includes goals and timetables for participation of minorities and women in the labor force in apprenticeship which meet or exceed the requirements of WAC 296-05-415; and
 - (iv) Meets the requirements of the following laws:
 - Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000, et seq.);
 - The regulations implementing 42 U.S.C. 2000, et seq.;
 - Executive Order 11246 as amended; and
 - The regulations (41 C.F.R. Part 60) implementing Executive Order 11246.
- Title I of the Americans with Disabilities Act (ADA);
 • 42 U.S.C. 12112 and 12113, as amended;
 • Regulation promulgated by the Equal Employment Opportunity Commission (EEOC) (29 C.F.R. Part 1630); and
 • The Genetic Information Nondiscrimination Act (GINA), 29 U.S.C. 2000ff et seq.

(2) A program sponsor must submit satisfactory evidence of its qualification for the exception to the WSATC. If the program sponsor designed the apprenticeship program or the equal opportunity program to circumvent the requirements of these rules, the program will not qualify for an exception.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-407 Apprenticeship program sponsor's obligations. (1) A sponsor of an approved apprenticeship program must:

- (a) Promote equal opportunity in its apprenticeship program; and
 - (b) Recruit, select, employ and train apprentices without discrimination based on race, sex, color, religion, national origin, age, disability or as otherwise specified by law.
- (2) A sponsor of an approved apprenticeship program with five or more apprentices must uniformly apply all rules related to apprentices. Such rules include, but are not limited to:
- Equality of wages;
 - Periodic advancement;
 - Promotion;
 - Assignment of work;
 - Job performance;
 - Rotation among all work processes for the occupation;

- Imposition of penalties or other disciplinary action; and
- All other aspects of the apprenticeship program administered by the program sponsors.

(3) Adopt and implement an equal employment opportunity plan and selection procedure as required by chapter 49.04 RCW, 29 C.F.R. Part 30, and these rules unless the approved apprenticeship program qualifies for an exception (see WAC 296-05-405).

(4) Anti-harassment training must be provided to all individuals connected with the administration or operation of the apprenticeship program to include apprentices and journey level workers who work with apprentices.

(a) The training session must be in-person or interactive online training;

(b) The training must include communication of the following at a minimum:

- (i) Harassing conduct will not be tolerated;
- (ii) The definition of harassment and the types of conduct that constitute unlawful harassment; and
- (iii) The right to file a harassment complaint and how to do so.

(c) Orientation and periodic information sessions must be conducted to inform and remind all such individuals of the sponsor's equal employment policy and to provide the anti-harassment training.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-415 Equal employment opportunity goals and timetables. (1) An equal employment opportunity plan must include goals and timetables. The first step in deciding whether goals and timetables are necessary is the completion of an analysis of the sponsor's program to determine whether there is an underutilization of minorities and/or women in the occupations represented by the program. This analysis must be:

- (a) Conducted by the sponsor with technical assistance provided by the department;
- (b) In writing; and
- (c) Included in the sponsor's equal employment opportunity plan.

(2) If the sponsor's analysis demonstrates that minorities and females are underutilized in the program, the program has an enrollment deficiency that must be corrected. Enrollment goals and timetables to correct this deficiency must be established and they must be included in the sponsor's equal employment opportunity plan. (See WAC 296-05-433.)

(3) If the sponsor's analysis demonstrates that no enrollment deficiencies exist, enrollment goals and timetables are not required. However, where no goals and timetables are established, the equal employment opportunity plan must include a detailed explanation why no goals and timetables have been established.

(4) Utilization goals may not provide a sponsor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's status as an apprentice on the basis of that person's race, sex, or ethnicity.

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-443 Complaint filing. (1) Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint. The basis of the complaint may be:

(a) Discrimination on the basis of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law by a sponsor or a sponsor's program;

(b) The equal opportunity standards have not been followed; or

(c) The sponsor's equal employment opportunity plan does not comply with the requirements of this chapter.

(2) A complaint may be filed in person or through an authorized representative. The complainant may choose to file a complaint with the WSATC or with a private review panel as established in WAC 296-05-445.

(3) A complaint must be in writing and shall be signed by the complainant. The complaint must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances leading to the complaint.

(4) The complaint must be filed not later than one hundred eighty calendar days from the date of the alleged discrimination or violation of the sponsor's equal employment opportunity plan or the rules of this chapter. If a complaint is initially filed with the private review panel and the complainant later wishes to refer the complaint to the WSATC, the referral must occur within one hundred eighty calendar days of the circumstances leading to the complaint or within thirty calendar days of the private review panel's final decision, whichever is later. ~~((If good cause is shown, the WSATC may extend these time periods.))~~

(5) Sponsors must provide written notice to applicants and apprentices of their right to file discrimination complaints. This notice must be included in the application materials and must also be displayed in a prominent public location where all apprentices will see the notice.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-447 Processing of complaints. (1) All approved programs must establish procedures explaining the program's complaint review process. These procedures must comply with the requirements of this section. Each sponsor must give a copy of the complaint procedures to each apprenticeship applicant and to all enrolled apprentices.

(2) When the apprenticeship supervisor receives a complaint and the sponsor has a private review panel in place, the complaint must be referred to the panel unless the complainant chooses otherwise or unless the council concludes that the panel will not satisfactorily resolve the complaint.

(3) Once the complaint is referred to the private review panel, the panel has no more than thirty calendar days to resolve it. At the end of the period, the supervisor will obtain the reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been

satisfactorily resolved and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and the parties formally notified.

(4) If the private review panel has not satisfactorily resolved the complaint within ninety calendar days, the WSATC may conduct a compliance review and take all necessary steps to resolve the complaint.

(5) If the review panel satisfactorily resolves the complaint but there is evidence that the equal opportunity practices of the sponsor's program are not in compliance with the requirements of this chapter, the council must conduct a compliance review and take all steps necessary to bring the program into compliance.

(6) When a private review panel does not exist, the WSATC may conduct a compliance review to determine the facts of the complaint and any other information necessary to resolve the dispute.

(7) If the WSATC believes that satisfactorily resolving a complaint requires a change in the time limits established in this section, it can modify the time constraints by adopting special processing procedures. However, special processing procedures must only be adopted when circumstances warrant them and only if they will not prejudice any person or party associated with the complaint.

(8) Equal employment opportunity complaints may be referred to the appropriate state or federal entity upon receipt.

WSR 19-24-089

WITHDRAWAL OF PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

(By the Code Reviser's Office)

[Filed December 3, 2019, 2:27 p.m.]

WAC 181-79A-2510, proposed by the professional educator standards board in WSR 19-11-053, appearing in issue 19-11 of the Washington State Register, which was distributed on June 5, 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 19-24-094

PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 3, 2019, 4:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-06-070.

Title of Rule and Other Identifying Information: Reinforcing steel and post-tensioning activities, chapter 296-155 WAC, Part O, concrete, concrete forms, shoring and masonry construction.

Hearing Location(s): On February 10, 2020, at 1:00 p.m., at the Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168; and on February 12, 2020, at 1:00 p.m., at the Enduris Training Center, 1610 South Technology Boulevard, #100, Spokane, WA 99224.

Date of Intended Adoption: March 17, 2020.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@Lni.wa.gov, fax 360-902-5619, by February 28, 2020.

Assistance for Persons with Disabilities: Contact Carmyn Shute, phone 360-902-6081, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov, by January 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making was in response to a petition by the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers received on November 20, 2018. Chapter 296-155 WAC, Part O, fell behind the newly revised 2018 - American National Standards Institute (ANSI) A10.9 (2013 and reaffirmed in 2018) standard when addressing hazards related to reinforcing steel and post-tensioning work. L&I has identified and amended relevant parts of chapter 296-155 WAC, Part O to reduce employee exposure to falls, struck by things, and impalement hazards associated with collapse of form-work.

The proposal includes clarifying language, new definitions, explanatory notes, and other changes needed to bring current safety standards up-to-date and easy to follow for the regulated community.

Significant changes include:

- A subsection to adopt the current requirement of fall protection at four feet or during form and rebar work; and
- A subsection regarding written notification requirements on reinforcing steel installation and concrete placement; and
- A subsection to require employers ensure that employees performing reinforcing steel and/or post-tensioning activities have been trained by a qualified person.

AMENDED SECTIONS:

WAC 296-155-675 Scope, application and definitions applicable to this part.

- Added several definitions, including controlling contractor and qualified person.

WAC 296-155-680 General provisions.

- Added language regarding site access and layout.
- Added language regarding written notifications prior to commencement of and immediately following reinforcing steel installation and concrete placement.
- Added language regarding sustainability requirements for vertical and horizontal columns, walls, and other reinforcing assemblies.
- Added language regarding impalement protection and custody.
- Added language regarding post-tensioning operations.
- Added language regarding fall protection.

- Added language regarding training requirements and retraining.

WAC 296-155-682 Requirements for equipment and tools.

- Updated references.

WAC 296-155-689 Placing and removal of forms.

- Updated references.

Reasons Supporting Proposal: The petitioner highlighted some points and rationale related to injury statistics and safety hazard concerns in which the L&I's division of occupational safety and health is responding to. Determination was made during the stakeholder process that the majority of the proposed changes are already considered industry standard practices. Implementation of the proposed rule may reduce the number of injured workers without adding significant costs to small businesses in the state of Washington.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, public.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, 360-902-5090.

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 Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6081, fax 360-902-5619, email Carmyn.Shute@Lni.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.

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. L&I identified the following rule changes that will result in increased costs: changes to WAC 296-155-680(8) that require the controlling contractor provide the reinforcing steel contractor on the project with the written notification regarding written notifications prior to commencement of and immediately following reinforcing steel installation and concrete placement; and changes to WAC 296-155-680(15) that require that each employee who performs reinforcing steel and/or post tensioning activities be provided training by a qualified person in the following areas for the activities in which they are engaged:

the hazards associated with reinforcing steel and post-tensioning activities, and the proper procedures and equipment to perform reinforcing steel and post-tensioning activities.

For the new written notification requirement, the costs were derived based on the estimated labor time value and cost of providing written notifications for an average of two thousand five hundred seventeen projects annually, resulting in a total annual cost of approximately \$11,965 to \$23,930 each year on the affected businesses. For the new training require-

ments, the costs are derived on an estimated number of workers who would require necessary training in a basic two-day workshop, resulting in an estimated annual cost of \$36,627 - \$60,728 to the affected employers.

L&I calculated the per business costs for affected employers and compared to the minor-cost threshold of one percent of annual payroll (see table below). The average costs were below the minor cost threshold.

4-Digit NAICS	Industry Description	Average Number of Firms	1% of Annual Payroll	Per Business Cost (low to high)	
2362	Construction of buildings	1,089	\$68,979	\$44.64	\$77.77
2371	Utility system construction	546	\$53,864	\$89.00	\$155.05
2373	Highway, street, and bridge construction	250	\$20,427	\$194.37	\$338.63
2381	Specialty trade contractors	218	\$44,967	\$223.15	\$388.79
2389	Other specialty trade contractors	288	\$11,641	\$168.87	\$294.21
TOTAL		2,390		\$20.33	\$35.42

A copy of the detailed cost calculations may be obtained by contacting Carmyn Shute, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6081, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov.

December 3, 2019
 Joel Sacks
 Director

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-675 Scope, application, and definitions applicable to this part. (1) **Scope and application.** This part sets forth requirements to protect all construction employees from the hazards associated with concrete and masonry construction operations performed in workplaces covered under chapter 296-155 WAC.

(2) **Definitions applicable to this part.**

Bull float. A tool used to spread out and smooth the concrete.

Competent person. One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, who has authorization to take prompt corrective action to eliminate them.

Controlling contractor. A prime contractor, general contractor, construction manager, or any other legal entity that has the overall responsibility for the construction of the project, including planning, quality, and completion.

Dead load. A constant load, without load factors, due to the mass (weight) of members, the supported structure and permanent attachments or accessories.

Falsework. Formwork to support concrete and placing operations for supported slabs of concrete structures, including all supporting members, hardware, and bracing.

Formwork. The total system of support for freshly placed or partially cured concrete, including the mold or sheeting (form) that is in contact with the concrete as well as

all supporting members including shores, reshores, hardware, braces, and related hardware.

Guy. A line that steadies a high piece or structure by pulling against an off-center load.

Jacking operation. The task of lifting a slab (or group of slabs) vertically from one location to another (e.g., from the casting location to a temporary (parked) location, or from a temporary location to another temporary location, or to its final location in the structure), during the construction of a building/structure where the lift-slab process is being used.

Lift slab. A method of concrete construction in which floor and roof slabs are cast on or at ground level and, using jacks, lifted into position.

Limited access zone. An area alongside a masonry wall, which is under construction, and which is clearly demarcated to limit access by employees.

Post-tensioning operations. A method of stressing reinforced concrete in which tendons running through the concrete are tensioned after the concrete has hardened.

Precast concrete. Concrete members (such as walls, panels, slabs, columns, and beams) which have been formed, cast, and cured prior to final placement in a structure.

Qualified. One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated their ability to solve or resolve problems relating to the subject matter, the work, or the project.

Reinforced concrete. A composite material in which the concrete provides the material's compressive strength, while

the forcing in the form of additional embedded material provides the tensile strength and/or ductility.

Reinforcing ironworker. A worker primarily engaged in the hoisting, rigging, field fabrication, moving, and installation of reinforcing steel assemblies, members, post-tensioning cables, and related equipment. Reinforcing steel activities include, but are not limited to: Off-loading and material handling of reinforcing components; fabrication, preassembly, and placement of reinforcing steel columns, beams, joists, mats, welded wire mesh, and curtain-walls; and the placement of post-tensioning cables.

Reinforcing steel assemblies. Vertical and horizontal columns, caissons, walls, drilled piers, mats, and other similar structures. For purposes of this standard, reinforcing steel includes rods, bars, or mesh made from composite and/or other materials.

Reshoring. The construction operation in which shoring equipment (also called reshores or reshoring equipment) is placed, as the original forms and shores are removed, in order to support partially cured concrete and construction loads.

Shore. A supporting member that resists a compressive force imposed by a load.

Slip form. A form that is moved as concrete is placed and slides without being detached to form walls or other concrete structures.

Stressing jacks. Portable hydraulic devices that pull the tendons associated with post-tensioning concrete to create a permanent tension load.

Tendon. A metal element, usually of steel such as wire, stranded components (such as wires), bars or rods used in prestressing or post-tensioning concrete.

Vertical slip forms. Forms which are jacked vertically during the placement of concrete.

Guy. A line that steadies a high piece or structure by pulling against an off center load.)

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-680 General provisions. (1) **General.** All equipment, material and construction techniques used in concrete construction and masonry work must meet the applicable requirements for design, construction, inspection, testing, maintenance and operations as prescribed in ANSI A10.9-1997, Concrete and Masonry Work Safety Requirements.

(2) **Construction loads.** You must not place any construction loads on a concrete structure or portion of a concrete structure unless the employer determines, based on information received from a person who is qualified in structural design, that the structure or portion of the structure is capable of supporting the loads.

(3) **Vertical loads.** Vertical loads consist of a dead load plus an allowance for live load. The weight of formwork together with the weight of freshly placed concrete is dead load. The live load consists of the weight of workers, equipment, runways and impact, and must be computed in pounds per square foot (psf) of horizontal projection.

(4) **Lateral loads.** Braces and shores must be designed to resist all foreseeable lateral loads such as wind, cable ten-

sions, inclined supports, impact of placement, and starting and stopping of equipment. The assumed value of load due to wind, impact of concrete, and equipment acting in any direction at each floor line must not be less than 100 pounds per lineal foot of floor edge or two percent of total dead load of the floor, whichever is greater. Wall forms must be designed for a minimum wind load of 10 psf, and bracing for wall forms should be designed for a lateral load of at least 100 pounds per lineal foot of wall, applied at the top. Walls of unusual height require special consideration.

(5) **Special loads.** Formwork must be designed for all special conditions of construction likely to occur, such as unsymmetrical placement of concrete, impact of machine-delivered concrete, uplift, and concentrated loads.

(6) You must check form supports and wedges during concrete placement to prevent distortion or failure.

(7) **((Reinforcing steel.)) Site access and layout.** The controlling contractor must ensure that the following is provided and maintained:

(a) Adequate access roads into and through the site for the safe delivery and movement of derricks, cranes, trucks, other necessary equipment, the material to be erected, and the means and methods for pedestrian and vehicular control.

Exception: This requirement does not apply to roads outside of the construction site.

(b) A firm, properly graded, and drained area, that is readily accessible to the work with adequate space for the safe assembly, rigging and storage of reinforcing and post-tensioning materials, and the safe operation of the reinforcing contractor's equipment.

(c) Adequate exterior platform for landing materials on the floors of multi-tiered buildings.

Exception: Where the design, structure, or space constraint precludes the installation of exterior platforms.

Exception: Where the design of the structure allows for the safe landing of materials without the exterior platform.

(d) Adequate protective system designed and constructed in accordance with Chapter 155 Part N Excavation, Trenching, and Shoring prior to the commencement of reinforcing operations in excavations and/or trenches.

(8) Written notifications prior to commencement of and immediately following reinforcing steel installation and concrete placement.

The controlling contractor must ensure that the reinforcing steel contractor on the project is provided with the following written notifications at the times indicated:

(a) Prior to commencement of reinforcing steel installation, that formwork and falsework has been inspected by a competent person and determined to meet the design requirements of the installing formwork/falsework contractor as indicated in (b) and (c) of this subsection and immediately after the installation of reinforcing steel and placement of the concrete.

(b) Prior to commencement of reinforcing steel installation, that the vertical formwork, elevated decks, and other working/walking surfaces are structurally stable and remain adequately braced, guyed, or supported to allow safe access of reinforcing workers, materials, and equipment.

(c) Prior to commencement of reinforcing steel installation, that the protective system for excavations and/or trenches has been inspected by a competent person.

(9) Sustainability requirements for vertical and horizontal columns, walls, and other reinforcing assemblies.

(a) Reinforcing steel for walls, piers, columns, prefabricated reinforcing steel assemblies, and similar vertical structures must be guyed, braced, or supported to prevent collapse.

(b) Guys, braces, or supports.

(i) Systems for guying, bracing, or supports must be designed by a qualified person.

(ii) Guys, braces, and supports must be installed and removed as directed by a competent person.

(c) Reinforcing steel must not be used as a guy or brace.

(d) The controlling contractor must prohibit other construction processes below or near the erection of reinforcement assemblies until they are adequately supported and/or secured to prevent structural collapse.

(e) The reinforcing steel contractor must flag specific areas of the erection level for their work activity. The guying and/or bracing must be in place before the release of the reinforcing assembly from the hoist rigging.

(10) Impalement protection and custody.

(a) You must guard all protruding reinforcing steel, onto and into which employees could fall, to eliminate the hazard of impalement.

(b) Wire mesh rolls: You must secure wire mesh rolls at each end to prevent dangerous recoiling action.

(c) ((Guying: You must guy or support reinforcing steel for walls, piers, columns, and similar vertical structures to prevent overturning and to prevent collapse.

(8) Post-tensioning operations:

(a) You must not permit any employee (except those essential to the post-tensioning operations) to be behind the jack during tensioning operations:

(b) You must erect signs and barriers to limit employee access to the post-tensioning area during tensioning operations:

(e)) When protective covers are provided by the reinforcing steel contractor, the protective covers must remain in place after reinforcing steel activities have been completed to protect workers from other trades only if the controlling contractor or its authorized representative:

(i) Had directed the reinforcing steel contractor to leave the protective covers in place; and

(ii) Has inspected and accepted control and responsibility for the protective covers; or

(iii) Has placed control and responsibility for the protective covers on another contractor other than the reinforcing steel contractor.

Note: The responsibilities of the controlling contractor related to accepting the control and custody of protective covers does not relieve the individual employer or subcontractor from protecting their employees from impalement hazards in accordance with the provisions of this subsection.

(11) Post-tensioning operations. The controlling contractor must:

(a) Provide written documentation to the employer performing the stressing operation that the minimum specified

initial concrete compressive strength has been achieved prior to commencement of stressing operations.

(b) Ensure no employees (except those essential to the post-tensioning operations) are permitted to be behind the jack or the fixed end anchorage during tensioning operations. No employees are permitted above or alongside the full length of the tendons during tensioning operations.

(c) Ensure signs and barricades are erected to limit access into the stressing area only to personnel engaged in stressing or de-tensioning operations.

(d) Prohibit other construction trades from working in the barricaded area during stressing operations.

(e) Ensure there is an adequate safe work platform of a minimum of three feet measured from the end of the floor slab to the platform toeboard, such as an extension of the formwork, for stressing tendons, cutting tendon tails, and grouting where tensioning operations are above grade.

Exception: Where the adjoining structure or other structural space constraint precludes the installation of exterior platforms.

(i) The work platform required in (e) of this subsection must include guardrails and toeboards meeting the requirements of WAC 296-880-40005; and

(ii) The work platform required in (e) of this subsection must be kept clear of any debris or materials not related to the stressing or de-tensioning operation.

(f) Ensure stressing equipment is secured to prevent accidental displacement during operation.

(g) Ensure stressing equipment calibrations specifications are available on site. Prior to stressing, a competent person must verify the adequacy of the stressing equipment calibrations.

(h) Ensure a competent person inspects the stressing equipment for damage or defects before stressing operations begin, and periodically during the stressing operations. The use of stressing equipment must conform to the manufacturer's instructions and recommendations.

(i) Ensure methods are employed to ensure that supporting forms, falsework or shoring does not fall due to cambering of the concrete during the stressing operations. Dead loads and construction loads (including those due to stressing) must be considered in the design of the forms, falsework, and shoring.

(12) Hoisting of stressed members.

(a) You must handle stressed members at pick points specifically designated ((on the manufacturer's drawings)) by the manufacturer.

((+)) (b) You must lift stressed members with lifting devices recommended by the manufacturer or the engineer in charge.

((e) You must not allow anyone)) (c) No one shall be allowed under stressed members during lifting and erecting.

((+)) (13) Working under loads.

(a) You must not permit any employee to work under concrete buckets while buckets are being elevated or lowered into position.

(b) To the extent practical, you must route elevated concrete buckets so that no employee, or the fewest number of employees, are exposed to the hazards associated with falling concrete buckets.

~~((10))~~ (c) Reinforcing assemblies:

(i) Routes for suspended loads must be preplanned to ensure that no employee is required to work directly below a suspended load except for:

(A) Employees engaged in the placing or initial connection of the reinforcement assemblies; and

(B) Employees necessary for the hooking or unhooking of the load.

(ii) When working under suspended loads, the following criteria must be met:

(A) Materials being hoisted must be rigged to prevent unintentional displacement;

(B) Hooks with self-closing safety latches or their equivalent must be used to prevent components from slipping out of the hook; and

(C) The controlling contractor must prohibit all activities under or in the hazard area of hoisting operations, including unloading and staging areas for reinforcing assemblies.

(14) Personal protective equipment.

(a) You must not permit any employee to apply a cement, sand, and water mixture through a pneumatic hose unless the employee is wearing protective head and face equipment.

~~(b) (You must not permit any employee to place or tie reinforcing steel more than 6 feet (1.8 m) above any adjacent working surface unless the employee is protected by personal fall arrest systems, safety net systems, or positioning device systems meeting the criteria of chapter 296-155 WAC, Part C-1.~~

~~(e) You must protect each employee on the face of formwork or reinforcing steel from falling 6 feet (1.8 m) or more to lower levels by personal fall arrest systems, safety net systems, or positioning device systems meeting the criteria of chapter 296-155 WAC, Part C-1.)~~ Fall protection must be provided at four feet or more in accordance with WAC 296-880-20005(6).

(15) Training requirements.

Employers must ensure that each employee who performs reinforcing steel and/or post-tensioning activities has been provided training by a qualified person in the following areas for the activities in which they are engaged:

(a) The hazards associated with reinforcing steel and post-tensioning activities; and

(b) The proper procedures and equipment to perform reinforcing steel and post-tensioning activities.

(16) Retraining.

When the employer has reason to believe that any employee who has already been trained does not have the understanding or skill required by subsection (15) of this section, you must retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(a) Changes in the workplace render previous training obsolete; or

(b) Changes in the types of systems or equipment to be used render previous training obsolete; or

(c) Inadequacies in an employee's knowledge of procedures or use of equipment indicate that the employee has not retained the requisite understanding or skill.

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-682 Requirements for equipment and tools. (1) **Bulk cement storage.** Bulk storage bins, containers, and silos must be equipped with the following:

(a) Conical or tapered bottoms; and

(b) Mechanical or pneumatic means of starting the flow of material.

(2) You must not permit any employee to enter storage facilities unless the ejection system has been shut down and locked out in accordance with WAC 296-155-429.

(3) You must use harnesses, lanyards, lifelines or droplines, independently attached or attended, as prescribed in chapter ~~((296-155 WAC, Part C-1, Fall protection requirements for construction))~~ 296-880 WAC, Unified fall protection.

(4) **Concrete mixers.** Concrete mixers with one cubic yard (.8 m³) or larger loading skips must be equipped with the following:

(a) A mechanical device to clear the skip of materials; and

(b) Guardrails installed on each side of the skip.

(5) **Power concrete trowels.** Powered and rotating type concrete troweling machines that are manually guided must be equipped with a control switch that will automatically shut off the power whenever the hands of the operator are removed from the equipment handles.

(6) **Concrete buggies.** Concrete buggy handles must not extend beyond the wheels on either side of the buggy.

Note: Installation of knuckle guards on buggy handles is recommended.

(7) Runways.

(a) Runways must be constructed to carry the maximum contemplated load with a safety factor of 4, have a smooth running surface, and be of sufficient width for two buggies to pass. Single runs to have a minimum width of 42 inches with turnouts. Runways to have standard railings. Where motor driven concrete buggies are used, a minimum 4-inches by 4-inches wheel guard must be securely fastened to outside edge of runways.

(b) All concrete buggy runways which are 12 inches or more above a work surface or floor, or ramps with more than 4 percent incline are considered "elevated" runways.

Exception: Small jobs utilizing only one concrete buggy, or larger jobs utilizing a "one-way traffic pattern" may be exempt from the requirements for "turnouts" or for "sufficient width for two buggies to pass."

Exemption: Runways less than 12 inches above the floor or ground which are utilized by hard-powered buggies only, may be exempt from the requirements for guardrails and wheelguards.

(8) Concrete pumps and placing booms.**(a) Definitions.**

Concrete delivery hose. A flexible concrete delivery hose which has two end couplings.

Concrete pump. A construction machine that pumps concrete.

Controls. The devices used to operate a machine.

Delivery systems. The pipe, hoses and components, through which the concrete is pumped.

Grooved end. A pipe clamp pipe connection where a groove is machined or rolled directly into the outside of the pipe wall (for example: Victualic).

Material pressure. The pressure exerted on the concrete inside the delivery system.

Placing boom and placing unit. A manual or power driven, slewable working device which:

- Consists of one or more extendable or folding parts for supporting the concrete delivery system, and directs the discharge into the desired location; and

- May be mounted on trucks, trailers, or special vehicles.

Qualified person. Someone who:

- Possesses a recognized degree or certificate of professional standing; or

- Has extensive knowledge, training, and experience; or

- Successfully demonstrated the ability to resolve problems relating to the work.

Restraining devices. A sling, cable, or equivalent device used to minimize excess movement of a delivery system in case of separation.

Whip hoses. A suspended hose that has only one coupling and is used to direct the delivery of concrete.

(b) **Equipment requirements.**

(i) Equipment identification tag.

You must ensure the following identification is furnished if originally identified by the manufacturer and on all pumps manufactured after January 1, 1998:

- The manufacturer's name;

- The year of manufacture;

- The model and serial number;

- The maximum material pressure;

- The maximum allowable pressure in the hydraulic system; and

- The maximum weight per foot of delivery system including concrete.

(ii) Manufacturer's manual.

You must have the manufacturer's operation/safety manual or equivalent available for each concrete pump or placing boom.

(iii) Unsafe condition of equipment.

If during an equipment inspection a condition is revealed that might endanger workers, you must not return the equipment to service until the condition is corrected.

(iv) Controls.

Controls must have their function clearly marked.

(v) Hydraulic systems.

(A) Concrete pumps and placing booms hydraulic systems must have pressure relief valves to prevent cylinder and boom damage.

(B) Hydraulic systems must have hydraulic holding valves if hose or coupling failure could result in uncontrolled vertical movement.

(vi) Certification.

In the event of failure of a structural member, overloading, or contact with energized electric power lines and before return to service, the equipment must be certified safe by:

- The manufacturer; or

- An agent of the manufacturer; or

- A professional engineer.

(vii) Marking weight. A permanent, legible notice stating the total weight of the unit must be marked on:

- Trailer or skid mounted concrete pumps;

- Placing booms; and

- All major detachable components over 500 pounds.

(viii) Lifting a pump.

A concrete pump must be lifted using the lift points specified by the manufacturer or a professional engineer.

(ix) Emergency shutoff.

A concrete pump must have a clearly labeled emergency stop switch that stops the pumping action.

(x) Inlet and outlet guarding.

(A) The waterbox must have a fixed guard to prevent unintentional access to the moving parts.

(B) The agitator must be guarded with a point of operation guard in accordance with chapter 296-806 WAC, Machine safety, and the guard must be:

- Hinged or bolted in place;

- At least 3 inches distance from the agitator;

- Be capable of supporting a load of 250 pounds.

(C) A person must not stand on the guard when the pump or agitator is running.

(xi) Outriggers.

(A) You must use outriggers in accordance with the manufacturer's specifications.

(B) Concrete pump trucks manufactured after January 1, 1998, must have outriggers or jacks permanently marked to indicate the maximum loading they transmit to the ground.

(xii) Load on a placing boom.

(A) The manufacturer's or a licensed, registered, structural engineer's specifications for the placing boom must not be exceeded by:

- The weight of the load;

- The length and diameter of suspended hose;

- The diameter and weight of mounted pipe.

(B) A concrete placing boom must not be used to drag hoses or lift other loads.

(C) All engineering calculations regarding modifications must be:

- Documented;

- Recorded; and

- Available upon request.

(xiii) Pipe diameter thickness. The pipe wall thickness must be measured in accordance with the manufacturer's instruction, and:

- Be sufficient to maintain a burst pressure greater than the maximum pressure the pump can produce;

- The pipe sections must be replaced when measurements indicate wall thickness has been reduced to the limits specified by the manufacturer.

(xiv) Pipe clamps.

(A) You must not pump concrete through a delivery system with grooved ends, such as those for Victualic-type couplers.

(B) Pipe clamps must have a pressure rating at least equal to the pump pressure rating.

(C) Pipe clamps contact surfaces must be free of concrete and other foreign matter.

(D) If quick connect clamps are used, you must pin or secure them to keep them from opening when used in a vertical application.

(xv) Delivery pipe.

(A) Delivery pipe between the concrete pump and the placing system must be supported and anchored to prevent movement and excessive loading on clamps.

(B) Double ended hoses must not be used as whip hoses.

(C) Attachments must not be placed on whip hoses (i.e., "S" hooks, valves, etc.).

Table 1, Nonmandatory

Recommended maximum yards per hour through hose

Hose Diameter	Hose Length (12' and less) Max. yards per hour	Hose Length (12' and longer) Max. yards per hour
2"	30	30
3"	90	50
4"	160	110
5"	See manufacturer specs	See manufacturer specs

- The above figures are based on a minimum of a 4" slump and a 5 sack mix.

- Variables in mix design can have an effect on these ratings.

- Aggregate should not exceed 1/3 the diameter of the delivery system.

(xvi) Restraining. A restraining device must:

- Be used on attachments suspended from the boom tips; and

- Have a load rating not less than 1/5 of its ultimate breaking strength.

(xvii) Equipment inspection.

(A) An inspection must be conducted annually for the first 5 years and semiannually thereafter and must include the following:

- Nondestructive testing of all sections of the boom by a method capable of ensuring the structural integrity of the boom;

- Be conducted by a qualified person or by a private agency.

(B) The inspection report must be documented and a copy maintained by the employer and in each unit inspected. It must contain the following:

- The identification, including the serial numbers and manufacturer's name, of the components and parts inspected and tested;

- A description of the test methods and results;

- The names and qualifications of the people performing the inspection;

- A listing of necessary repairs; and

- The signature of the manufacturer, an agent of the manufacturer, or a qualified person.

Note: See WAC 296-155-628 (8)(d) for the inspection worksheet criteria.

(xviii) Equipment repair.

(A) Replacement parts must meet or exceed the original manufacturer's specifications or be certified by a registered professional structural engineer.

(B) A properly certified welder must perform any welding on the boom, outrigger, or structural component.

(xix) Compressed air cleaning of the piping system. To clean the piping system:

(A) The pipe system must be securely anchored before it is cleaned out.

(B) The flexible discharge hose must be removed.

(C) Workers not essential to the cleaning process must leave the vicinity.

(D) The compressed air system must have a shutoff valve.

(E) Blow out caps must have a bleeder valve to relieve air pressure.

(F) A trap basket or containment device (i.e., concrete truck, concrete bucket) must be available and secured to receive the clean out device.

(G) Delivery pipes must be depressurized before clamps and fittings are released.

(c) Qualification and training requirements.

(i) Operator trainee—Qualification requirements. To be qualified to become a concrete pump operator, the trainee must meet the following requirements unless it can be shown that failure to meet the requirements will not affect the operation of the concrete pump boom.

(A) Vision requirements:

- At least 20/30 Snellen in one eye and 20/50 in the other.

Corrective lenses may be used to fulfill this requirement;

- Ability to distinguish colors, regardless of position, if color differentiation is required;

- Normal depth perception and field of vision.

(B) Hearing requirements: Hearing adequate to meet operational demands. Corrective devices may be used to fulfill this requirement.

(ii) Operator trainee—Training requirements. Operator trainee training requirements include, but are not limited to, the following:

(A) Demonstrated their ability to read and comprehend the pump manufacturer's operation and safety manual.

(B) Be of legal age to perform the duties required.

(C) Received documented classroom training and testing (as applicable) on these recommended subjects:

- Driving, operating, cleaning and maintaining concrete pumps, placing booms, and related equipment;

- Jib/boom extensions;

- Boom length/angle;

- Manufacturer's variances;

- Radii;

- Range diagram, stability, tipping axis; and

- Structural/tipping determinations.

(D) Maintain and have available upon request a copy of all training materials and a record of training.

(E) Satisfactorily completed a written examination for the concrete pump boom for which they are becoming qualified. It will cover:

- Safety;

- Operational characteristics and limitations; and

- Controls.

(iii) Operator—Qualification requirements. Operators will be considered qualified when they have:

(A) Completed the operator trainee requirements listed in (c)(i) and (ii) of this subsection.

(B) Completed a program of training conducted by a qualified person, including practical experience under the direct supervision of a qualified person.

(C) Passed a practical operating examination of their ability to operate a specific model and type of equipment. Possess the knowledge and the ability to implement emergency procedures.

(D) Possess the knowledge regarding the restart procedure after emergency stop has been activated.

(E) Possess the proper class of driver's license to drive the concrete pump truck.

(F) Demonstrate the ability to comprehend and interpret all labels, safety decals, operator's manuals, and other information required to safely operate the concrete pump.

(G) Be familiar with the applicable safety requirements.

(H) Understand the responsibility for equipment maintenance.

(d) Concrete pump inspection worksheet criteria. Concrete pump trucks will be inspected using the following criteria: The manufacturer's required inspection criteria will be followed in all instances.

Note: DOT requirements for inspections - Ref. 49.C.F.R.396.11, Driver Vehicle Inspections and 396.13, Driver Pre-Trip Inspections; and WAC 296-155-610.

(i) Hydraulic systems.

(A) Oil level;

(B) Hoses;

(C) Fittings;

(D) Holding valves;

(E) Pressure settings;

(F) Hydraulic cylinders;

(G) Ensure that the emergency stop system is functioning properly;

(H) All controls clearly marked.

(ii) Electrical.

(A) All systems functioning properly.

(B) All remote control functions are operating properly.

Ensure that the emergency stop system is functioning properly.

(C) All controls clearly marked.

(iii) Structural.

(A) Visual inspection for cracks, corrosion, and deformations of the concrete pump with placing boom structure, and all load carrying components such as outriggers, cross frames, torsion box beams, and delivery line support structures that may lead to nondestructive testing.

(B) Visual examination of all links, pivots, pins, and bolts.

(C) Vertical and horizontal movement at the turret, turntable, rotation gear lash, bearing tolerances, not to exceed manufacturer's specifications.

(iv) Piping systems.

(A) Wall thickness must not exceed original manufacturer's specifications.

(B) Mounting hardware for attaching delivery system.

(C) Correct clamps and safety pins.

(v) Safety decals.

All safety decals must be in place as required by the manufacturer.

(9) **Concrete buckets.**

(a) Concrete buckets equipped with hydraulic or pneumatic gates must have positive safety latches or similar safety devices installed to prevent premature or accidental dumping.

(b) Concrete buckets must be designed to prevent concrete from hanging up on top and the sides.

(c) Riding of concrete buckets for any purpose is prohibited, and you must keep vibrator crews out from under concrete buckets suspended from cranes or cableways.

(d) When discharging on a slope, you must block the wheels of ready-mix trucks and set the brakes to prevent movement.

(10) **Tremies.** You must secure sections of tremies and similar concrete conveyances with wire rope (or equivalent materials in addition to the regular couplings or connections).

(11) **Bull floats.** Bull float handles, used where they might contact energized electrical conductors, must be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material.

(12) Masonry saws must be constructed, guarded, and operated in accordance with WAC 296-155-367 (1) through (4).

(13) **Lockout/tagout procedures.** You must not permit any employee to perform maintenance or repair activity on equipment (such as compressors, mixers, screens, or pumps used for concrete and masonry construction activities) where the inadvertent operation of the equipment could occur and cause injury, unless all potentially hazardous energy sources have been locked out and tagged in accordance with chapter 296-155 WAC, Part I.

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-689 Placing and removal of forms. (1)

When moved or raised by crane, cableway, A-frame, or similar mechanical device, forms must be securely attached to slings having a minimum safety factor of 5. Use of No. 9 tie wire, fiber rope, and similar makeshift lashing is prohibited.

(2) You must use taglines in moving panels or other large sections of forms by crane or hoist.

(3) All hoisting equipment, including hoisting cable used to raise and move forms must have a minimum safety factor incorporated in the manufacturer's design, and the manufacturer's recommended loading must not be exceeded. Field-fabricated or shop-fabricated hoisting equipment must be designed or approved by a registered professional engineer, incorporating a minimum safety factor of 5 in its design. Panels and built-up form sections must be equipped with metal hoisting brackets for attachment of slings.

(4) Forms intended for use where there is a free fall of over 10 feet must be equipped with adequate scaffolding and guardrails, or employees working on the forms must be protected from falls in accordance with chapter ((296-155 WAC,

~~Part C-1)~~ 296-880 WAC during forming and stripping operations.

(5) You must not release vertical forms being raised or removed in sections until adequately braced or secured. You must not release overhead forms until adequately braced or secured.

(6) You must protect workers or others at lower levels from falling materials. You must erect appropriate warning signs along walkways.

(7) You must not remove forms until the concrete is cured. The concrete must be adequately set in order to permit safe removal of the forms, shoring, and bracing. You must adhere to engineer's specifications and local building codes in determining the length of time forms should remain in place following concrete placement. In addition, you must perform tests on field-cured concrete specimens in order to insure that concrete has obtained sufficient strength to safely support the load prior to removal of forms.

WSR 19-24-096
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed December 3, 2019, 5:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-027.

Title of Rule and Other Identifying Information: Title 308 WAC, Licensing, department of; creating chapter 308-09 WAC, Military service members or spouses—Professional license.

Hearing Location(s): On January 7, 2020, at 10:00 a.m., at 405 Black Lake Boulevard S.W., Room 2108, Olympia, WA 98502. Check in with customer service counter.

Date of Intended Adoption: January 8, 2019 [2020].

Submit Written Comments to: Stephanie Sams, 405 Black Lake Boulevard S.W., Olympia, WA 98502, email ssams@dol.wa.gov, by January 6, 2020.

Assistance for Persons with Disabilities: Contact Stephanie Sams, phone 360-664-6567, email ssams@dol.wa.gov, by January 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of licensing is promulgating new rules regarding professional licensure for military service members and military spouses. These rules will codify practices around:

- Expedited processing of military service members and military spouse professional license applications;
- Issuance of temporary professional licenses for military spouses awaiting permanent licensure; and
- Changing an active professional license to either military status or inactive status for military service members and military spouses.

Reasons Supporting Proposal: This rule-making effort adopts long-standing policies and implements best practices around services to military service members and military

spouses. These rules are in alignment with state statutes and Executive Order 19-01.

Statutory Authority for Adoption: RCW 18.340.020, 43.24.023, 43.24.130.

Statute Being Implemented: RCW 18.340.020, 43.24.130.

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: Not applicable.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1445.

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 subsections (5)(b)(ii) and (5)(b)(v) of RCW 34.05.328 as these rules relate to business and professional licensing application processes and are dictated by statute. Those changes not related to the above exemptions will have no significant cost to the agency to implement as they will be built into the agency's new business and professional licensing system.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

December 3, 2019

Damon Monroe

Rules Coordinator

Chapter 308-09 WAC

**MILITARY SERVICE MEMBERS OR SPOUSES—
PROFESSIONAL LICENSE**

NEW SECTION

WAC 308-09-005 Purpose. (1) This chapter implements requirements for regulated professional or occupational licenses regarding licensing of military service members and military spouses and registered domestic partners.

(2) In addition to the requirements contained in this rule, there may be requirements unique to a particular profession or occupation. The authorizing statutes and rules for each professional or occupational license may provide additional requirements and information.

(3) These rules apply to professions or occupations listed in the Uniform Regulation of Business and Professions Act, chapter 18.235 RCW, RCW 18.235.020 (2)(a), and to profes-

sions or occupations listed in RCW 18.235.020 (2)(b) if adopted by the appropriate board or commission under separate rule, and to the businesses regulated under chapter 46.70 RCW.

NEW SECTION

WAC 308-09-010 Definitions. (1) "Director" means the director of the department of licensing or designee.

(2) "Employment" means self-employment and employment by any other entity.

(3) "Good standing" means the condition of a valid license authorizing a person to engage in a regulated profession or occupation. A license in good standing is not subject to any disciplinary sanctions, terms, conditions, or restrictions by the licensing authority of this state, or the jurisdiction where the licensee is licensed to practice.

(4) "License" means permission to engage in a profession or occupation as defined by chapter 18.235 or 46.70 RCW.

(5) "Licensee" means a person who possesses a license to engage in a regulated profession or occupation.

(6) "Licensing authority" means:

(a) The director of the department of licensing or designee with respect to those occupations or professions identified in chapter 46.70 RCW and RCW 18.235.020 (2)(a); or

(b) A board having licensing authority over those occupations or professions identified in RCW 18.235.020 (2)(b) if the appropriate licensing authority has adopted these rules.

(7) "Military service member" means a person serving in the military.

(8) "Military service" or "serving in the military" means being enlisted or commissioned in the United States Armed Forces (active or reserve components), the United States health service commissioned corps, the United States National Guard, or the Merchant Marines of the United States or a veteran of these branches.

(9) "Military spouse" means any person currently or previously married to or in a registered domestic partnership with a military service member during the military service member's period of active, reserve, or National Guard service.

(10) "Regulated profession or occupation" means a profession or occupation identified in chapter 46.70 RCW or RCW 18.235.020 (2)(a) or (b) if the appropriate board or commission has adopted these rules.

(11) "Standard license" means a license of standard duration and renewal requirements, as established by that program's governing statute.

(12) "Status" means the condition of a license, wherein:

(a) An "active license" status means the licensee is authorized to engage in a regulated profession or occupation;

(b) An "inactive license" status means the licensee has qualified for the license but is not currently authorized to engage in a regulated profession or occupation for nondisciplinary reasons, for example because the licensee has left Washington state as a result of their spouse or partner being deployed or stationed to a location outside of Washington state;

(c) A licensee may place their license in "military status" if they are serving in the military. A license in military status is an active license.

(13) "Substantially equivalent" means the requirements to qualify for the same or similar license in another state are materially similar to Washington requirements in terms of quality, quantity of training, or experience.

(14) "Temporary license" is a license that authorizes the licensee to engage in a regulated profession or occupation for a defined period of time during which the licensee completes additional requirements for Washington licensure that are not related to training or practice standards of the profession as noted in RCW 18.340.020 (2)(c).

(15) "Training or practice standards" means education, experience, Washington specific examination, or a combination thereof, directly relating to the state's interest in regulating a specific profession or occupation to protect the public health, safety, or welfare.

NEW SECTION

WAC 308-09-015 Military spouse requesting expedited processing. (1) A military spouse may request expedited processing when the military spouse:

(a) Holds an active license in good standing issued by another jurisdiction;

(b) Is moving to Washington as a result of their spouse's permanent change of duty station based on military orders; and

(c) Is leaving employment in another state to accompany their spouse to Washington.

(2) To request expedited processing, the military spouse applicant must:

(a) Submit the appropriate license application indicating the applicant is a military spouse, with the appropriate fee(s);

(b) Submit documentation that shows the applicant had an applicable license in good standing issued by another jurisdiction and that shows the applicant is not subject to any disciplinary action by the licensing authority of that jurisdiction;

(c) Upon request, submit any of the following:

(i) A copy of the military service member's service orders;

(ii) A letter from the military service member's commanding officer explaining the military service member's transfer of duty stations;

(iii) A copy of the DD Form 1172-2 DEERS Enrollment;

(iv) Other supporting U.S. Department of Defense or Department of Veterans Affairs documentation.

(d) Upon request, submit a copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

NEW SECTION

WAC 308-09-020 Military spouse licensing—Equivalency to Washington standards and temporary licensing.

(1) The licensing authority must process a request for temporary license as soon as practical after receipt of a completed application. The licensing authority must compare the profession or occupation requirements of the jurisdiction where the

applicant held a license to the requirements associated with the most similar license issued by the licensing authority in Washington. The licensing authority will determine whether the requirements of the jurisdiction where the applicant holds a license meet or are substantially equivalent to the requirements for the requested profession or occupation in Washington.

(2) If the licensing authority determines the Washington requirements are substantially equivalent and have been met, and that the applicant is otherwise eligible for the requested license, the licensing authority may issue a standard license.

(3) If the licensing authority determines the training and practice standards of the state where the applicant holds a license are substantially equivalent and the applicant is otherwise eligible for the requested license, the licensing authority may issue a temporary license to allow the applicant time to complete additional requirements not related to training or practice standards that are necessary to qualify for a standard license in Washington.

(4) A temporary license issued under these rules becomes null and void when any of the following occur:

- (a) A standard license is issued;
- (b) A denial of the standard license application becomes final;
- (c) The temporary license expires.

(5) Prior to the expiration date of the temporary license the temporary license holder may ask the licensing authority in writing to extend the expiration date. The licensing authority will consider extension of the expiration date based on the temporary license holder's need and documented progress toward meeting standard license requirements.

NEW SECTION

WAC 308-09-025 Converting a military spouse's active license to an inactive license. (1) The licensing authority will convert a military spouse's active license in good standing to an inactive license when the licensee:

(a) Submits a written request for the license status to be changed from active to inactive due to the licensee's spouse or registered domestic partner being deployed or stationed in a location outside Washington state.

(b) Submits, upon request, the following:

(i) A copy of service orders verifying the licensee's spouse or domestic partner is a member of the military service areas defined in WAC 308-09-010(8) and has been, or will be deployed or stationed to a location outside Washington state.

(ii) A copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

(2) The licensee must not practice in Washington while the license is in an inactive status.

NEW SECTION

WAC 308-09-030 Military spouses—Inactive licenses. (1) A military spouse may maintain an inactive license as long as the military service member is stationed or deployed in a location outside the state of Washington. Upon

return to Washington, the military spouse has six months to request their license return to active.

(2) To change their license from inactive to active, the military spouse licensee must, within six months of returning to Washington state:

(a) Submit a written request for the change to an active license;

(b) Pay the current renewal fee, if applicable. The licensee should contact the regulatory program directly to determine whether a renewal fee is due; and

(c) Complete any continuing education requirements or other requirements necessary to make the license active and compliant with current program requirements. The continuing education requirements will be determined by the regulatory program's licensing authority, but will not exceed the requirements needed for the current renewal cycle unless required by the regulatory program's authorizing statute or federal guidelines. The licensee should contact the regulatory program directly to determine what requirements must be met.

(3) The director may defer completion of continuing education for the holder of an inactive license and place the license in an active status for a period of ninety days, pending completion of education. If the holder of a license fails to comply with the continuing education requirement within the ninety-day time frame, the license will expire and the licensing authority will follow standard late renewal or cancellation processes.

NEW SECTION

WAC 308-09-040 Licensee with active licenses who enter the military. (1) A person who already holds a license issued by the licensing authority who then enters active military service may notify the department to request their license be assigned military status. This allows the licensee to maintain their license in full force and effect while in military service.

(2) The licensing authority will convert an active licensee whose license is in good standing to military status when the licensee submits all of the following:

(a) A written request for military status due to entering active military service, including the expected duration of their deployment; and

(b) A copy of service orders verifying the licensee is an active duty member of the armed forces of the United States or the other services described in WAC 308-09-010(8).

(3) The licensee may obtain military status at any time the criteria in subsection (2) of this section are met. There is no fee required for military status. Portions of the current renewal fee will not be prorated or refunded.

(4) A military status license remains in full force and effect so long as the service continues and allows practice throughout the state of Washington unless sooner suspended, canceled, or revoked by the licensing authority.

(5) A military spouse or registered domestic partner with power of attorney can act as an agent for the military service member.

NEW SECTION

WAC 308-09-045 Maintaining a military status license. (1) As long as a military service member licensee's military service continues, the licensee is not required to renew their license, but should maintain the license in military status. To maintain a military status license, the licensee should submit to the department an official copy of service orders verifying that they are an active duty member of the United States Armed Forces or other services described in WAC 308-09-010(8).

(2) The department will provide courtesy notices to the licensee's address on file using the license renewal cycles.

(3) A licensee should return the courtesy notice to the department with an official copy of their service orders.

(4) Military status license maintenance requests are accepted by the department no sooner than ninety days prior to the date the license would expire if not in military status.

(5) Continuing education is not required while the license is in military status.

NEW SECTION

WAC 308-09-050 Changing a military status license at completion of active military duty. (1) To change a military status license to an active license, the licensee must:

(a) Provide a written notice of the change in their service status;

(b) Pay the current renewal fee, if applicable. The licensee should contact the regulatory program directly prior to making the request to determine whether a renewal fee is due;

(c) Upon request, provide a copy of the orders showing active duty status has changed within the last six months, or discharge papers or DD-214 issued within the last six months.

(2) The licensee must request the military status be changed to active status within six months of honorable discharge by meeting the requirements of subsection (1) of this section.

(3) Continuing education requirements will apply after the first post-discharge renewal. These requirements will be determined by the regulatory program's licensing authority, but will not exceed the requirements needed for the current renewal cycle unless required by the program's authorizing statute or federal guidelines. The licensee should contact the regulatory program directly prior to making the request to determine what requirements must be met.

(4) If the holder of a license fails to comply with subsection (2) of this section, the licensing authority will follow standard late renewal or cancellation processes.

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

Title of Rule and Other Identifying Information: WAC 179-05-025 Start date of the paraeducator certificate program.

Hearing Location(s): On January 15, 2020, at 8:30 a.m., at the Hilton Garden Inn Olympia, 2101 Henderson Park Lane S.E., Olympia, WA 98501.

Date of Intended Adoption: January 15, 2020.

Submit Written Comments to: Paraeducator Board, 600 Washington Street S.E., Room 400, Olympia, WA 98504, email pesb@k12.wa.us, www.pesb.wa.gov, by January 5, 2020.

Assistance for Persons with Disabilities: Contact paraeducator board, phone 360-725-6275, email rulespesb@k12.wa.us, www.pesb.wa.gov, by January 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifying the start time of the paraeducator certificate program.

Reasons Supporting Proposal: This proposal is supported by the board and our partners at the office of superintendent of public instruction. Additionally, this will provide clarification to the education system concerning the paraeducator certificate program.

Statutory Authority for Adoption: Chapters 28A.413, 28A.410 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: Paraeducator board, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Busbee, 600 Washington Street S.E., Olympia, WA 98504-7236; Implementation and Enforcement: Professional Educator Standards Board, 600 Washington Street S.E., Olympia, WA 98504-7236.

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 probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

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.

December 4, 2019
Justin Montermini
Rules Coordinator

WSR 19-24-102**PROPOSED RULES****PARAEDUCATOR BOARD**

[Filed December 4, 2019, 10:37 a.m.]

Original Notice.

NEW SECTION

WAC 179-05-025 Start date of the paraeducator certificate program. (1) Beginning July 1, 2019, districts, or providers, may train educators on the paraeducator certificate

program. Training completed before July 1, 2019, will not count towards completing continuing education credit hours of the paraeducator certificate program.

(2) The general paraeducator certificate may be attained with continuing education credit hours that were completed after July 1, 2019, and within five years prior to the date of application.

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Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 19-24-104
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed December 4, 2019, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-056.

Title of Rule and Other Identifying Information: Licensing requirements for foster family homes: WAC 110-148-1320 When will the department grant me a foster family license?, 110-148-1365 What are the personal requirements for foster parents?, 110-148-1390 Can I accept children outside the limitations of my license?, 110-148-1440 What are the requirements for my home and property?, 110-148-1445 What are the requirements for water, garbage and sewer in my home?, 110-148-1455 How must I keep children safe around bodies of water?, 110-148-1460 How do I prepare for a natural disaster or emergency?, 110-148-1465 What other emergency fire and safety requirements must I follow to become licensed?, 110-148-1470 What are the general requirements for bedrooms?, 110-148-1495 What are the requirements for smoking around children?, and 110-148-1510 What requirements do I need to follow when I transport children?

Hearing Location(s): On January 7, 2020, at 1:00 p.m., at Office Building 2, Service Level, Conference Room 4, 1115 Washington Street S.E., Olympia, WA.

Date of Intended Adoption: January 10, 2020.

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, <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by January 7, 2020.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by January 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implement new model foster family home licensing standards developed by the United States Department of Health and Human Services (HHS) for eligibility requirements, home health and safety, capacity, sleeping arrangements, emergency preparedness, transportation, training, and foster parent assurances.

Changes are: (1) Any individuals who are at least sixteen years old and living on the property (including those not living in the family home) must pass a background check; (2) the licensee and all household members must have pertussis and influenza immunizations when the child in care is medically fragile as defined by rule, unless exempted by a licensed health care provider; (3) one applicant for licensure in the family home must have functional literacy and be able to communicate with the child, DCYF, health care providers, and other service providers; (4) over-capacity exceptions are established; (5) requirements for a properly operating kitchen are clarified; (6) recycling disposal service is required, when available; (7) safety requirements for swimming pools are established; (8) evacuation plans must be reviewed with children in care and posted in the home; (9) a carbon monoxide detector is required for each level of occupancy in the home and at least one carbon monoxide detector must be near each sleeping area; (10) cosleeping and bed-sharing with children in care is prohibited; smoking is prohibited in vehicles used to transport children; and (11) the driver or owner of a vehicle used to transport children in care must have proof of registration.

Reasons Supporting Proposal: DCYF must comply with 42 U.S.C. § 671 (a)(36)(A) by implementing the model licensing standards developed under the Family First Prevention Services Act (codified at P.L. 115-123). Earlier this year, HHS approved DCYF's draft rule changes and the drafts have been shared with the licensed community through voluntary webinars. Noncompliance will jeopardize the receipt of federal appropriations that fund the state's foster care program.

Statutory Authority for Adoption: RCW 74.15.030; chapter 74.15 RCW.

Statute Being Implemented: Chapter 74.15 RCW.

Rule is necessary because of federal law, P.L. 115-123.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ernest Blackwell, Tacoma, Washington, 253-260-0355; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies required to comply with RCW 34.05.328 (5)[(a)](i). 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 19.85.061 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: Bipartisan Budget Act of 2018, P.L. 115-123 (includes the Family First Prevention Services Act (FFPSA)); 42 U.S.C. § 671 (a)(36)(A), national model foster family home licensing standards.

December 4, 2019
Brenda Villarreal
Rules Coordinator

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

WAC 110-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate (adult ~~(and/or)~~ or infant) CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members, individuals living on any part of your property, and anyone else having unsupervised contact with your foster ~~((child(ren)))~~ children must pass ~~((the following))~~ a background check ~~((requirements per chapter 388-06A WAC (This includes people living on any part of your property)))~~, as required by chapter 110-04 WAC:

(a) Anyone sixteen years old or older must pass a background check;

(b) Anyone younger than sixteen years old must pass a background check if the department determines one is warranted to ensure the safety of a child;

(c) Anyone eighteen years old or older must pass an FBI fingerprint-based background check; and

(d) Anyone eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You ~~(s;)~~ and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test ~~((in the previous))~~ within the twelve months prior to receipt of the application. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living ~~((on your premises))~~ in the household, not including children in out-of-home care. We may ~~((; in consultation with a licensed health care provider;))~~ grant a medical exception to this requirement if ~~((you have a statement from))~~ the immunization is contrary to the child's health as documented by a licensed health care provider ~~((MD, DO, ND, PA and ARNP)))~~.

(6) ~~((We recommend that))~~ You and all household members must have pertussis and influenza immunizations ~~((The~~

~~department will not license you))~~ to serve foster children who are:

~~(a) Under the age of two ((; without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated)); or~~

(b) Medically fragile as defined in WAC 110-148-1305.

(c) A medical exception may be granted if the immunization is contrary to your or the household member's health as documented by a licensed health care provider.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

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

WAC 110-148-1365 What are the personal requirements for foster parents? (1) You must be at least twenty-one years old to apply for a license.

(2) You must demonstrate you have:

(a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of children under your care; ~~((and))~~

(b) You must have sufficient regular income to maintain your own family, without the foster care reimbursement made for the children in your care;

(c) At least one applicant in the home must have functional literacy; and

(d) You must be able to communicate with the child, the department, health care providers, and other service providers.

(3) You may not use drugs or alcohol, whether legal or illegal, in a manner that affects your ability to provide safe care to children.

(4) You and everyone residing on your premises or who you allow to have unsupervised access to children must demonstrate they have the ability to furnish children with a nurturing, respectful, and supportive environment.

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

WAC 110-148-1390 Can I accept children outside the limitations of my license? (1) We have the discretion to allow you to temporarily exceed your capacity. We may do this when you provide care for a sibling group, respite care, placement of a relative child, or because you have demon-

strated exceptional abilities to meet the needs of children. The placement must be in the best interest of the child and may not affect the health and safety of other children in the home.

(2) If your home is licensed for six foster children, LD will not allow you to exceed your capacity, except to allow:

(a) Parenting youths in foster care to remain with their children;

(b) Siblings to remain together;

(c) A child who has an established, meaningful relationship with the family to remain with the family; or

(d) A family with the necessary special training or skills to provide care to a child who has a severe disability.

(3) The approval must be in writing and we may require a written plan for additional supervision or other requirements before granting approval.

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

WAC 110-148-1440 What are the requirements for my home and property? (1) Your home must have adequate indoor and outdoor space, ventilation, toilet and bathing facilities, light and heat to ensure the health and comfort of all members of the household.

(2) Your home must have a properly operating kitchen with a properly maintained and working:

(a) Sink;

(b) Refrigerator;

(c) Stove; and

(d) Oven.

(3) You must keep your home, property, living areas and furnishings:

(a) Clean, ~~((comfortable and in good repair))~~ safe, and sanitary;

(b) Reasonably free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods available; and

(c) ~~((Reasonably))~~ Free from ((anything)) dangerous objects and conditions that may be a hazard to children.

~~((3))~~ (4) You must keep all toxic materials out of the reach of children and separated from food items.

~~((4))~~ (5) You must provide adequate laundry and drying equipment, or make other arrangements for laundry on a regular basis.

~~((5))~~ (6) People must be able to easily open doors from the inside and outside in all areas of the home that are occupied. This includes closets, bathrooms, and bedrooms. You must also have easy access to the outside in case of an emergency.

~~((6))~~ (7) The cleanliness and care of your home must meet generally accepted health standards for the storage and preparation of food.

~~((7))~~ (8) You must develop a plan with your licensor to address hazardous conditions that are present in your home or on your property.

~~((8))~~ (9) You are responsible for following all local and state regulations such as zoning regulations, local building codes and fire codes. The department may require you to provide proof that you are complying with local regulations.

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

WAC 110-148-1445 What are the requirements for water, garbage and sewer in my home? (1) You must maintain adequate sewage and garbage facilities, as well as recycling disposal service if it is available. You must discharge sewage into a public system or into a functioning septic system or a department of health approved ~~((and/or))~~ or tribal authority alternative system.

(2) You must have access to a public water supply unless you have a private water supply tested by the local health district or a private water-testing laboratory approved by the department of health or tribal government. Testing is required at the time of licensing, relicensing and at any time the department or child placing agency deems necessary.

(3) The temperature of running water may not exceed one hundred twenty degrees.

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

WAC 110-148-1455 How must I keep children safe around bodies of water? (1) You must ensure children in your care are safe around bodies of water. You must:

(a) Keep all swimming pools and other bodies of water fenced with a locking gate or other ~~((DLR approved))~~ LD-approved safety device;

(b) Lock hot tubs when not in use;

(c) Make all potential water hazards, including wading pools, inaccessible to children when not in use;

(d) Equip your swimming pool with a life saving device, such as a ring buoy; and

(e) Empty your swimming pool after each use. If your swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.

(2) All swimming pools and other bodies of water must comply with state and local regulations. You must work with your licensor to establish a plan for the bodies of water based on the development level and behaviors of the children in your home.

(3) You must observe the following when foster children are swimming in pools and outdoor bodies of water:

(a) Swim only in designated swimming areas; or

(b) Require all children age thirteen and under to wear U.S. Coast Guard-approved personal floatation devices when swimming outside the supervision of a lifeguard.

(4) If you have any water-based recreation devices, you must use and maintain them according to manufacturer's recommendations. All children and youth who ride in a water-based recreation device must wear a U.S. Coast Guard-approved personal floatation device at all times.

(5) An adult with current age-appropriate first aid and CPR or a lifeguard must supervise children swimming under age twelve, and must be able to see and hear the children at all times. Children under the age of five must be within touching distance of a supervising adult or the birth parent at all times.

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

WAC 110-148-1460 How do I prepare for a natural disaster or emergency? (1) You must develop an evacuation plan in case of a fire, natural disaster or other emergency. The plan must include:

- (a) An evacuation floor plan, identifying exit doors and windows;
- (b) Action to take for evacuating your home that ensures responsibility for the children; ~~((and))~~
- (c) A plan for notification regarding the whereabouts and well-being of the children following the evacuation; and
- (d) Your plan must be reviewed with the children and posted in a prominent place in the home.

(2) You must share this plan with your licensor and update the plan when circumstances in your home change. The emergency plan will be based on the type of children in your care, and the conditions of your home and property. Evacuation plans may change based on the developmental level and behaviors of children living in your home.

(3) Your required plan for natural disasters should include supplies of food, water, medications and other necessary supplies.

(4) Emergency evacuation drills ~~((shall))~~ must be practiced at least quarterly with children in your home. You must review evacuation procedures with every child when he or she is placed in your home.

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

WAC 110-148-1465 What other emergency fire and safety requirements must I follow to become licensed? (1) You must observe all state and local fire codes (WAC 212-12-005). We will determine that reasonable fire safety standards exist in your home based on the children placed in your home.

(2) Children must be able to escape from every floor in your home. In most cases, this includes a functional fire ladder available from upper stories.

(3) Windows must open to the outside and be large enough for a rescue person to enter and exit wearing rescue gear, unless the building or structure was previously approved by the local fire marshal or building official with jurisdiction.

(4) You must have easy access to all rooms in your home in case of emergency.

(5) We may require you to have an inspection by WSP/FPB or the local fire authority if we have questions about fire safety, or if local ordinances or WSP/FPB require these inspections.

(6) Your home must have smoke detectors in operating condition both inside and outside of all sleeping areas. Smoke detectors must also be installed on each story of the home, in all play areas, and in the basement. You must install and maintain smoke detectors according to manufacturer's specifications.

(7) You must have at least one carbon monoxide detector on each level of occupancy in the home and at least one near each sleeping area.

(8) You must have at least one approved 2A10BC-rated five pound or larger all-purpose fire extinguisher readily available at all times. You must maintain and service fire extinguishers according to manufacturer's specifications.

~~((8))~~ (9) Barriers are required for fireplaces, wood stoves, and other heating systems if you are licensed for children less than six years of age. You must not leave open-flame devices unattended or use them incorrectly.

~~((9))~~ (10) Emergency vehicles must be able to access your home. Your address must be clearly visible on your home or mailbox so that emergency personnel can easily find your home.

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

WAC 110-148-1470 What are the general requirements for bedrooms? (1) Each child must have a bedroom, approved by the licensor, with privacy and space that is appropriate and adequate to meet the child's developmental needs. Children may share bedrooms, in compliance with WAC ~~((388-148-1475))~~ 110-148-1475.

(2) Each bedroom must have unrestricted direct access to outdoors as well as one direct access to common use areas such as hallways, corridors, living rooms, day rooms, or other such common use areas.

(3) You must not use hallways, kitchens, living rooms, dining rooms, ~~((or))~~ unfinished basements, or other common areas as bedrooms.

(4) Children must not be required to pass through private bedroom space in order to access common areas of the home.

(5) An adult must be on the same floor or within easy hearing distance and access to where children under six years of age are sleeping.

(6) You must provide an appropriately sized separate bed for each child with clean bedding and a mattress in good condition.

(7) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(8) You must assure that children have access to clean clothing that is appropriate for their age. You must provide safe storage of children's clothing and personal possessions.

(9) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW and the Consumer Product Safety Improvement Act of 2008. These requirements include:

(a) A maximum of 2 3/8" between vertical slats of the crib; and

(b) Cribs, infant beds, bassinets, and playpens must be made of wood, metal, or approved plastic, with secure latching devices and clean, firm, snug-fitting mattresses covered with waterproof material that can easily be disinfected.

(10) You must not cosleep or bed share on any sleeping surface (such as a bed, sofa, or chair) with children in care.

(11) You must place infants on their backs for sleeping, unless advised differently by the child's licensed health care provider.

~~((11))~~ (12) You must not have loose blankets, pillows, crib bumpers, or stuffed toys with a sleeping infant.

~~((12))~~ (13) You may swaddle infants using one light-weight blanket upon the advice and training of a licensed health care provider. You must keep the blanket loose around the hips and legs when swaddling in order to avoid hip dysplasia. You may swaddle infants under two months of age unless a licensed health care provider directs otherwise. You must not dress a swaddled infant in a manner that allows them to overheat.

~~((13))~~ (14) You must not use wedges and positioners with a sleeping infant unless advised differently by the infant's licensed health care provider.

~~((14))~~ (15) You must not use weighted blankets for children under three years of age or for children of any age with mobility limitations.

~~((15))~~ (16) You may use a weighted blanket upon the advice and training from a licensed health care provider for children over the age of three years who do not have mobility limitations. You must meet the following requirements:

(a) The weight of the blanket must not exceed ten percent of the child's body weight;

(b) Metal beads are choking hazards and must not be used in a weighted blanket;

(c) You must not cover the child's head with a weighted blanket or place it above the middle of the child's chest;

(d) The weighted blanket must not hinder a child's movement; and

(e) The weighted blanket must not be used as a restraint.

~~((16))~~ (17) You must not allow children to use the loft style beds or upper bunks if the child is vulnerable due to age, development, or condition, such as preschool children, expectant mothers, and children with a disability.

~~((4))~~ (4) The vehicle must be equipped with seat belts, car seats and booster seats, and/or other appropriate safety devices for all passengers as required by law;

~~((5))~~ (5) The number of passengers must not exceed the vehicle's seat belts; and

~~((6))~~ (6) Each person in the vehicle must use an individual seat belt or approved child passenger restraint system whenever the vehicle is in motion, and follow the law regarding placement of children in vehicles.

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

WAC 110-148-1495 What are the requirements for smoking around children? (1) You must not allow smoking in your home. You may not smoke in motor vehicles ~~((when))~~ used to transport children ~~((are present))~~.

(2) You may permit adults to smoke outdoors away from children in accordance with RCW 70.160.075.

(3) These requirements do not apply to traditional or spiritual Native Alaskan/Native American or religious ceremonies involving the use of tobacco.

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

WAC 110-148-1510 What requirements do I need to follow when I transport children? ~~((4))~~ When you transport children in your care you must follow these requirements:

~~((a))~~ (1) The vehicle must be kept in a safe operating condition;

~~((b))~~ (2) The driver must have a valid driver's license;

~~((c))~~ (3) The driver or owner of the vehicle must be covered under an automobile liability insurance policy and have proof of registration;