

WSR 12-23-010
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 8, 2012, 2:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-19-041.

Title of Rule and Other Identifying Information: WAC 392-140-600 through 392-140-685, state special education safety net funding.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 Washington Street S.E., Olympia, WA 98502, on January 8, 2013, at 1:30 p.m.

Date of Intended Adoption: January 8, 2013.

Submit Written Comments to: Rules Coordinator, Legal Services, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail maryellen.parrish@k12.wa.us, fax (360) 753-4201, by January 7, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by January 3, 2013, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update of language as a result of legislative changes.

- Eliminate rule pertaining to reapplication as ESHB 1086 language limits award determination to August of each year;
- Modify language pertaining to special education safety net award adjustments due to percentage of medicaid billings for eligible students;
- Minor wording changes to ensure consistent language throughout rules.

Reasons Supporting Proposal: Proposed language is a result of changes enacted in ESHB 1086.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Mary Ellen Parrish, OSPI, (360) 725-6086; Implementation: Doug Gill, OSPI, (360) 725-6075; and Enforcement: Bob Harmon, OSPI, (360) 725-6170.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

November 8, 2012
 Randy Dorn
 Superintendent of
 Public Instruction

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-600 Special education safety net—Applicable provisions. The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of

safety net (~~((allocations))~~) awards of state special education (~~((moneys))~~) funds and Individuals with Disabilities Education Act (IDEA) federal funds for the (~~((2007-08))~~) 2012-13 school year and thereafter. Beginning with the 2010-11 school year award cycle, the office of the superintendent of public instruction shall make award determinations for safety net funding in August of each year.

AMENDATORY SECTION (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

WAC 392-140-601 Special education safety net—Authority. The authority for WAC 392-140-600 through 392-140-685 is:

- (1) The appropriation language for special education programs in the Washington state Biennial Operating Appropriations Act; and
- (2) RCW 28A.150.290(1); and
- (3) RCW 28A.150.392.

AMENDATORY SECTION (Amending WSR 06-01-017, filed 12/9/05, effective 1/9/06)

WAC 392-140-60105 Definition—High need student. (~~((A student with a disability whose program cost is greater than three times the statewide average per pupil expenditures as defined in section 9101 of the Elementary and Secondary Education Act of 1965 or a multiple of the statewide average per pupil expenditures as established by the superintendent of public instruction and published in the *Safety Net Bulletin* shall be considered a high need student for purposes of this chapter.))~~ For purposes of special education safety net funding, high need student means a student eligible for special education services whose properly formulated Individualized Education Program (IEP) costs as calculated on worksheet C exceed a multiple of the statewide average per pupil expenditures (APPE) as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(1) For federal special education safety net funding, the multiple of the statewide average per pupil expenditures shall be at least three times the statewide average; and

(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the multiple of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual *Safety Net Bulletin*.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-602 Special education safety net—Eligible applicants. (1) An individual school district of the state of Washington is eligible to apply for special education safety net (~~((moneys))~~) awards on behalf of its resident students. Resident students include those students as defined (~~((as resident pursuant to WAC 392-137-115, those enrolled through choice (RCW 28A.225.225), those from nonhigh districts (RCW 28A.225.210), and those enrolled as institutional education students pursuant to WAC 392-122-205 (4)~~)

~~and (5))~~ by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member district is eligible to apply for special education safety net ~~((moneys))~~ awards. ~~((The cooperative and the participating school))~~ Member districts shall be treated as a single school district for the purposes of this chapter ~~((Participating school districts))~~ and are not eligible to apply for safety net ~~((mon- eys))~~ awards individually.

(3) The Washington ~~((school for the deaf))~~ state center for childhood deafness and hearing loss and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-605 Special education safety net— Application types, certification, worksheets. Application for safety net ~~((funding))~~ awards shall be made on Form SPI 1381 - Certification published by the office of the superintendent of public instruction. Applications will be considered and awards made according to the schedule published in the annual *Safety Net Bulletin*.

(1) School districts may make application for safety net ~~((funding))~~ awards in two ~~((application))~~ categories - High need student(s) and/or community impact factors ~~((for costs associated with communities that draw a larger number of families with children in need of special education services))~~. The ~~((school district making application))~~ applicant for either or both categories of safety net ~~((funding))~~ awards shall certify that:

(a) ~~((The district recognizes that))~~ Differences in costs attributable to district philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards~~((:))~~;

(b) The application complies with the respective safety net application standards of WAC 392-140-616 and 392-140-617;

(c) The application provides true, accurate, and complete information ~~((to the best of the school district's knowledge))~~;

(d) The ~~((district understands))~~ applicant acknowledges that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the award letter, and certifies that federal medic-aid has been billed for all services to eligible students consis- tent with RCW 28A.150.392(e);

(e) The ~~((district))~~ applicant is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic educa- tion apportionment and special education funding formulas and federal funding;

(f) The ~~((district's))~~ applicant's special education ser- vices are operated in a reasonably efficient manner;

(g) Indirect costs included for purposes of determining safety net ~~((allocations))~~ awards do not exceed the allowable ~~((percent for federal special education program))~~ federally restricted indirect rate plus one percent;

(h) Any available state and federal funding is insufficient to address the ~~((additional needs))~~ request for additional funds;

(i) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Sup- plemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year con- tracts (ESY) required by an IEP; and

(j) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by ~~((an))~~ a properly formulated IEP.

(2) Worksheet A shall be included with the application and must demonstrate the ~~((need))~~ applicant's capacity for safety net ~~((funding))~~ awards. Worksheet A is used to deter- mine a maximum amount of safety net award eligibility ~~((for a school district))~~. Award amounts may be less than the max- imum potential amount of safety net award eligibility deter- mined on worksheet A. ~~((School districts are encouraged and may be required to submit additional information designed to assist the state oversight committee in analyzing the applica- tion.))~~

(3) All high need student applications shall include worksheets "A" and "C" and ~~((individuals))~~ Summary of Applications for High Need Individual Students published in the safety net application, and certification of standards and criteria pursuant to WAC 392-140-616.

(4) All community impact applications shall include worksheet A, the community impact application, all support- ing documentation, and certification of standards and criteria pursuant to WAC 392-140-617.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-608 Special education safety net— Safety net application—Timing. Safety net applications shall be submitted and reviewed pursuant to the schedule of dates published by the office of the superintendent of public instruction in the annual safety net bulletin. ~~((Late))~~ Applica- tions not received by the published dates and times in the bul- letin will not be accepted and no applications for the school year will be accepted after the final application due date.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-609 Special education safety net— Standards and criteria—((Appropriate and)) Properly ((and efficiently prepared and)) formulated IEPs. Individu- alized education programs (IEPs) which are ~~((appropriate.))~~ properly ~~((and efficiently prepared and))~~ formulated are those IEPs that meet all of the following criteria:

(1) The IEPs comply with federal and state procedural requirements.

(2) The delivery of specially designed instruction identi- fied on the IEP also complies with state and federal require-

ments ~~((i.e., regularly scheduled teaching or training activities provided or designed by special education qualified staff))~~ consistent with WAC 392-172A-01155 or as amended.

(3) The provision of special education services ~~((conforms))~~ is consistent with areas of need identified in the student's evaluation and/or reevaluation made pursuant to chapter 392-172A WAC or as amended.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-616 Special education safety net—Standards—High need student applications. For ~~((districts))~~ applicants requesting safety net ~~((funding))~~ awards to meet the ~~((extraordinary))~~ needs of an eligible high need special education student, the ~~((district))~~ applicant shall convincingly demonstrate to a majority of the state oversight committee members at a minimum that:

(1) The IEP for the eligible special education student is ~~((appropriate, and))~~ properly ~~((and efficiently prepared and))~~ formulated~~((:)); and~~

(2) ~~((All of the following criteria apply to the high need student:~~

~~((a))~~ Costs eligible for safety net consideration must be associated with providing direct special education and related services identified in a properly formulated IEP~~((:~~

~~((b))~~ and quantifiable by the committee on worksheet C; and

(3) In order to deliver appropriate special education and related services to the student, the ~~((district))~~ applicant must be providing services which incur costs exceeding:

~~((i))~~ (a) The annual threshold as established in WAC 392-140-60105 by the office of superintendent of public instruction for state ~~((funding; then~~

~~((ii))~~ Three times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) for the state of Washington for federal ~~((funding))~~ safety net awards.

(b) Threshold amounts shall be adjusted pro rata for eligible students not ~~((counted or expected to be counted for special education services))~~ served by the applicant on all ~~((eight))~~ nine enrollment count dates (October through ~~((May))~~ June). For example, for a student served ~~((and reported for only))~~ six of the ~~((eight))~~ nine count dates, the threshold amount shall be reduced to ~~((three-quarters))~~ two-thirds of the full amount.

~~((c))~~ ~~The total cost of educational services must exceed any carryover of federal flow through special education funding as of August 31 of the prior school year.~~

~~((3))~~ (4) The state safety net oversight committee shall adapt the high need student application ~~((as appropriate for applications prepared by))~~ for the Washington state school for the blind and the Washington ((school for the deaf)) state center for childhood deafness and hearing loss.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-617 Special education safety net—Standards—Community impact applications. For ~~((dis-~~

~~tricts))~~ applicants requesting state safety net ~~((funding))~~ awards to meet the extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, the ~~((district))~~ applicant must meet the standards of WAC 392-140-605 (1)(a) through (j) and convincingly demonstrate that:

(1) Demographic, environmental, sociological or other factor(s) cause the district's special education enrollment to be disproportional by category of disability or the overall number of students identified as eligible for special education; and

(2) The unique factor(s) identified by the ~~((district))~~ applicant is not the result of district philosophy, service delivery choice, or accounting practice; and

(3) The identified factor(s) creates an ~~((adverse))~~ extraordinary documentable fiscal impact upon the ~~((district's))~~ applicant's special education program; and

(4) The ~~((district))~~ applicant summarizes the steps the applicant has taken ~~((in the current year))~~ or ~~((steps the district))~~ plans to take ~~((in the future))~~ in response to the factors identified in the application.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need. Applications for safety net funds shall demonstrate ~~((district financial need))~~ capacity for safety net awards as follows:

(1) Application worksheet "A" shall demonstrate a fiscal ~~((need))~~ capacity in excess of~~((:~~

~~((a))~~ Any previous safety net awards for the current school year; and

~~((b))~~ all available revenue to the applicant for special education, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue.

(2) Awards shall not exceed the potential capacity for safety net funding on the worksheet "A."

(3) Beginning with the 2007-08 school year, worksheets submitted with safety net applications ~~((are to))~~ must reflect the full cost method of accounting, pursuant to section 501(1)(k), chapter 372, Laws of 2006.

(4) The safety net oversight committee may revise the ~~((district's))~~ applicant's worksheet "A" as submitted for errors or omissions or more current information.

(5) The ~~((school district))~~ applicant shall provide clarifying information ~~((as requested by))~~ at the request of the state oversight committee.

(6) After the close of the school year, ~~((the safety net oversight committee may review))~~ the worksheet "A" used to determine ~~((need))~~ capacity for ~~((a district's))~~ an award may be reviewed against the actual final school year enrollments, available revenues, and legitimate expenditures reported by the ~~((district))~~ applicant. Based upon the results of this review~~((:~~

~~((a))~~ the safety net allocation for the school year may be adjusted or recovered~~((: or~~

~~(b)) if the ((committee finds that)) award or a portion of the safety net ((allocation was not needed to balance revenues and expenditures, the committee may consider that portion of the allocation available to meet the needs of the ensuing school year.~~

~~(7) The state safety net oversight committee shall adapt the worksheet "A"—Demonstration of Need as appropriate for applications prepared by districts participating in the pilot program according to the provisions of RCW 28A.630.015(4)) award exceeded the demonstrated capacity for funding based upon consideration of all available revenues and legitimate expenditures.~~

~~((8)) (7) In accordance with the state of Washington Accounting Manual for Public School Districts and statutory federal language, potential capacity for safety net ((funding)) awards shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free ((appropriated)) appropriate public education.~~

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-630 Special education safety net—Special education program audit ((team))—Purpose, procedures. Special education program audits by staff of the state auditor's office may be requested to assist the special education safety net committee. When reviewing ~~((a school district's))~~ an applicant's special education program, the auditors may review and verify any certifications and supporting information provided by the ~~((district))~~ applicant in a safety net application. The auditors ~~((may))~~ will provide the results of the review to the state oversight committee. The results of the auditor's review may be considered by the oversight committee in determining, adjusting, or recovering safety net awards.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-640 Special education safety net—State oversight committee—Membership, structure. Membership of the state oversight committee shall consist of: Staff of the office of the state auditor who shall be nonvoting, and one or more representatives from ~~((a))~~ school ~~((district(s), and one))~~ districts or ~~((more representatives from an))~~ educational service districts.

~~(1) ((The state oversight committee members will be appointed by the office of superintendent of public instruction.~~

~~(2))~~ The state director of special education shall serve as an ex officio, nonvoting committee member and act as the state oversight committee manager.

(2) The state oversight committee members will be appointed by the state oversight committee manager.

(3) Members of the state oversight committee ((from school districts and/or educational service districts)) will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of district(s) served, and other demographic consid-

erations which will ((guarantee)) ensure a representative state committee.

~~(4) ((Alternate members shall be appointed. In the event a member is unable to vote at a committee meeting, an alternate member shall vote.~~

~~(5) Membership appointments shall be made for a period of one year unless OSPI agrees on an annual basis that the member will continue to serve on the committee.)~~ The oversight committee manager may replace a portion of the committee each year in order to ~~((enhance representation))~~ ensure a representative state committee.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures. (1) The state oversight committee will review applications as deemed necessary by the office of superintendent of public instruction pursuant to WAC 392-140-608.

(2) All applications received by the state oversight committee will be reviewed for completeness by the state oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the ~~((instruction))~~ annual bulletin published by the office of superintendent of public instruction. Incomplete applications will not be considered by the committee.

(3) The state oversight committee manager or designee will forward to the committee members copies of the applications for review in a timely manner.

(4) The state oversight committee manager or designee will be responsible for presenting each application for consideration to the committee.

(5) Committee members shall review and discuss the ~~((application content))~~ applicant's request for safety net awards for completeness~~((s))~~ and accuracy~~((and understanding of the reason(s) for the applicant's need for safety net funding))~~.

(6) The committee may ~~((request))~~ require that ~~((a submitting school district))~~ an applicant provide clarifying information.

(7) Committee members will individually indicate their agreement, disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

(8) A majority vote by the committee members ~~((will))~~ shall be sufficient to determine the committee action.

(9) The state oversight committee manager will ensure that notes are taken which summarize the ~~((questions and))~~ discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments ~~((recommended))~~ applied by the committee, the amount of any award to be made, and the reasons for ~~((and against))~~ the action taken by the committee.

(10) ~~((Committee))~~ Voting members of the committee shall each sign the decision summary.

(11) The state oversight committee manager, on behalf of the committee, will notify the applicant ~~((school district))~~ in writing of the determination of the committee. The ~~((school district))~~ applicant will be provided a copy of the decision summary.

(12) All applications received by the state oversight committee will be retained by the office of the superintendent of public instruction for use in the evaluation of the safety net ~~((funding))~~ award process and to provide the office of the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-646 Special education safety net—State oversight committee actions. The state oversight committee shall ~~((take the following actions:))~~ review all safety net applications.

(1) ~~((After the state oversight committee determines:~~

~~(a) There are no unresolved audit examination issues related to special education that are material in nature;~~

~~(b) There are no unresolved child count verification issues which are material in nature; and~~

~~(c) All corrections to state enrollment reporting, required for resolution of (a) and (b) of this subsection, are completed.~~

~~(2))~~ An application reviewed during an application cycle may be:

(a) Approved; or

(b) Disapproved.

~~((3))~~ (2) The amount approved shall ~~((be equal to or less than))~~ not exceed the amount for which application was made.

~~((4) The approval may be contingent on additional requirements imposed by the committee such as development of an action plan to resolve a specified problem prior to submission of any future safety net application to assure school district compliance with the criteria and standards set forth in these safety net regulations.~~

~~(5) The approvals are subject to adjustment and recovery pursuant to WAC 392-140-675 through 392-140-685.)~~ (3) The state oversight committee may not approve an application if there are unresolved audit issues related to special education that are material to the application. For purposes of this section, "audit" means an examination of a subrecipient to determine compliance with the state or federal laws and regulations governing the operation of a specific program and includes program audits, single audits, or any special purpose audit consistent with chapter 392-115 WAC and WAC 392-140-630. "Unresolved" means that the subrecipient has exhausted the audit resolution process described in chapter 392-115 WAC as amended.

(4) Awards approved by the state oversight committee are subject to recovery pursuant to WAC 392-140-675 through 392-140-685.

AMENDATORY SECTION (Amending WSR 02-05-036, filed 2/12/02, effective 2/13/02)

WAC 392-140-650 Special education safety net—Withdrawal of application. If at any time ~~((a school district))~~ an applicant wishes to withdraw a submitted application prior to the committee vote, the ~~((school district))~~ superintendent or designee of the applicant district must submit a

letter requesting withdrawal to the state oversight committee ~~((prior to the published meeting date))~~ manager.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-656 Special education safety net—Request for review and reconsideration of an action. An applicant ~~((district))~~ may request review and reconsideration of an action of the state oversight committee made pursuant to WAC 392-140-646.

(1) The ~~((district))~~ applicant shall make the request in writing to the ~~((office of the superintendent of public instruction))~~ oversight committee manager within ~~((thirty))~~ twenty days of the date that the state oversight committee's written determination ~~((notice))~~ is sent to the ~~((district))~~ applicant pursuant to WAC 392-140-643(11).

(2) The applicant ~~((district))~~ shall request reconsideration of the state oversight committee's action on one or more of the following grounds:

(a) The action was outside the statutory authority of the committee;

(b) The action failed to follow prescribed procedures;

(c) The action erroneously interpreted or applied the law;

(d) The action was not supported by substantial evidence; or

(e) The action was inconsistent with the agency rules regarding safety net funding.

(3) If the office of the superintendent of public instruction finds grounds for reconsideration pursuant to subsection (2) of this section, OSPI shall request reconsideration of the action by the state oversight committee. OSPI shall state the grounds for reconsideration supported by the facts considered.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-660 Special education safety net—Approved application—Special education safety net ~~((allocations))~~ awards. (1) The special education safety net ~~((allocation))~~ award for an individual district shall be the ~~((smaller))~~ lesser of:

(a) The amount requested ~~((by the school district));~~ or

(b) The amount authorized by the state oversight committee.

(2) Special education safety net ~~((allocations))~~ awards for high need students under WAC 392-140-605(1) shall use ~~((appropriated))~~ federal and state ~~((moneys))~~ funds appropriated by the legislature consistent with RCW 28A.150.392(1).

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-675 Special education safety net—Adjustments to special education safety net ~~((allocations))~~ awards. Final safety net ~~((allocations may))~~ awards shall be adjusted ~~((as follows:~~

~~(1) For those districts not maximizing medicaid billing for special education students under RCW 74.09.5255, special education safety net allocations shall be reduced by the~~

estimated potential additional incentive payments for the school year if the district maximized medicaid incentive payments. Potential additional incentive payments shall be estimated by the superintendent of public instruction based on the district's percent of medicaid eligible students billed and a statewide average incentive payment per student determined by the superintendent in October of the school year. The average incentive payment per student shall be determined using the prior school year's statewide medicaid billing data assuming fifty percent incentive payments for all school districts. The superintendent of public instruction shall update medicaid billing adjustments to safety net allocations periodically during the school year and again in January following the close of the school year.) based on:

(1) The percent of potential medicaid eligible students billed. Potential medicaid revenue will be estimated by the office of the superintendent of public instruction based on the applicant's percent of medicaid eligible students billed and the statewide average payment per student as determined in July of the school year for which the applicant is requesting safety net awards. The office of the superintendent of public instruction shall provide Form SPI 1679 for district reporting of medicaid eligible students and shall update the district's special education medicaid eligibility count and finalize the count for the year based upon the applicant's most recent submission of Form SPI 1679; and

(2) ((Special education safety net allocations for a school district may be adjusted to reflect)) Changes in factors for which additional or revised information becomes available after the awarding of the initial safety net ((allocation)) award. ((This means:))

(a) High need awards and/or community impact awards ((may)) will be reduced or nullified when the ((school district's actual)) applicant's available revenues and legitimate expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(b) ((A school district's)) An applicant's safety net award may be recovered or adjusted ((by the safety net oversight committee)) based on the results of the review conducted by the ((special education program audit team)) state auditor's office pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

WAC 392-140-685 Special education safety net—Recovery of state and/or federal ((allocations to school districts)) awards. High need student state and/or federal special education safety net ((allocations)) awards and state community impact safety net awards((:

((+)) shall be recovered or awards reduced for the following reasons:

((a)) (1) The application omits pertinent information and/or contains a falsification or ((deliberate)) misrepresentation((, including omission)) of ((a material fact)) information in the application.

((b)) (2) The ((allocation)) award is unexpended for the purpose allocated including but not limited to situations where the student leaves the district or has a change in services. For students who transfer to another Washington pub-

lic school district, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district transfers the equipment to the other school district.

~~((c)) The IEP is determined at a later date, through state audit or child count verification, to be inappropriate or improperly prepared and appropriate and proper preparation would materially affect the justification or amount of need for safety net funding.~~

(2) May be recovered or awards reduced for the following reasons:

(a)) (3) The ((school district)) applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

((b)) (4) The ((district's actual)) applicant's available revenues are significantly higher than estimated revenues on which the award was based or the ((district's)) applicant's legitimate actual expenditures are significantly lower than the estimated expenditures on which the award was based.

((c)) (5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

~~((Recovery adjustments not made in the current school year shall be added to the amount calculated pursuant to WAC 392-140-616 (2)(c) for the following school year. Such amounts reduce state and/or federal safety net awards in the following year.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-140-653	Special education safety net—Reapplication.
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WSR 12-23-050

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 16, 2012, 1:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-031.

Title of Rule and Other Identifying Information: The department is proposing revisions to chapter 16-101 WAC, Washington state milk and milk products standards, by replacing the 2007 pasteurized milk ordinance (PMO), the 2007 procedures document, the 2007 methods for making sanitation ratings document and the 2005 evaluation of milk laboratories document with the most current 2011 version of the documents, including the revision of the somatic cell count of milk to ensure that milk and milk products produced in this state meet the latest national standards and to assist in continued acceptance of Washington state milk and milk products shipped to other states and countries.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, Room 259, 1111

Washington Street S.E., Olympia, WA 98504-2560, on January 3, 2013, at 10:00 a.m.

Date of Intended Adoption: January 10, 2013.

Submit Written Comments to: Julie Carlson, P.O. Box 42560, Olympia, WA 98504-2560, e-mail jcarlson@agr.wa.gov, fax (360) 902-2087, by January 3, 2013, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Julie Carlson by December 27, 2012, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of chapter 16-101 WAC, Washington state milk and milk products standards includes: Amending WAC 16-101-701 to adopt the 2011 revision of the PMO and update exceptions to the PMO (those portions that conflict with Washington state law) and to establish the somatic cell count for individual producer bovine cow milk not to exceed 400,000 per mL; WAC 16-101-716 to adopt the 2011 procedures document; WAC 16-101-721 to adopt the 2011 methods for making sanitation ratings document; WAC 16-101-726 to adopt the 2011 evaluation of milk laboratories document; and WAC 16-101-731 to update where the PMO and other related documents can be obtained.

Statutory Authority for Adoption: RCW 15.36.021.

Statute Being Implemented: Chapters 15.36 and 34.05 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Claudia Coles, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1905.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Overview: The division of food safety and consumer services within Washington state department of agriculture (WSDA) is proposing amending chapter 16-101 WAC under the authorization of chapters 15.36 and 34.05 RCW. Recently WSDA was petitioned by two major dairy product producers (Darigold Inc., and Safeway) along with the Washington State Dairy Federation to establish more stringent standards for somatic cell counts in milk from individual dairy cow milk producers than the current standards established by FDA in the Grade A PMO. New stricter quality standards being implemented and proposed by global customers require milk and milk products produced in Washington state to meet these new standards. This request is to ensure continued sales in export and domestic markets for milk and milk products produced in Washington state.

The proposed rule amendment includes:

- Reestablishing the current tolerance level for somatic cell counts in dairy cow milk from the current standard of 750,000 per mL to 400,000 per mL.
- Adoption of the 2011 PMO.

The provisions of this proposed rule amendment would apply to all four hundred eighty-five licensed dairy cow farm

operations in Washington state as defined under chapter 15.36 RCW.

The following small business economic impact statement (SBEIS) was prepared in compliance with the Regulatory Fairness Act, RCW 19.85.040, and provides an analysis of the proposed rule amendment impact on small businesses compared to large businesses. The intent of the proposed rule amendment is to provide clarity to business owners from a regulatory perspective and support future sales and exports of dairy cow milk and milk products.

Citizens Affected by This Proposal: WSDA is the responsible agency for licensing and inspecting dairy cow milk operations and monitoring the quality of dairy cow milk produced by licensed dairies and processed within Washington state. Currently there are just over four hundred eighty-five licensed dairy cow milk operations in Washington state that would fall under this rule. Over ninety percent of the licensed dairy cow milk farms impacted under this proposed rule would be considered small businesses (employing fifty or fewer employees).

Cost Survey Examination: This proposal to chapter 16-101 WAC was presented to WSDA by two major dairy processors and the Washington State Dairy Federation which represents dairy farmers within Washington state. The proposal was discussed and shared with the Washington State Dairy Federation board of directors, Washington state dairy products commission and major dairy cow milk processors. Additionally, the proposal was shared and discussed with raw milk producers by conference call. Assumptions on impacts to these small businesses are based on discussions with stakeholders, dairy processors and dairy producers.

Costs of Complying with this Proposed Rule: This proposed rule amendment will ensure dairy cow milk and related milk products produced and processed in Washington state will be eligible to be exported to overseas markets. Over the past five years exports of dairy products produced and processed in Washington state have been a key part of ensuring markets for dairy cow milk produced and processed in Washington state. Loss of export markets could have a negative impact on net incomes to both dairy cow milk processors and producers. This proposal will also ensure Washington state remains in compliance with FDA requirements for the shipment of dairy cow milk out of Washington state by adoption of the most current (2011 revision) of the PMO. This proposed rule amendment should not create any additional costs for dairy cow milk operations, as over ninety-seven percent of licensed dairy cow milk producers are already meeting the proposed somatic cell count limit of 400,000 per mL. Both dairy cow milk processors and WSDA food safety and consumer services division staff are working with the small number of dairy cow milk producers who have exceeded the proposed limit on somatic cell counts to assist them in meeting this proposal in the future. Low somatic cell counts are a sign of healthy cattle and promote a longer shelf life for dairy cow milk and milk products. The proposed rule amendment is designed to provide regulatory clarity, maintain current and future export markets, not create a reduction or loss of sales, and will not require the addition or loss of jobs in order for dairy cow milk producers to be in compliance.

Considerations to Reduce Impact to Small Business:

The agency reviewed the following potential impacts to small businesses and identified where possible reductions in impacts could be found.

- Reducing, modifying, or eliminating regulatory requirements.
 - o The rule proposal will ensure continued exports and interstate sales of dairy cow milk and products produced and/or processed in Washington state.
- Simplifying, reducing or eliminating recordkeeping and reporting requirements.
 - o The proposed rule clearly defines standards for somatic cell counts and procedures for certification of interstate shipments of milk.
- Reducing the frequency of inspections.
 - o Inspections of dairy processors and producers including sampling of dairy cow milk will be conducted only on a routine bases [basis] unless concerns related to the operation has [have] been noted during an inspection or reported to the agency.
- Delaying compliance timelines.
 - o The agency will follow all provisions of chapter 43.05 RCW in providing technical assistance and clear timelines for compliance to the business owner.
- Reducing or modifying fine schedules for compliance.
 - o The rule proposal will not change or modify the current compliance schedule implemented when compliance actions are taken.

From input received by stakeholders, dairy cow milk producers and dairy cow milk processors the agency has provided in the proposed rule amendment clear guidelines and definitions for compliance with the key objective to provide clarity and to limit costs to the business associated with regulatory compliance.

Conclusion: The intent of the proposed rule amendment is to assist the dairy cow milk industry in promoting current and future sales including exports of dairy cow milk and milk products produced and/or processed in Washington state. An analysis of this rule proposal noted this proposal will impose minor or no costs to dairy cow milk licensees. Businesses affected by the rule proposal will not lose revenue or need to eliminate jobs.

On the contrast this rule proposal will position the dairy cow milk industry to be able to maintain and increase export sales of dairy cow milk products, with the possibility of creating more jobs and increasing revenues for licensees in the future. The goal of this proposed rule is to provide these small businesses with a stable and predictable business climate.

A copy of the statement may be obtained by contacting Julie Carlson, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1880, fax (360) 902-2087, e-mail jcarlson@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 16, 2012
Kirk Robinson
Assistant Director

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

WAC 16-101-701 Standards for the production of milk and milk products. (1) With the exception of the portions identified in subsection (2) of this section, the department adopts the Grade "A" Pasteurized Milk Ordinance, ((2007)) 2011 Revision, United States Public Health Service/Food and Drug Administration, as additional Washington state standards for the production of milk and milk products including Grade A condensed and dry milk products and condensed and dry whey products under chapter 15.36 RCW.

(2) The department does not adopt the following portions of the Grade "A" Pasteurized Milk Ordinance, ((2007)) 2011 Revision:

(a) Grade "A" Pasteurized Milk Ordinance - ((2007)) 2011 Revision.

PMO Page No.	Excepted Portion
Pages ((41-42)) <u>12-13</u>	<ul style="list-style-type: none"> • Section 3, Permits, paragraph 4, which begins with "The regulatory agency shall suspend..." • Section 3, Permits, paragraph 5, which begins with "Upon notification..."
<u>Page 24</u>	<ul style="list-style-type: none"> • <u>Section 6, The Examination of Milk and Milk Products, paragraph 5, which begins with "Whenever two (2) of the last four (4) consecutive..."</u>
Page ((28)) <u>29</u>	<p>Section of Table 1 entitled "GRADE "A" RAW MILK AND MILK PRODUCTS FOR PASTEURIZATION, ULTRA-PASTEURIZATION OR ASEPTIC PROCESSING"</p> <ul style="list-style-type: none"> • "Temperature: Cooled to 10°C (50°F) or less within four (4) hours or less of the commencement of the first milking and to 7°C (45°F) or less within two hours after the completion of milking. Provided that the blend temperature after the first milking and subsequent milkings does not exceed 10°C (50°F)."

PMO Page No.	Excepted Portion
	<p>Note: Milk sample submitted for testing cooled and maintained at 0°C (32°F) to 4.4°C (40°F), but <7.0°C (45°F) and less than three (3) hours after collection has not increased in temperature;</p> <ul style="list-style-type: none"> Under Bacterial Limits, only the sentence... "Individual producer milk not to exceed 100,000 per mL prior to commingling with other producer milk."

(b) Standards for Grade "A" Raw Milk for Pasteurization, Ultra-pasteurization or Aseptic Processing.

PMO Page No.	Excepted Portion
Page ((54) <u>52</u>)	Item 18r. "Raw Milk Cooling" paragraph 1, which begins with "Raw milk for pasteurization shall be cooled..."
Page(s 51-52) <u>53</u>	Ir. "Administrative Procedures", paragraph 1 only

(c) Standards for Grade "A" Pasteurized, Ultra-pasteurized and Aseptically Processed Milk and Milk Products.

PMO Page No.	Excepted Portion
Page 111	Item 18p. "Bottling, Packaging and Container Filling", under Public Health Reason, first sentence only which begins with "Manual bottling, packaging, and container filling..."
Page 111	Item 18p. "Administrative Procedures", item number 2 only.
Page 113	Item 19p. "Capping, container closure and sealing and Dry Milk Product Storage", Administrative Procedures, item number 1 only.
Page ((125) <u>126</u>)	Sections 15 (Enforcement), 16 (Penalty), and 17 (Repeal and Date of Effect)

(d) Appendix E: Examples of 3-out-of-5 Compliance Enforcement Procedures.

PMO Page No.	Excepted Portion
Pages ((198-199) <u>202-203</u>)	All of Appendix E

(3) The department does adopt the following somatic cell count standards to be: Individual producer bovine cow milk not to exceed 400,000 per mL; and goat, sheep, and all other species milk not to exceed 1,000,000 per mL.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

WAC 16-101-716 Procedures for certification of interstate milk shippers. The department adopts the Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments ((~~2007~~) 2011 Revision as Washington state procedures for the certification of interstate milk shippers.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

WAC 16-101-721 Methods for making sanitation ratings of milk shippers. The department adopts the Methods of Making Sanitation Ratings of Milk Shippers ((~~2007~~) 2011 Revision, United States Health and Human Services Public Health Service/Food and Drug Administration as Washington state methods for ratings of interstate milk shippers.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

WAC 16-101-726 Standard for the accrediting of milk laboratories. The department adopts the Evaluation of Milk Laboratories ((~~2005~~) 2011 Revision United States Health and Human Services Public Health Service/Food and Drug Administration as the Washington state standard for accrediting milk laboratories and certified industry supervisors who request certification and approval for uniform collection and testing required for compliance with the Grade "A" Pasteurized Milk Ordinance.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

WAC 16-101-731 Availability of the publications adopted by the department in this chapter. (1) The Grade "A" Pasteurized Milk Ordinance, ((~~2007~~) 2011 Revision, United States Public Health Service/Food and Drug Administration, can be purchased from the Superintendent of Documents, U.S. Printing Office, Washington, D.C.

(2) The following publications can be obtained by writing the Center for Food Safety and Applied Nutrition, Director, Office of Constituent Operations, Industry Activities Staff, HFS-S65 200 "C" Street, S.W., Washington, D.C. 20204:

- The Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ((~~2007~~) 2011 Revision.
- The Methods of Making Sanitation Ratings of Milk Shippers, ((~~2007~~) 2011 Revision, United States Department of Health and Human Services Public Health Services/Food and Drug Administration.
- The Evaluation of Milk Laboratories, ((~~2005~~) 2011 Revision, United States Department of Health and Human Services Public Health Service/Food and Drug Administration.

WSR 12-23-051
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed November 16, 2012, 1:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-072.

Title of Rule and Other Identifying Information: WAC 458-20-257 (Rule 257) Warranties and ~~maintenance agreements~~ service contracts.

Hearing Location(s): Capital Plaza Building, 4th Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on January 3, 2013, at 10 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: January 10, 2013.

Submit Written Comments to: Gayle Carlson, e-mail GayleC@dor.wa.gov, P.O. Box 47453, Olympia, WA 98504-7453, by January 3, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule 257 explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons:

- Selling warranties and maintenance agreements for tangible personal property; and
- Performing services covered by such a warranty or maintenance agreement.

The department is proposing an amendment to Rule 257 to:

- Update the rule to recognize that the sale of an extended warranty is a retail sale;
- Explain that the sale of a mixed agreement (an agreement containing provisions of both a warranty and service contract), is a bundled transaction; and
- Reformat the rule to provide the information in a more useful manner.

Reasons Supporting Proposal: To update the rule to recognize current law.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.050 and 82.08.010.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Russ Brubaker, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1505.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

November 16, 2012

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-081, filed 5/2/90, effective 6/2/90)

WAC 458-20-257 Warranties and (~~maintenance agreements~~) service contracts. ~~((1) Definitions.~~ For the purposes of this section, the following terms will apply:

~~(a) Warranties. Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.~~

~~(b) Warrantor. The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.~~

~~(c) Maintenance agreements. Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.~~

(2) B&O tax.

~~(a) Manufacturer's warranties included in the retail selling price of the article being sold.~~

~~(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.~~

~~(ii) When a repair is made by the manufacturer warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.~~

~~(iii) When a person other than the manufacturer warrantor makes a repair for the manufacturer warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.~~

~~(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

~~(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.~~

(ii) When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.

(e) Maintenance agreements.

(i) Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

(d) Amounts received as a commission or other consideration for selling a warranty or maintenance agreement of a third party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.

(e) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.

(3) Retail sales tax.

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.

(ii) When a repair is made by the manufacturer warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the manufacturer warrantor makes a repair for the manufacturer warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer warrantor. No retail sales tax is collected from the manufacturer warrantor.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.

(ii) When a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.

(e) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.

(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

(4) USE TAX.

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.

(ii) Where a third party makes repairs for a manufacturer warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a repair is made by the warrantor under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

(e) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

(5) Additional service — deductible. In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax. This includes so-called "deductible" amounts not covered by a warranty or maintenance agreement.

(6) Mixed agreements. If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

(7) Examples:

(a) An automobile dealer sells a vehicle to a customer for selling price of \$15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has \$600 (\$200 parts and \$400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the \$15,000 selling price.

(ii) The \$15,000 selling price is reported under the retailing B&O tax classification. The \$600 repair is reported under the wholesaling B&O tax classification.

(iii) The \$200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition

to the repairs in example (a), the customer has the dealer complete \$500 of repairs under the dealer's extended warranty. The customer paid the \$100 deductible and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and the subcontractor are as follows:

(i) The dealer reports the \$200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale.

(ii) The \$100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.

(iii) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(iv) The dealer is the consumer of the parts removed from its inventory and used in the repair. The \$150 dealer cost of the parts taken from inventory is subject to use tax.

(v) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O tax. (1) **Introduction.** This rule explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements that cover tangible personal property. This rule does not pertain to similar types of agreements for real property.

This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Definitions.** For the purposes of this rule, the following terms will apply:

(a) **Agreement.** Unless otherwise stated, "agreement" means "service contract," "warranty," or "mixed agreement" as those terms are defined in this rule.

(b) **Warranty.** A warranty, sometimes referred to as a guarantee, means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both based upon the happening of some unforeseen occurrence, e.g., a component part fails and the property needs repair. Unless otherwise stated, the term "warranty" includes both a warranty and an extended warranty.

(c) **Service contract.** A service contract, sometimes referred to as a maintenance agreement, provides for the repairing, cleaning, altering, or improving of tangible personal property, generally for the purpose of continued satisfactory operation. These services may be performed on a regular or irregular basis.

(d) **Mixed agreement.** A mixed agreement is an agreement that contains provisions of both warranty and service contracts.

(3) **Sales of agreements.** Sales of agreements to consumers are subject to the retailing B&O and retail sales taxes, unless a specific exemption applies. Persons making sales of agreements to persons who will be reselling the agreements, without intervening use, are subject to the wholesaling B&O

tax classification. Sellers must obtain reseller permits from their customers to document the wholesale nature of any sale as provided in WAC 458-20-102 (Reseller permits).

(a) **Sale of a product, which includes an agreement at no separate charge.** The sales price of a product often includes, for no extra charge, warranty coverage for a specific period of time. This type of warranty is commonly referred to as a "manufacturer's warranty." Some sellers may extend the warranty period for no extra charge. Where there is no separate charge for the sale of an agreement, the sale is considered a sale of the product only, and the entire sales price is taxed accordingly (e.g., retail, wholesale, or tax-exempt).

Example 1. An automobile dealer sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five years or 50,000 miles warranty. The automobile dealer extends warranty coverage for an additional two years, with no separate charge to the customer. The dealer must collect retail sales tax on the \$20,000 selling price from the customer, and report \$20,000 in sales under the retailing B&O tax and retail sales tax classifications on the excise tax return.

(b) **Additional charges for parts or repair services covered under an agreement.** In some cases, a customer is required to pay an amount for services or parts not fully covered under an agreement. This additional amount is subject to both the retailing B&O tax and retail sales tax.

Example 2. The automobile dealer in Example 1 sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier, and under the policy claims are paid on the retail value of the repairs. The customer has the dealer complete \$500 of repairs under the warranty. The customer pays a reduced charge of \$100 for the warranty services and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and subcontractor is as follows:

(i) In addition to retail sales tax collected on the \$20,000 selling price, retail sales tax is collected on the \$200 paid for the dealer's own extended warranty.

(ii) The \$20,200 selling price for both the automobile and warranty is reported under the retailing B&O tax and retail sales tax classifications on the excise tax return. The \$20,000 paid for the automobile (but not the cost of the warranty) is also subject to the motor vehicle excise tax.

(iii) The \$100 reduced charge paid for the warranty services performed is subject to the retailing B&O tax, and the dealer must collect retail sales tax from the customer.

(iv) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(v) The \$150 cost of the parts taken from inventory is not subject to use tax.

(vi) The subcontractor is making a wholesale sale to the dealer.

(c) **Exemptions.** The sale of an agreement is not exempt simply because the sale of the property to which it applies is exempt. Generally, for the sale of the agreement to be exempt, there must be a provision in statute exempting all services or products covered by the agreement. If all such

obligations are not exempt, the sale of the agreement is subject to retail sales tax. See also RCW 82.08.190 and 82.08.195 for additional information regarding the taxation of bundled transactions.

(i) Service contracts. Since a service contract is a contract for the repairing, cleaning, altering, or improving of the tangible personal property covered by the contract, the sale of a service contract may be exempt from retail sales tax if there is a statutory exemption for all activities covered by the contract.

Example 3. RCW 82.08.02565, known as the "M&E exemption," provides a retail sales tax exemption for both the sale and repair of eligible manufacturing machinery and equipment. Company A sells equipment that qualifies for the M&E exemption to Manufacturer B. The purchase price of the equipment is \$10,000 and includes a 90-day warranty against defects in materials and workmanship. Manufacturer B also purchases a service contract for an additional \$300 that covers only exempt parts and repairs. If Manufacturer B provides Company A with a valid M&E exemption certificate, the \$10,000 selling price and \$300 service contract price are exempt from retail sales tax. The service contract is exempt as RCW 82.08.02565 includes an exemption for the sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment. The 90-day warranty included in the selling price is not subject to additional tax. Company A reports the total \$10,300 under the retailing B&O tax and retail sales tax classifications, taking a deduction under retail sales tax for the M&E exemption.

Example 4. RCW 82.08.809 provides an exemption for the purchase of vehicles using clean alternative fuels provided the provisions of the exemption are followed. A dealer sells a new vehicle powered by natural gas and a two-year service contract to a customer. The sale of the vehicle is exempt from retail sales tax, but the sale of the service contract is not as there is no statutory exemption for the activities covered by the service contract.

(ii) Warranties. The sale of a warranty is exempt only if a specific statutory exemption is available. The place of sale for a warranty is the seller's business location if the buyer receives the warranty at that location. See RCW 82.32.730 for additional sourcing information.

Example 5. Assume that Manufacturer B in Example 3 also purchases an extended warranty for an additional \$200. If Manufacturer B provides Company A with a valid M&E exemption certificate, the \$10,000 selling price and \$300 service contract are exempt from retail sales tax, but the \$200 for the extended warranty is subject to retail sales tax. RCW 82.08.02565 exempts sales tax on repairs of eligible equipment, but does not provide for an exemption for a warranty for eligible equipment. As there is no corresponding tax exemption for B&O tax, the total amount of \$10,500 is subject to the retailing B&O tax.

(iii) Mixed agreements. The sale of a mixed agreement, which by definition contains provisions of both a warranty and a service contract, is a "bundled transaction." Retail sales tax must generally be collected on the selling price of a mixed agreement, unless both the warranty provisions and service contract provisions each separately qualify for a retail sales

tax exemption. Refer to RCW 82.08.190 and 82.08.195 for additional guidance on how retail sales tax applies to bundled transactions.

(4) Sales of agreements by third parties. Consideration received by a third party as a commission, for selling an agreement for the actual warrantor, is subject to B&O tax under the service and other activities B&O tax classification.

(5) Sales of repair services or parts to obligor. A person obligated under an agreement may purchase the following from a supplier or service provider at wholesale, provided that the obligor provides the supplier or service provider with a reseller permit (reseller permits replaced resale certificates effective January 1, 2010):

- Parts purchased to replace or become an ingredient or component of property covered by the agreement, as long as there is no intervening use of the parts as a consumer; and
- Repair services purchased to satisfy the obligor's obligations under an agreement.

Sales of the above are subject to wholesaling B&O tax, provided the obligor provides the supplier or service provider with a reseller permit.

WSR 12-23-058

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 19, 2012, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-110.

Title of Rule and Other Identifying Information: WAC 388-97-0001 Definitions, 388-97-0040 Discrimination prohibited, 388-97-1000 Resident assessment, 388-97-1620 General administration, 388-97-1640 Required notification and reporting, 388-97-2020 Intermediate care facilities for mentally retarded, and 388-97-2180 ICF/MR exceptions to physical plan requirements.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington Street S.E., Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on January 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 9, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 8, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 11, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is

amending these rules to be consistent with federal regulations and newly passed state laws: SHB 2056 Relating to assisted living facilities; SHB [SSB] 5708 Relating to reshaping the delivery of long term care services; 20 United States Code 1140 ("Rosa's law"); 42 Code of Federal Regulations 483.20(d); and Social Security Act section 1128I(h) as added by section 6113 of the Affordable Care Act section 6113.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Bird, P.O. Box 45600, Olympia, WA 98513, (360) 725-2581; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes [statutes] or federal statutes [statutes] or regulations.

November 13, 2012

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 12-24 issue of the Register.

WSR 12-23-061

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 19, 2012, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-067.

Title of Rule and Other Identifying Information: Commercial driver's license and motorcycle endorsement fees.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on January 3, 2013, at 3:00 p.m.

Date of Intended Adoption: January 7, 2013.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by January 2, 2013.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by January 2, 2013, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Delete redundant and outdated reference to the fee for a commercial driver's license (WAC 308-100-050) and update references to the motorcycle endorsement (WAC 308-104-016) to reflect recent legislative changes (ESSB 6150).

Reasons Supporting Proposal: Brings administrative rules into compliance with recent legislation.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.049, 46.20.505.

Statute Being Implemented: RCW 46.20.049 and 46.20.505.

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: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

November 19, 2012

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-025, filed 11/28/07)

WAC 308-100-050 Examination fees. (1) ~~((The basic fee for obtaining or renewing any class of commercial driver's license shall be thirty dollars.~~

~~((2)))~~ The examination fee for each commercial driver's license knowledge examination, commercial driver's license endorsement knowledge examination, or any combination of commercial driver's license and endorsement knowledge examinations, shall be ten dollars.

~~((3)))~~ ~~((2))~~(a) Except as provided in subsection ~~((3)))~~ ~~((2))~~(b) of this section, the examination fee for each commercial driver's license skill examination conducted by the department shall be one hundred dollars.

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by the department shall be seventy-five dollars:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405~~((4)))~~.

~~((4)))~~ ~~((3))~~ An applicant who has failed the skill examination must re-test and pay the full fee required under subsection ~~((3)))~~ ~~((2))~~ of this section.

~~((5))~~ (4) Drivers selected for reexamination by the department may be subject to costs associated with the testing.

~~((6))~~ (5) The fees in this section are in addition to the regular drivers' licensing fees.

AMENDATORY SECTION (Amending WSR 00-02-017, filed 12/27/99)

WAC 308-104-016 Motorcycle endorsement fees.

The endorsement fee for the initial motorcycle endorsement shall be ~~((ten))~~ twelve dollars, unless the initial endorsement is issued for a period other than six years, in which case the initial endorsement fee shall be two dollars for each year or partial year that the endorsement is issued, and the subsequent renewal endorsement fee shall be ~~((twenty-five))~~ thirty dollars, unless the endorsement is renewed or extended for a period other than ~~((five))~~ six years, in which case the subsequent renewal endorsement fee shall be five dollars for each year that the endorsement is renewed or extended.

WSR 12-23-068

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed November 20, 2012, 7:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-057.

Title of Rule and Other Identifying Information: 1. WAC 4-30-050 What are the requirements concerning records and clients confidential information?

2. WAC 4-30-134 What are the CPE requirements for individuals?

Hearing Location(s): The Doubletree Hotel Seattle Airport, Cascade 12 Room, 18740 International Boulevard, SeaTac, WA, on January 22, 2013, at 9:00 a.m.

Date of Intended Adoption: January 22, 2013.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail info@cpaboard.wa.gov, fax (360) 664-9190, by January 15, 2013.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by January 15, 2013, TTY (800) 833-6388 or (800) 833-6385 (Telebraille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. WAC 4-30-050, to correct an error in subsection (3) and to clarify that licensees who prepare federal income tax returns in accordance with IRS rules do not violate client confidentiality.

2. WAC 4-30-134, to allow CPAs, CPA inactive certificate holders, and resident nonlicensee CPA firm owners with the option of taking an AICPA based ethics course, the current Washington rules ethics course, or other professionally based ethics courses on subsequent license renewals.

Reasons Supporting Proposal: 1. IRS regulations require registered domestic partners residing in community property states such as Washington state to report half of the community income on each partner's federal tax return. This

requires CPA tax preparers to disclose each partner's personal information on the other's tax return. RCW 18.04.405, WAC 4-30-050 and internal revenue code prohibit CPA preparers of tax returns from disclosing tax return information without the consent of the client. This proposal clarifies that CPAs may disclose the tax information if required by federal or state tax laws provided each client provides the CPA with specific consent and the intended recipients are specifically and fully identified.

2. Every three years, CPAs, CPA-inactive certificate holders, and nonlicensee CPA firm owners must complete four hours of board approved continuing professional education (CPE) in ethics and regulation with specific application to the practice of public accounting in Washington state. Not all of these credentialed persons are employed in public practice and the rules do not change that often. More and more CPE sponsors are providing ethics in the individual's required workplace competencies. This proposal will provide the credentialed person with flexibility to obtain ethics CPE that is the most beneficial to them. Other changes in the proposal are for clarity. The board is not proposing to change the basic CPE requirements.

Statutory Authority for Adoption: 1. RCW 18.04.055 (2), 18.04.405(1). 2. RCW 18.04.055 (7), (14), 18.04.215(5).

Statute Being Implemented: 1. RCW 18.04.055(2), 18.04.405(1). 2. RCW 18.04.055 (7) (14), 18.04.215(5).

Rule is necessary because of federal law, Office of Chief Counsel Memorandum # 201021050 and IRS Publication 555.

Name of Proponent: The Washington state board of accountancy.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05-328 (5)(a).

November 19, 2012

Richard C. Sweeney

Executive Director

AMENDATORY SECTION (Amending WSR 11-06-062, filed 3/2/11, effective 4/2/11)

WAC 4-30-050 What are the requirements concerning records and clients confidential information? (1) **Client:** The term "client" as used throughout WAC 4-30-050 and 4-30-051 includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client in an initial interview to obtain or provide professional services.

(2) **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed

without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the licensee, partnership, limited liability company, or corporation, or any combined or merged partnership, limited liability company, or corporation, or successor in interest.

(3) **Confidential client communication or information:** Licensees, CPA-Inactive certificate holders, nonlicensee firm owners and employees of such persons must not without the specific consent of the client or the heirs, successors, or authorized representatives (~~(or employee)~~) of the client disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.

This rule applies to confidential communications and information obtained in the course of professional tax compliance services unless state or federal tax laws or regulations require or permit use or disclosure of such information.

Consents may include those requirements of Treasury Circular 230 and IRC Sec. 7216 for purposes of this rule, provided the intended recipients are specifically and fully identified by full name, address, and other unique identifiers.

(4) This rule does not:

(a) Affect in any way the obligation of those persons to comply with a lawfully issued subpoena or summons;

(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;

(c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-134 What are the continuing professional education (CPE) requirements for individuals? (1) ~~(The following)~~ Qualifying continuing professional education (CPE) must contribute to the professional competency in the individual's area(s) of professional practice or relative to the individual's current work place job functions.

(2) Qualifying CPE is required ~~(for)~~ to be completed by individuals during ~~(the three calendar year period prior to renewal)~~ any board specified CPE reporting period.

(3) A CPE reporting period is a calendar year time period beginning in the calendar year a credential is first issued by this board and ending on December 31st of the subsequent third calendar year; for example, if your license was issued any time during calendar year one (2012), the CPE reporting period ends on December 31st of calendar year three (2014).

(4) General CPE requirements for renewal of valid credentials:

(a) ~~(An individual licensed to practice in this state)~~ A licensee must complete a total of 120 CPE hours, including 4

CPE credit hours in ~~(an approved Washington)~~ ethics ~~(and regulations course)~~ meeting the requirements of subsection ~~((3))~~ ~~(6)(b)~~ of this section. The total 120 CPE hours requirement is limited to no more than 24 CPE credit hours in nontechnical subject areas. ~~(All qualifying CPE hours must be taken after the date your initial CPA license was issued.)~~

(b) A CPA-Inactive certificate holder or a resident nonlicensee firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ ~~(6)(b)~~ of this section~~(-and)~~.

(c) Individuals ~~(holding)~~ eligible to exercise practice privileges are exempt from the CPE requirements of this section.

~~((2) CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:~~ When you convert your status from a CPA-Inactive certificate holder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:

~~(a))~~ **(5) Exceptions to the general CPE requirements:**

(a) The initial CPE renewal period after conversion of a CPA-Inactive certificate to a Washington state license:

(i) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ ~~(6)(a)~~ of this section prior to December 31st of the calendar year following the calendar year in which your license was initially issued.

~~((b))~~ (ii) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ ~~(6)(a)~~ of this section.

~~((c))~~ (iii) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection ~~((3))~~ ~~(6)(a)~~ of this section.

~~((3))~~ (b) For the following circumstances, you must have completed the requirements of subsection (4)(a) of this section within the thirty-six-month period immediately preceding the date an application is submitted to the board; however, the 4 CPE hours in ethics meeting the requirements of subsection (6)(a) of this section must be completed within the six-month period immediately preceding the date your application and the CPE documentation is submitted to the board:

(i) You are applying to reactivate a license out of retirement; or

(ii) You are a CPA-Inactive certificate holder applying for a license or you want to return to your previously held status as a licensee; or

(iii) You are applying for reinstatement of a lapsed, suspended, or revoked license.

(c) For the following circumstances, you must have completed the 4 CPE hours in ethics meeting the requirements of subsection (6)(a) of this section within the six-month period

immediately preceding the date your application and the CPE documentation is submitted to the board:

(i) You are applying to reactivate a CPA-Inactive certificate out of retirement; or

(ii) You are applying to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner.

(6) CPE in ethics and regulation((s applicable to practice in Washington state)):

(a) During ((each)) the first CPE reporting period after initial licensing all individuals initially licensed in this state, ((individual CPA-Inactive certificate holders in this state, and)) including nonresident and foreign individuals receiving initial licenses by reciprocity, and individuals initially recognized as resident nonlicensee firm owners are required to complete 4 qualifying CPE credit hours in approved ethics and regulations ((with specific application to the practice of public accounting)) in Washington state. ((In order to be approved by the board,)) The content of this initially required 4 CPE credit hours must be specific to the laws and rules applicable to the practice of public accounting in Washington state including the requirements for the initial and continued use of restricted titles in this state.

All CPE sponsors ((or instructor)) must submit ((documentation associated with the ethics and regulations CPE)) course materials for this initially required 4 CPE credit hours to the executive director of the board for approval ((and the sponsor or instructor must obtain written approval from the board)) prior to delivery of the content for credit. The ethics and regulations ((CPE)) course materials must cover all of the following topics, and ((the ethics and regulations CPE)) instructors of approved courses must substantially address these topics in their presentations:

((a)) (i) Chapter 18.04 RCW and Title 4 WAC. The CPE must include general level information on the Public Accountancy Act, the board's rules, policies, and the rule-making process.

((b)) (ii) WAC 4-30-026 How can I contact the board?

((c)) (iii) WAC 4-30-032 Do I need to notify the board if I change my address?

((d)) (iv) WAC 4-30-034 Must I respond to inquiries from the board?

((e)) (v) WAC 4-30-040 through 4-30-048 Ethics and prohibited practices. The CPE must include detailed information on each rule and all related board policies.

((f)) (vi) WAC ((4-30-103)) 4-30-130 Series—Continuing competency. The CPE must include detailed information on each rule and all related board policies.

((g)) (vii) WAC 4-30-142 What are the bases for the board to impose discipline?

((h)) (viii) AICPA Code of Conduct: The CPE must include general level information on the AICPA Code of Conduct.

((i)) (ix) Variances or key differences between Washington state law (chapter 18.04 RCW), this board's rules (Title 4 WAC) and the AICPA Code of Conduct.

((j)) (x) Other topics or information as defined by board policy.

((4) CPE requirements to renew a license or CPA-Inactive certificate out of retirement:

(a) In order to renew a license out of retirement, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the renewal application is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application is submitted to the board.

(b) In order to renew a CPA-Inactive certificate out of retirement, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application is submitted to the board.

(5) CPE requirements for a CPA-Inactive certificate holder to either qualify to apply for a license or return to their previously held status as a licensee: If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is submitted to the board.

(6) Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the application for reinstatement is submitted to the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your application for reinstatement is submitted to the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement is submitted to the board.

(7) Reciprocity: If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section, after you were licensed as a CPA and within the thirty-six month period immediately preceding the date your application is submitted to the board. For purposes of initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

((8)) (b) During the CPE reporting periods subsequent to the first CPE reporting period, all individuals licensed in this state, including those licensees who obtained their initial license through this state's reciprocity provisions, individual CPA-Inactive certificate holders in this state, and resident nonlicensee firm owners are required to complete 4 qualifying CPE credit hours in ethics applicable to the individual's required competencies in the workplace.

Examples of course content include the following or any combination thereof accumulating to the required 4 hours:

(i) Washington state specific CPE in ethics and regulation described in (a) of this subsection;

(ii) Courses covering the AICPA Code of Professional Conduct;

(iii) Courses covering international codes of conduct applicable to your practice environment;

(iv) Courses covering the ethical codes of conduct prescribed by other volunteer professional organizations applicable to the individual's competencies including, but not limited to, organizations such as the Institute of Internal Auditors (IIA), the Institute of Management Accountants (IMA), or the Association of Government Accountants (AGA);

(v) Courses covering the ethical standards established by other state or federal agencies, including state specific courses required by other state boards of accountancy provided that the content is substantially equivalent to Washington state's law, rules, and policies; or

(vi) Courses specifically addressing the ethical and regulatory issues and challenges faced by licensees, CPA-Inactive certificate holders or the equivalent, and/or resident nonlicensee firm owners. This type of course would be expected to also include responsible and practical solutions to ethical and regulatory issues, including those related to compliance with the laws and rules of Washington state.

(7) CPE extension requests: In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must complete the required CPE by ((the end of the CPE reporting period)) December 31st of the calendar year preceding the calendar year of your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause.

The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing by ((the end of the CPE reporting period)) December 31st of the calendar year preceding the calendar year of your renewal. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

A form useful for this purpose is available from the board's web site or will be provided to you upon request.

(8) Self-reported deficiencies: If you fail to file a timely request for extension but you self-report a CPE deficiency to the board during the renewal period January 1st through June 30th of the renewal year, you will be permitted to continue to use the restricted title during the renewal period provided you:

(a) Submit to the board, in writing, the specific CPE plan to obtain to correct the CPE deficiency on or before June 30th of the renewal period;

(b) Timely complete the CPE sufficient to correct the deficiency;

(c) Timely submit certificates of completion for the subject CPE taken to the board; and

(d) Pay the fee for reinstatement of a lapsed credential on or before June 30th of the renewal year.

CPE deficiencies taken by June 30th of the renewal year under this subsection will be carried back to the reporting period ending on December 31st of the preceding calendar year and be subject to CPE audit in the next renewal period to ensure that inadvertent double counting does not occur.

WSR 12-23-069

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-21—Filed November 20, 2012, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-15-088.

Title of Rule and Other Identifying Information: Commissioner's data submission requirements for K-12 public school district employee health benefit plans.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on December 27, 2012, at 1:00 p.m.

Date of Intended Adoption: January 7, 2012 [2013].

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, Fax (360) 586-3109, by December 26, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by December 26, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 28A.400-275 requires K-12 public school districts and their benefit providers to annually submit data to the insurance commissioner regarding their employee health benefit plans. RCW 48.02.210 authorizes the commissioner to adopt rules necessary to implement the data submission requirements under RCW 28A.400.275. These proposed rules establish and implement the data submission requirements for carriers that provide health benefit plans for school district employees.

Reasons Supporting Proposal: RCW 28A.400.275 requires the insurance commissioner to receive health benefits information from school districts or their health benefit providers. The data requirements and submission process are not defined in the statute and carriers and school districts will benefit from the clarification provided by the rules.

Statutory Authority for Adoption: RCW 48.02.060 and 48.02.210(3).

Statute Being Implemented: RCW 28A.400.275.

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 and Implementation: Pete Cutler, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-9651; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must

comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Pete Cutler, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-9651, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

November 20, 2012

Mike Kreidler

Insurance Commissioner

Chapter 284-198 WAC

K-12 EMPLOYEE HEALTH INSURANCE DATA REPORTING RULES

NEW SECTION

WAC 284-198-001 Scope. (1) This chapter applies to health care service contractors, health maintenance organizations, and disability insurers that offer health benefit plans to K-12 public school district employees.

(2) This chapter explains the K-12 public school district employee health benefit plan data submission requirements established pursuant to RCW 28A.400.275 and 48.02.210.

NEW SECTION

WAC 284-198-005 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise:

(1) "Association health plan" means a health benefit plan or policy issued through an association either pursuant to a master contract or through group contracts that predicate eligibility for enrollment in whole or in part on membership in an association.

(2) "Benefit package" has the same meaning as "health plan" or "health benefit plan."

(3) "Carrier" means, solely for the purpose of this chapter, health care service contractors, health maintenance organizations, and disability insurers that offer health benefit plans to K-12 public school district employees.

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

(5) "Data call" means the commissioner's instructions to carriers for submission of information pursuant to RCW 28A.400.275 and 48.02.210.

(6) "Actual earned premium" means premium as defined in RCW 48.43.005, plus any rate credits or recoupment less any refunds, for the applicable period, whether received before, during or after the applicable period.

(7) "Enrollee" means a person entitled to coverage for benefits under a health benefit plan, including an enrollee, subscriber, policyholder, or a beneficiary of a group plan.

(8) "General administrative expenses" means actual paid expenses for administration, as reported to the commissioner and the National Association of Insurance Commissioners.

(9) "Health plan" or "health benefit plan" means any policy, contract or agreement offered to provide, arrange, reim-

burse or pay for medical services, as described in RCW 48.43.005(26).

(10) "Health plan premium" means the amount agreed upon as the health plan unit rate charged by the carrier for each plan participant for coverage under a comprehensive medical plan for a defined period of time, regardless of the entity responsible for paying the premium or its equivalent.

(11) "Health plan rate" means the unit rate used to calculate the premium charged, received or deposited as consideration for a health benefit plan or the continuance of a health benefit plan.

(12) "Submission" means the transfer to and actual receipt by the commissioner of data, documents and information, provided by the carrier consistent with the format, method and timing specified by the commissioner.

(13) "Total claim expenses" means the dollar amount of claims recorded as paid during the reporting period.

NEW SECTION

WAC 284-198-010 Acknowledgment. Carriers must acknowledge receipt of the data call by sending an electronic mail acknowledgment to the commissioner's mailbox: 5940survey@oic.wa.gov. The carrier must include the name, e-mail address and telephone number of the contact person within the organization regarding the data call if it has not already done so pursuant to WAC 284-198-050.

NEW SECTION

WAC 284-198-020 Survey instrument. (1) The data call will be issued in the form of a survey instrument, template for narrative responses and record format instruction, containing questions requiring narrative as well as numeric responses. Carriers must respond to the survey instrument pursuant to the instructions posted on the commissioner's web site.

(2) The survey instrument will collect health plan earned premium and paid claims expenses on a monthly basis for each month of the calendar year, and may also collect those data on a plan year basis. The survey instrument will collect data regarding health plan administrative expenses and reserves for incurred but not reported expenses, on an annual and per-member, per-month (PMPM) basis.

NEW SECTION

WAC 284-198-025 Submission. Carriers must comply with the commissioner's data submission standards and are responsible for the accuracy and completeness of the data for all record groups requested through the data call, and for correcting errors identified during the data validation process in a timely manner, and delivering corrected data on or before the due dates set by the commissioner during the data validation process.

(1) Data, supporting documents and any other information necessary to respond to the commissioner's data call must be submitted to the commissioner by the carrier at the address specified in the instructions not later than the deadline established in the data call.

(2) Carriers must use the survey template form posted on the commissioner's web site when responding to the data call, and follow the instructions, requirements and guidelines for the record layout format also posted on the web site. Carriers may submit additional documents or other explanatory information with the completed survey template. These additional documents must be submitted to the commissioner in compliance with any other record layout format requirements included in the instructions.

(3) Carriers must submit data for an individual company as one file. One individual must coordinate, compile and submit the complete package electronically, as directed in the instructions posted on the commissioner's web site.

(4) If a carrier retains the services of a third party to respond to the data call that entity must respond to the data call within the time frames required of the carrier, and follow the commissioner's instructions for submission. If the commissioner requires resubmission of the data, in whole or in part, the third party must respond within the time frame that the commissioner requires.

(5) The commissioner may contract with an entity to collect the data that must be reported pursuant to this chapter. In such a case carriers must submit the required data to that entity for use by the commissioner in carrying out the requirements of RCW 28A.400.275 and 48.02.210.

NEW SECTION

WAC 284-198-030 Resubmission. If the commissioner requires a carrier to resubmit data because the data file was submitted in an incorrect format or does not otherwise comply with the specifications in this chapter and the data call, the carrier must respond within thirty calendar days of receiving a notice to resubmit.

NEW SECTION

WAC 284-198-035 Validation. The carrier must validate the completed survey by executing and submitting to the commissioner the statement of data validity posted on the commissioner's web site with the data call instructions pursuant to RCW 28A.400.275 and 48.02.210.

NEW SECTION

WAC 284-198-040 Data retention. Carriers must retain all data, including computer runs produced to support the data call submission, for three years following submission of the data.

NEW SECTION

WAC 284-198-045 Data fields. The survey template will require reporting of the following data fields and information for each health benefit plan that includes K-12 public school district enrollees:

Field	Description	Type (numeric or text)	Notes
(1)	Carrier name	text	

Field	Description	Type (numeric or text)	Notes
(2)	Health benefit plan (HBP) name or plan identifier and policy number	text	
	HBP - Summary of benefit package - Covered benefits, deductibles, coinsurance, copayments	text	
(3)	HBP monthly enrollment, including employee and dependent enrollment counts by month Jan-Dec 2012		
(4)	HBP aggregate monthly total and per-member, per-month (PMPM) paid claims Jan-Dec 2012		
	For data fields (#5-#10) report total paid expense; utilization/1000; and PMPM expense		
(5)	HBP monthly paid inpatient facility claims Jan-Dec 2012		
(6)	HBP monthly paid outpatient facility claims Jan-Dec 2012		
(7)	HBP monthly paid physician claims Jan-Dec 2012		
(8)	HBP monthly paid pharmacy claims Jan-Dec 2012		
(9)	HBP monthly paid capitation payments for medical care Jan-Dec 2012		
(10)	Other HBP monthly paid medical claims Jan-Dec 2012		
(11)	HBP - A list of plan deidentified enrollees that had greater than \$100,000 paid claims in 2012; including for each: The total amount of paid claims, the enrollment status; and the survey instrument diagnosis code categories		
(12)	HBP actual earned premium Jan-Dec 2012		
(13)	HBP total premium or rate stabilization reserves for the plan year ending in 2012		
(14)	HBP surplus or deficit as of the plan year ending in 2012		
(15)	HBP total annual and PMPM general administrative expenses - 2012		
(16)	HBP total annual and PMPM administrative expenses for premium taxes, WSHIP assessments, and other government taxes or assessments - 2012		
(17)	HBP total annual and PMPM administrative expenses for commissions and consulting, including all direct or indirect producer compensation - 2012		
(18)	HBP total annual and PMPM administrative expenses for PPO network access - 2012		

Field	Description	Type (numeric or text)	Notes
(19)	HBP total annual and PMPM administrative expenses for all expenses not listed in data fields (16)-(18) - 2012		
(20)	HBP total annual and PMPM expenses for disease management, wellness, and similar programs - 2012		
(21)	Carrier progress toward health care cost savings and reduced administrative costs	text	
(22)	Description of HBP use of innovative features to reduce premium growth and use of unnecessary health services	text	
(23)	Data necessary for school districts to more effectively and competitively manage and procure health insurance plans for employees	text	

NEW SECTION

WAC 284-198-050 Contact person. Carriers must notify the commissioner of the name of the person within their organization to whom the survey instrument and data call should be sent. The commissioner will contact the carrier through the person identified to communicate the data call, and to obtain answers to questions about the carrier's data submission. The notification must be submitted to 5940survey@oic.wa.gov, and must include the person's name, title, electronic mail address, physical address and telephone number. Carriers must provide the commissioner with notification within one week after the effective date of this chapter.

NEW SECTION

WAC 284-198-055 Health plan data needed by school districts—Association health plans. (1) Carriers must provide to a school district any health plan data in the possession of the carrier that is needed by the school district in order to respond to the district's data reporting requirements under RCW 28A.400.275 and 48.02.210.

(2) Carriers that provide coverage to school district employees through association health plans must require the association to provide to a school district any health plan data in the possession of the association that is needed by the school district in order to respond to the district's data reporting requirements under RCW 28A.400.275 and 48.02.210.

**WSR 12-23-071
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2012-14—Filed November 20,
2012, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-081.

Title of Rule and Other Identifying Information: Security breach notification.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on December 27, 2012, at 10:00 a.m.

Date of Intended Adoption: January 2, 2013.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by December 27, 2012.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by December 26, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will identify who is required to be notified when a security breach occurs and what information is required to be included in the notification. The proposed regulation will provide consistency between state and federal requirements.

Reasons Supporting Proposal: In 2009, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act. The changes affect notice requirements related to security breaches, such as unintentional disclosure of personal health information. State regulations will be consistent with federal requirements.

Statutory Authority for Adoption: RCW 48.02.060, 48.30.010 and 48.43.505. The Gramm-Leach Bliley Act, Pub. L. 102-106, Sec. 501(b), Sec. 505 (B)(2). The Health Information Technology for Economic and Clinical Health Act, Pub. L. 111-5, Sec. 13402.

Statute Being Implemented: RCW 48.43.505.

Rule is necessary because of federal law, The Gramm-Leach Bliley Act, Pub. L. 102-106, Sec. 501(b), Sec. 505 (B)(2). The Health Information Technology for Economic and Clinical Health Act, Pub. L. 111-5, Sec. 13402.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 90504-0255 [98504-0255], (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The increased cost for insurance licensees to meet this proposed new requirement (notifying the commissioner in cases of a security breach) is significantly less than 0.3% of the average Washington revenue of the smallest domestic licensees. Therefore a small business economic impact statement is not required for this proposed rule.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Donna Dorris, P.O. Box 40258, Olympia, WA

98504-0258, phone (360) 725-7040, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

November 20, 2012

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2000-08, filed 1/9/01, effective 2/9/01)

WAC 284-04-610 Violation. A violation of this ((~~regulation~~)) chapter shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in this state.

NEW SECTION

WAC 284-04-625 Security breach notification requirements. (1) The commissioner defines failure to provide notice of security breaches in compliance with this section as an unfair practice for the following reasons:

(a) Many licensees fail or periodically fail to protect personal information and protected health information as defined in subsection (2)(a) and (b) of this section, resulting in security breaches affecting their customers or consumers.

(b) When a customer or consumer whose personal or protected health information has been breached seeks assistance from the commissioner, information about security breaches and what actions a licensee is taking to protect customers or consumers must be available to the commissioner.

(2) All licensees must notify the insurance commissioner in writing within two business days about the number of customers or consumers potentially affected and what actions are being taken following discovery of:

(a) A breach of personal information as defined in RCW 19.255.010 (4) and (5) that seems reasonably likely to subject customers to a risk of criminal activity; or

(b) A breach of unsecured protected health information as defined in 45 C.F.R. 164.402 which compromises the security or privacy of the protected information for licensees subject to 45 C.F.R. 164.

(3) For breaches of protected health information, licensees subject to 45 C.F.R. 164 must comply with the regulations (45 C.F.R. 164.400 through 164.410) adopted by the U.S. Department of Health and Human Services (HHS) governing these requirements including:

(a) Notification requirements for a security breach as defined by 45 C.F.R. 164.400, meaning an acquisition, access, use, or disclosure of protected health information in a manner not permitted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule which compromises the security or privacy of the protected health information.

(b) Notifying individuals, and other entities described in 45 C.F.R. 164.404 through 164.410.

(c) Notifying affected entities without unreasonable delay and in no case later than sixty calendar days following the discovery of the breach.

(d) Notifying documents that contain:

(i) A brief description of what happened, including the date of the breach and the date of discovery of the breach, if known;

(ii) A description of the types of unsecured protected health information involved in the breach;

(iii) Any steps individuals should take to protect themselves from potential harm resulting from the breach;

(iv) A brief description of what the covered entity is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and

(v) Contact information for individuals to ask questions or learn additional information.

WSR 12-23-086

PROPOSED RULES

**OFFICE OF THE
STATE TREASURER**

[Filed November 20, 2012, 4:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-043.

Title of Rule and Other Identifying Information: Chapter 210-01 WAC, Operation of the local government investment pool (LGIP), this chapter is being repealed and replaced with chapter 210-10 WAC, Operation of the local government investment pool, in order to amend the WAC provisions that were contained in chapter 210-01 WAC without altering or losing the legislative history associated with them as a result of the comprehensive changes and reorganization of the rules.

Hearing Location(s): Office of the State Treasurer, Capitol Court Building, Room 204, 1110 Capitol Way S.W., Olympia, WA 98504, on January 8, 2013, at 10:00 a.m.

Date of Intended Adoption: January 9, 2013.

Submit Written Comments to: Johnna Craig, 1110 Capitol Way S.W., P.O. Box 40200, Olympia, WA 98504, e-mail johnna.craig@tre.wa.gov, fax (360) 704-5181, by January 6, 2013.

Assistance for Persons with Disabilities: Contact Johnna S. Craig by January 7, 2013, TTY Dial 7-1-1 for telecommunications relay services.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and update existing WACs (by repealing chapter 210-01 WAC and replacing with chapter 210-10 WAC) to (1) introduce the concept and use of a prospectus, (2) introduce the ability of the state treasurer to offer different subpools with different investment strategies, (3) modernize and update the provisions of the WACs to account for legislative changes, and (4) provide for more clarity and more precision with respect to the terminology used in the WACs.

Reasons Supporting Proposal: The proposed changes allow more flexibility for the state treasurer to offer different investment options. It also clarifies and makes consistent the process and operation of the LGIP and requires the use of a

prospectus to more comprehensively explain the operations of the LGIP.

Statutory Authority for Adoption: RCW 43.250.060.

Statute Being Implemented: Chapter 43.250 RCW.

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

Name of Proponent: Washington state treasurer, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Doug Extine, 416 Syd Snyder Avenue S.W., Legislative Building, Room 230, Olympia, WA 98504, (360) 902-9012.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are "rules relating only to internal governmental operations that are not subject to violation by a nongovernmental entity" as stated in RCW 34.05.310 and therefore such requirement is not applicable to these proposed rules. Further the rules are not being proposed by the state board of education as addressed in section 1, chapter 210, Laws of 2012.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are "rules relating only to internal governmental operations that are not subject to violation by a nongovernmental entity" as stated in RCW 34.05.-328 (5)(b) and therefore such requirement is not applicable to these proposed rules.

November 20, 2012

Douglas D. Extine

Deputy State Treasurer

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 210-01-010	Promulgation.
WAC 210-01-020	Definitions.
WAC 210-01-030	Local government ordinance or resolution.
WAC 210-01-040	Proper adoption and filing of local government ordinance or resolution.
WAC 210-01-050	State treasurer's liability.
WAC 210-01-060	Deposit and withdrawal of funds.
WAC 210-01-070	Transaction limitation.
WAC 210-01-080	Deposit procedures.
WAC 210-01-090	Withdrawal procedures.
WAC 210-01-100	Interest earnings credit.
WAC 210-01-110	Reporting requirements.
WAC 210-01-120	Administrative deductions.
WAC 210-01-130	Portfolio management.

Chapter 210-10 WAC

LOCAL GOVERNMENT INVESTMENT POOL

NEW SECTION

WAC 210-10-010 Definitions. Unless the context requires otherwise:

"Extended asset fund" means a subpool whose investments generally have a longer maturity than the money market fund and may be more restricted in the number of contributions and withdrawals than the money market fund.

"Financial institution" means a public depository as defined in RCW 39.58.010.

"Financial officer" means the same as that term is defined in RCW 43.250.020.

"Funds" means the same as that term is defined in RCW 43.250.020.

"Government finance official" means the same as that term is defined in RCW 43.250.020.

"Local government investment pool" or "pool" means the aggregate of all funds from pool participants that are placed in the custody of the state treasurer for investment and reinvestment.

"Money market fund" means a subpool whose investments are primarily money market instruments.

"Net asset value" with respect to the assets of a subpool shall mean the value of the assets of that subpool reduced by its accrued liability.

"Pool participant" means any eligible governmental entity as that term is defined in RCW 43.250.020 that is invested in a subpool.

"Prospectus" means a written offer of an investment in the pool or in any subpool designated as a prospectus by the state treasurer.

"Subpool" means a subcomponent of the pool as may be established and designated by the state treasurer from time to time. Each subpool shall have its own name, assets, and liabilities as designated by the state treasurer. The state treasurer may designate separate investment policies, restrictions, objectives, and strategies for each subpool.

"Value" with respect to an asset shall mean (a) with respect to securities for which market quotations are readily available, the market value of such securities, and (b) with respect to other securities or assets, fair value as determined by the state treasurer. In determining fair value, the state treasurer may appoint and rely upon a pricing service. With respect to the money market fund, "value" shall mean the amortized cost of the money market fund's assets unless the state treasurer determines otherwise.

NEW SECTION

WAC 210-10-020 Requirements for participation in the pool. (1) Before participating in the pool, all pool participants shall file with the state treasurer, any documentation required by the state treasurer. Such documentation shall, at a minimum, provide the following information:

(a) Name and address of the pool participant;

(b) A statement that the pool participant agrees to contribute or withdraw funds in the local government investment

pool in accordance with the provisions of the Washington Administrative Code and the prospectus for the purpose of investment as stated therein; and

(c) The names and titles of the officials authorized to order the contribution or withdrawal of funds in the local government investment pool.

(2) It shall be the responsibility of pool participants to properly execute and file any required documentation with the state treasurer. The state treasurer shall not allow participation in the local government investment pool unless such documentation has been filed with the state treasurer.

NEW SECTION

WAC 210-10-030 State treasurer's liability. The state treasurer shall not be liable for:

(1) Any loss, including loss of capital, resulting from investments in the pool and/or any subpool, as applicable, except as provided for in RCW 43.250.040;

(2) Any damages resulting from misfeasance, malfeasance, nonfeasance, or defalcation on the part of a government finance official, financial officer, or pool participant;

(3) Any loss, including loss of capital, that results from a pool participant's failure to comply with the provisions of the Washington Administrative Code or the prospectus; or

(4) Any loss, including loss of capital, resulting from a pool participant seeking, and being granted, a withdrawal due to necessity, from the extended asset fund.

NEW SECTION

WAC 210-10-040 Transaction limitation. The state treasurer reserves the right at its sole discretion to set a minimum and/or maximum transaction amount from any subpool and to limit the number of transactions, whether contribution, withdrawal, or transfer, permitted in a day or other given period of time, or whether to pay withdrawal proceeds in kind or in cash. The state treasurer may establish thresholds and defer withdrawals in excess of those thresholds and pay them out on a deferred or delayed basis from any subpool. In addition, the state treasurer reserves the right at its sole discretion to reject any proposed contribution order, and in particular to reject any proposed contribution made by a pool participant engaged in behavior deemed by the state treasurer to be abusive.

NEW SECTION

WAC 210-10-050 Contribution procedures. (1) Contribution procedures for the money market fund:

All contributions will be effected by electronic funds transfer to an account in the money market fund designated by the state treasurer. It is the responsibility of each pool participant to pay any bank charges associated with such electronic transfers to the state treasurer. Failure to wire funds by a pool participant after notification to the state treasurer of an intended transfer will result in penalties. Penalties for failure to timely wire funds will be assessed to the account of the pool participant responsible.

Contribution requests received in good order will receive the net asset value per unit of the money market fund next determined after the order is accepted by the state treasurer.

(2) Contribution procedures for the extended asset fund:

Direct investments into the extended asset fund are not permitted. Contributions to the extended asset fund may only be effected by means of a contribution from the money market fund. Contributions will take place monthly, on the 10th calendar day of the month (or on the next business day, if the 10th does not fall on a business day).

Pool participants must notify the state treasurer of any contribution on the business day prior to a permitted contribution date no later than the time on that day specified in the prospectus. The state treasurer may allow contributions with less than the required notice in its sole discretion.

Contributions to the extended asset fund will be effected by way of a corresponding withdrawal from the pool participant's specified money market fund account. On the contribution date, shares will be sold from the specified money market fund account at the net asset value determined as of the order acceptance date. Shares of the extended asset fund will be purchased using the extended asset fund's net asset value determined as of the order acceptance date.

NEW SECTION

WAC 210-10-060 Contribution limits and earnings credit. (1) Contribution limits and earnings credit for the money market fund:

To ensure same day credit, a pool participant must inform the state treasurer of any contribution over one million dollars no later than 9 a.m. on the same day the contribution is made. Contributions for one million dollars or less can be requested at any time prior to 10 a.m. on the day of contribution.

For all other contributions over one million dollars that are requested prior to 10 a.m., a pool participant may receive same day credit at the sole discretion of the state treasurer. Contributions that receive same day credit will count, for earning rate purposes, as of the day in which the contribution was made. Contributions for which no notice is received prior to 10 a.m. will be credited as of the following business day.

(2) Earnings credit:

Income earnings credit on funds contributed to a subpool will be credited to each subpool in the timing and manner described in the prospectus.

NEW SECTION

WAC 210-10-070 Withdrawal procedures. (1) Withdrawal procedures for the money market fund:

Each pool participant shall file with the state treasurer a letter designating the financial institution at which funds withdrawn from the money market fund shall be deposited. This letter shall contain the name of the financial institution, the location of the financial institution, the account name, and the account number to which funds will be deposited. This letter shall be signed by local officials authorized to receive and disburse funds, as described in WAC 210-10-020. Disbursements from the subpool will be effected by electronic

funds transfer. Failure by the state treasurer to wire funds to a pool participant after proper notification to the state treasurer to disburse funds to a pool participant may result in a bank overdraft in the pool participant's bank account. The state treasurer will reimburse a pool participant for such bank overdraft penalties charged to the pool participant's bank account.

In order to withdraw funds from the money market fund, a pool participant must notify the state treasurer of any withdrawal over one million dollars no later than 9 a.m. on the same day the withdrawal is made. Withdrawals for one million dollars or less can be requested at any time prior to 10 a.m. on the day of withdrawal.

For all other withdrawals from the money market fund over one million dollars that are requested prior to 10 a.m., a pool participant may receive such withdrawal on the same day it is requested at the sole discretion of the state treasurer.

Withdrawal requests with respect to the money market fund received in good order will receive the net asset value per unit of the money market fund next determined after the order is accepted by the state treasurer.

(2) **Withdrawal procedures for the extended asset fund.**

Withdrawal orders will be accepted on a quarterly basis and must be received two business days prior to the intended withdrawal date. Withdrawals will occur on the 10th calendar day of the months so designated in the prospectus. If the 10th is not a business day, the withdrawal will occur on the following business day. Other withdrawals may be permitted due to necessity, if the governing body of a pool participant sets forth, by resolution or other appropriate official action, that a withdrawal is necessary to meet the cash flow needs of the pool participant.

Withdrawals from the extended asset fund will be effected by way of a corresponding contribution into the pool participant's specified money market fund account. On the withdrawal date, shares will be sold from the specified extended asset fund account at the net asset value determined as of the next business day after the order acceptance date. Shares of the money market fund will be purchased using the money market fund's net asset value determined as of the next business day after the order acceptance date.

Pool participants must notify the state treasurer of any withdrawal two business days prior to a permitted withdrawal date no later than the time on that day specified in the prospectus. The state treasurer may allow withdrawals with less than the required notice in its sole discretion.

NEW SECTION

WAC 210-10-080 Transfer procedures. A pool participant may transfer funds from one money market fund account to another. To ensure same day credit, a pool participant must inform the state treasurer of any transfer no later than 10 a.m. on the same day the transfer is made.

NEW SECTION

WAC 210-10-090 Reporting requirements. The state treasurer will provide to each pool participant a monthly statement showing that pool participant's beginning balance, contributions, withdrawals, transfers, administrative charges,

earnings rate, earnings, and ending balance in each subpool for the preceding calendar month.

NEW SECTION

WAC 210-10-100 Administrative deductions. As authorized in RCW 43.250.060, the state treasurer will require reimbursement for the administration and recovery of costs associated with the operation of the pool. Each pool participant will reimburse the state treasurer based upon each pool participant's share of the total pool assets in the timing and manner described in the prospectus.

NEW SECTION

WAC 210-10-110 Portfolio management. The state treasurer shall manage the funds invested in each subpool in such a manner as to effectively maximize the yield to the subpool. The state treasurer shall have the sole responsibility in setting the investment strategy for each subpool.

NEW SECTION

WAC 210-10-120 The prospectus. The state treasurer may specify by means of a prospectus, or supplement thereto, such terms and conditions not otherwise set forth in the administrative code applicable to the management and operation of the pool and/or any subpool, including investment policies, restrictions, objectives not inconsistent with WAC 210-10-110, contributions, the crediting of income, gain or loss, the allocation of liabilities among subpools, and withdrawals and contributions among subpools, as the state treasurer may deem appropriate, from time to time. Material changes to a prospectus may be made by the state treasurer by means of a supplement or restated prospectus, effective as of the date sent to pool participants or as of the later date stated therein.

NEW SECTION

WAC 210-10-130 Liquidation and termination. The state treasurer may liquidate and terminate any subpool in its sole discretion. Upon declaring a liquidation, the state treasurer shall make arrangements for the disposition of the affected subpool's assets and either the payment of all liabilities or the establishment of adequate reserves for the discharge of the subpool's liabilities, if any. Pool participants will receive their pro rata share of the subpool's assets net of such liabilities or reserves. Notwithstanding the foregoing, the state treasurer may hold back up to ten percent of the value of the liquidating subpool until all liabilities are discharged. Residual amounts, if any, will be distributed to pool participants on a pro rata basis. Pool participants will not earn income on any amounts held back.

NEW SECTION

WAC 210-10-140 Restriction on withdrawals. The state treasurer may take any measure and impose any restriction on withdrawals from any subpool or any category of pool participant, including, but not limited to, prorating over time

any withdrawal order and/or satisfying any withdrawal order by offering pool participants withdrawals in-kind, as described in the prospectus.

WSR 12-23-093
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed November 21, 2012, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-058.

Title of Rule and Other Identifying Information: WAC 16-470-300 through 16-470-340, onion white rot disease quarantine. The department is proposing to modify the existing designated pest-free area for onion white rot disease by adding Klickitat County to the pest-free area. In addition, the proposal corrects agency contact information.

Hearing Location(s): Washington State Department of Agriculture, 21 North First Avenue, Room 238, 2nd Floor, Yakima, WA 98902, on December 27, 2012, at 2:00 p.m.

Date of Intended Adoption: January 3, 2013.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by December 27, 2012.

Assistance for Persons with Disabilities: Contact Henri Gonzales by December 17, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal adds Klickitat County to the pest-free area for onion white rot disease. The existing onion white rot quarantine has been amended several times to update its provisions and to change the area eligible to be declared pest-free in response to spread of the infestation from its initial point of establishment. Adding Klickitat County to the pest-free area will create additional protections regarding the disease for fields in that county and will create additional business opportunities for growers of onion or garlic by allowing crops produced there to be certified as being grown in a pest-free area.

Reasons Supporting Proposal: Onion white rot is a potentially devastating fungal disease of the *Allium* genus (onions, garlic, shallots, and closely related species), which can greatly decrease yields and reduce storage quality. It is spread primarily by movement of contaminated water, soil, and equipment, and by infested *Allium* plants and plant parts. Once a field is infested, the pathogen remains indefinitely in the soil. In 1985, a quarantine was established to prevent the introduction and spread of the disease into noninfested areas of the state. The affected industry has requested changes to the existing pest-free area in order to adequately protect growers.

Statutory Authority for Adoption: RCW 17.24.041 and chapter 34.05 RCW.

Statute Being Implemented: RCW 17.24.041.

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

Name of Proponent: Mercer Canyons, Inc., private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no additional regulations or costs on Washington businesses. In addition, expanding the pest-free area will benefit growers and homeowners in Klickitat County wishing to grow onions, garlic, shallots, chives, and other related species by preventing an infestation of onion white rot.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 21, 2012

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 09-17-099, filed 8/18/09, effective 9/18/09)

WAC 16-470-305 Onion white rot disease—Definitions. The following definitions apply to WAC 16-470-300 through 16-470-340:

(1) "Onion" means any plant of the *Allium* genus, including, but not limited to onion, garlic, leek, chive and shallots.

(2) "Pest-free area" means Adams, Benton, Franklin (~~and~~), Grant, and Klickitat counties.

AMENDATORY SECTION (Amending WSR 09-17-099, filed 8/18/09, effective 9/18/09)

WAC 16-470-330 Onion white rot disease—Enforcement. (1) The department may inspect any onion plant, plant part, or plantings within the pest-free area to determine whether *Sclerotium cepivorum* is present. If *Sclerotium cepivorum* is detected at any stage of production or transportation or in soil, the department may impound any infested onions or other articles and by written order direct the control and eradication of an infestation.

(2) Movement of infested onions or other articles within the pest-free area or removal of infested onions or other articles from the pest-free area is prohibited, except when the infested onions or other articles are accompanied by a written permit issued by the department. Requests for permits must be addressed to: Plant Services Program Manager, Plant Protection Division, Washington State Department of Agriculture, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA ((98540-2560)) 98504-2560; fax ((360-902-2092)) 360-902-2094; e-mail: nursery@agr.wa.gov.

(3) Control and eradication methods that may be used are limited to those approved by the department. They may include:

(a) Destroying onions from an infested lot, bin, or location, and other infested articles;

(b) Prohibiting the production of onions in part or all of any infested area;

(c) Preventing off-flow of irrigation or rainwater from any infested area;

(d) Prohibiting the pasturing of animals on any infested area;

(e) Requiring equipment, tools and machinery used on an infested area be cleaned and sanitized as described in WAC 16-470-320 prior to removal from the area.