

**WSR 19-02-011**  
**PROPOSED RULES**  
**PARAEDUCATOR BOARD**

[Filed December 20, 2018, 3:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-120.

Title of Rule and Other Identifying Information: Amends chapter 179-11 WAC to specify requirements for the general paraeducator certificate.

Hearing Location(s): On March 20, 2019, at 8:30, at the Seattle Marriot Hotel, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: March 20, 2019.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by March 13, 2019.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by March 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amended regulations for the general paraeducator certificate as required in HB [ESHB] 1115, 2017.

Reasons Supporting Proposal: Statutory requirement.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: State legislature, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. Regulatory change does not have a fiscal impact.

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

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

December 20, 2018

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-16-107, filed 7/31/18, effective 8/31/18)

**WAC 179-11-040 Process.** (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) The paraeducator must complete the general paraeducator certificate in three years after completing the fundamental course of study, as follows:

(a) If the fundamental course of study is completed prior to June 30th of a calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the same calendar year regardless of the date of completion; and

(b) If the fundamental course of study is completed July 1st or later in the calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the next calendar year regardless of the date of completion.

(3) To attain the paraeducator general certificate, the paraeducator must complete training that meets in-service education approval standards as written in chapter 181-85 WAC.

(4) A maximum of one professional growth plan may be completed towards the attainment of the general paraeducator certificate.

(5) A paraeducator who holds the English language learner subject matter certificate and/or special education subject matter certificate may deduct twenty continuing education credit hours per subject matter certificate from the hours required to meet the general paraeducator certificate.

~~((5))~~ (6) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the general paraeducator certificate.

**WSR 19-02-025**

**PROPOSED RULES**

**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed December 21, 2018, 11:30 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-31-395 What definitions apply to shared leave?

Hearing Location(s): On February 14, 2019, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: February 21, 2019.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by February 7, 2019.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by February 7, 2018 [2019].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 357-31-395 is to expand the definition of employee's relative to include sibling.

Reasons Supporting Proposal: To allow an employee the ability to request to receive shared leave for a sibling who suffers from an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature.

Statutory Authority for Adoption: Chapter 41.04 RCW.

Statute Being Implemented: RCW 41.04.665.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 21, 2018

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

**AMENDATORY SECTION** (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

**WAC 357-31-395 What definitions apply to shared leave?** (1) As defined in RCW 41.04.655, "employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent, or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

**WSR 19-02-026**

**PROPOSED RULES**

**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed December 21, 2018, 1:16 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-26-005 What is the purpose of this chapter?, 357-26-010 When must an employer reasonably accommodate a disability?, 357-26-015 What actions may an employer take to reasonably accommodate a disability?, 357-26-020 What is the requirement for employers to have a policy and procedure covering disability accommodation?, 357-26-025 May an employee who is unable to perform the essential functions of a position due to a disability request to be separated from employment?, 357-26-030 When must an employer provide reasonable pregnancy accommodations?, 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations?, 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation?, 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit?, 357-26-050 When must an employer provide reasonable safety accommodations?, 357-26-055 What actions must an employer take to provide safety accommodations?, and 357-26-060 When an applicant or employee who is a victim of domestic violence, sexual assault or stalking or when an employee has a family member who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, what documentation may the applicant or employee be required to submit?

Hearing Location(s): On February 14, 2019, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: February 21, 2019.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by February 7, 2019.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by February 7, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 294, Laws of 2017 (SSB 5835) was passed during the 2017 legislative session with an effective date of July 23, 2017. This bill states that it is an unfair practice for any employer to fail or refuse to make a reasonable accommodation for an employee for pregnancy or a pregnancy related health condition unless the employer can demonstrate that doing so would impose an undue hardship. Chapter 47, Laws of 2018 (HB 2661) was passed during the 2018 legislative session with an effective date of June 7, 2018. This bill states that victims of domestic violence, sexual assault, or stalking are able to have reasonable safety accommodations in the workplace.

Reasons Supporting Proposal: To place new provisions in Title 357 WAC to align with SSB 5835 which became

effective on July 23, 2017, and HB 2661 which became effective on June 7, 2018.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 43.10.005 and 49.76-040.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 21, 2018

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

**WAC 357-26-005 What is the purpose of this chapter?** The purpose of chapter 357-26 WAC is to provide guidance to employers regarding reasonable accommodation (~~as it specifically relates to employment and separation due to disability within the provisions of the civil service rules~~) for the following reasons:

(1) Disability;

(2) Pregnancy; and

(3) Safety.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

**WAC 357-26-010 When must an employer (~~provide reasonable accommodation~~) reasonably accommodate a disability?** An employer must reasonably accommodate a known disability of a qualified candidate or employee as required by chapter 49.60 RCW and the federal Americans with Disabilities Act.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

**WAC 357-26-015 What actions may an employer take to (~~provide reasonable accommodation~~) reasonably accommodate a disability?** For persons with disabilities, as defined by state or federal law, reasonable accommodation may include, but is not limited to:

(1) Accommodation in application procedures, testing, and the interview process; or

(2) Modifications or adjustments to a job, work method, or work environment that make it possible for a qualified person with a disability to perform the essential functions of a position, or enjoy the benefits and privileges of employment equal to employees without disabilities.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

**WAC 357-26-020 What is the requirement for employers to have a policy and procedure covering (~~reasonable~~) disability accommodation?** (1) In accordance with the policy statement requirements of WAC 357-25-025, employers must develop and maintain a policy statement on reasonable accommodation.

(2) In accordance with state and federal laws, employers must develop and make readily available a procedure regarding reasonable accommodation of employees with disabilities.

(a) Each employee who requests reasonable accommodation must be provided access to the employer's reasonable accommodation procedure in an accessible format.

(b) Employees who request reasonable accommodation must be notified in writing that in the event (~~he or she~~) they cannot be accommodated in (~~his or her~~) their current position, and placement in an alternative vacant position is not possible, the appointing authority may initiate a disability separation in accordance with WAC 357-46-160.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

**WAC 357-26-025 May an employee who is unable to perform the essential functions of a position due to a disability request to be separated from employment?** An employee who is unable to perform the essential functions of the employee's position due to mental, sensory, or physical incapacity may notify the employer that (~~he or she does~~) they do not wish to pursue accommodation and would like to be separated from employment. In this case, the appointing authority is not required to consider a reasonable accommodation and may initiate a disability separation in accordance with WAC 357-46-160.

NEW SECTION

**WAC 357-26-030 When must an employer provide reasonable pregnancy accommodations?** An employer must provide reasonable pregnancy accommodations to employees who are pregnant or have a pregnancy-related health condition as required in RCW 43.10.005.

NEW SECTION

**WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations?** (1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation, which includes the following:

- (a) Providing more frequent, longer, or flexible restroom breaks;
  - (b) Modifying a no food or drink policy;
  - (c) Providing seating or allowing an employee to sit more frequently if the job requires standing;
  - (d) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;
  - (e) Providing a temporary transfer to a less strenuous or less hazardous position;
  - (f) Providing assistance with manual labor and limits on lifting;
  - (g) Scheduling flexibility for prenatal visits; and
  - (h) Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's attending health care provider.
- (2) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.
- (3) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

NEW SECTION

**WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation?** The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (h). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits on lifting over seventeen pounds.

NEW SECTION

**WAC 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit?** When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (h). An employee is not required to submit written certification for pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits lifting over seventeen pounds.

NEW SECTION

**WAC 357-26-050 When must an employer provide reasonable safety accommodations?** An employer must provide reasonable safety accommodations to an applicant or

employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as required in chapter 49.76 RCW.

NEW SECTION

**WAC 357-26-055 What actions must an employer take to provide safety accommodations?** (1) An employer must provide an applicant, or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking, a reasonable safety accommodation, which includes, but is not limited to the following:

- (a) A transfer or reassignment;
  - (b) Modified schedule;
  - (c) Changed work telephone number, work email address and/or workstation;
  - (d) Installed lock;
  - (e) Implemented safety procedure; or
  - (f) Any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.
- (2) Leave taken in accordance with chapter 357-31 WAC may be considered a reasonable safety accommodation.
- (3) The employer may deny a reasonable safety accommodation based on an undue hardship, which means an action requiring significant difficulty or expense.

NEW SECTION

**WAC 357-26-060 When an applicant or employee who is a victim of domestic violence, sexual assault or stalking or when an employee has a family member who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, what documentation may the applicant or employee be required to submit?** (1) When an applicant or employee who is a victim of domestic violence, sexual assault or stalking or when an employee has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, the employer may require that the request be supported by verification. An applicant or employee may satisfy the verification requirement by providing the employer with one or more of the following:

- (a) A police report indicating that the applicant, employee or employee's family member was a victim of domestic violence, sexual assault or stalking;
- (b) A court order protecting or separating the applicant, employee or the employee's family member from the perpetrator of the act of domestic violence, sexual assault or stalking;
- (c) Evidence from the court or prosecuting attorney that the applicant, employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault or stalking;
- (d) An applicant or employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault or stalking and the safety

accommodation requested is to protect the employee from domestic violence, sexual assault or stalking; or

(e) Documentation that the applicant, employee or the employee's family member is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(2) If the victim of domestic violence, sexual assault or stalking is the employee's family member, as defined in chapter 357-01 WAC, verification of the familial relationship between the employee and the victim may include, but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.

**WSR 19-02-037**  
**PROPOSED RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed December 26, 2018, 8:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-22-005.

Title of Rule and Other Identifying Information: WAC 363-116-082 Limitations on new pilots.

Hearing Location(s): On February 21, 2019, at 10:00 a.m., at 2901 Third Avenue, 1st Floor, Agate Conference Room.

Date of Intended Adoption: February 21, 2019.

Submit Written Comments to: Sheri J. Tonn, Chair, 2901 Third Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by February 14, 2019.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by February 14, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to increased vessel sizes and changes to availability, the tonnage categories for each license level in the Puget Sound pilotage district are proposed to be adjusted. The anticipated effects of these changes will include better transitions between training and piloting, better distribution in the tonnages of tankers between the license levels, and better access to various vessel types for all license levels. The proposed changes are as follows:

License Year 1 - Tank Vessels - no change (Piloting on vessels of any size prohibited), Other Vessels from 30,000 GT to 38,000 GT.

License Year 2 - Tank Vessels - from 30,000 GT to 32,000 GT, Other Vessels - from 38,000 GT to 48,000 GT.

License Year 3 - Tank Vessels - from 38,000 GT to 40,000 GT, Other Vessels - from 48,000 GT to 60,000 GT.

License Year 4 - Tank Vessels - from 45,000 GT to 50,000 GT, Other Vessels - from 60,000 GT to 70,000 GT.

License Year 5 - Tank Vessels - from 55,000 GT to 65,000 GT, Other Vessels - from 75,000 GT to 95,000 GT.

Reasons Supporting Proposal: The board's trainee evaluation committee (TEC), which is comprised of industry stakeholders as well as board members, did extensive research and thoughtfully put together the recommendations for the board. Additional stakeholder comments are welcome and will continue to be considered.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board has received the proposed amendments from TEC favoring the adoption of these new rules.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, 206-515-3904.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

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

December 26, 2018

Jaimie C. Bever

Executive Director

AMENDATORY SECTION (Amending WSR 15-04-136, filed 2/4/15, effective 3/7/15)

**WAC 363-116-082 Limitations on new pilots.** (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - License limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	<del>((30,000))</del> <u>38,000</u> GT (ITC) <del>((or 660 feet))</del> except for passenger vessels which may only have a maximum size of 5000 GT (ITC)
2	<del>((30,000))</del> <u>32,000</u> GT (ITC)	<del>((38,000))</del> <u>48,000</u> GT (ITC)
3	<del>((38,000))</del> <u>40,000</u> GT (ITC)	<del>((48,000))</del> <u>60,000</u> GT (ITC)
4	<del>((45,000))</del> <u>50,000</u> GT (ITC)	<del>((60,000))</del> <u>70,000</u> GT (ITC)
5	<del>((55,000))</del> <u>65,000</u> GT (ITC)	<del>((75,000))</del> <u>95,000</u> GT (ITC)

(3) Puget Sound pilotage district - Pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - License limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	32,000 GT (ITC) except that piloting on vessels of

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
		any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	15,000 GT (ITC)	42,000 GT (ITC)
3	32,000 GT (ITC)	52,000 GT (ITC)
4	42,000 GT (ITC)	62,000 GT (ITC)
5	52,000 GT (ITC)	72,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - Pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River Bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 32,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of 15,000 GT (ITC) and two trips on other vessels in excess of 42,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the two upgrade trips upon other vessels in excess of 42,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make two license upgrade trips on tank vessels in excess of 32,000 GT (ITC) and two trips on other vessels in excess of 52,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on tank ves-

vessels in excess of 42,000 GT (ITC) and two trips on other vessels in excess of 62,000 GT (ITC).

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 52,000 GT (ITC) and two trips on other vessels in excess of 72,000 GT (ITC).

(f) If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with (a) through (e) of this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.

**WSR 19-02-040**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed December 26, 2018, 9:24 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency.

Hearing Location(s): On February 28, 2019, at 10:00 a.m., at the Northwest Clean Air Agency (NWCAA) Office, 1600 South 2nd Street, Mount Vernon, WA.

Date of Intended Adoption: March 14, 2019.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov) [[info@nwcleanair.wa.gov](mailto:info@nwcleanair.wa.gov)], fax 360-428-1620, by February 28, 2019.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber, phone 360-428-1617, fax 360-428-1620, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov) [[info@nwcleanair.wa.gov](mailto:info@nwcleanair.wa.gov)], by February 21, 2019.

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

- Clarify and update the construction permitting (new source review) program regulations to reduce regulatory

burden and focus on permitting projects where our permits provide significant air quality benefit (NWCAA Sections 300-305).

- Modify the registration program to improve transparency and equity (NWCAA Sections 320-321).
- Remove the ambient air quality standards from the regulation in favor of the state rule that already applies statewide (NWCAA Sections 400-428).
- Clarify and update the sulfur dioxide requirements (monitoring, etc.) at certain sources to include only those requirements that add air quality benefit in the current conditions (NWCAA Section 460).
- Modify a few definitions to clarify applicability and to match the state rule (NWCAA Section 200).
- Update the adoption-by-reference date to allow us to implement the most recent version of the referenced state and federal rules (NWCAA Section 104).

New/Amended Regulation Section Derivations: Amending NWCAA 200: Added definition of Lowest Achievable Emission Rate (LAER), NWCAA 300.1: Included former NWCAA 300.2 and 300.6, NWCAA 300.2: New language expanding on former NWCAA 300.2d, NWCAA 300.3: Renumbered from former NWCAA 300.4 with clarifications, NWCAA 300.4: Renumbered from former NWCAA 300.5 with clarifications, NWCAA 300.5 and NWCAA 300.6: Not used, NWCAA 300.7, 300.8, 300.9, 300.10, 300.11, and 300.12: Clarified language, NWCAA 300.13: Based on former NWCAA 300.15, NWCAA 301: Not used, NWCAA 303: Clarified language, NWCAA 305: Updated language based on WAC 173-400-171, NWCAA 305.4: Not used, NWCAA 305.7: Renumbered from former NWCAA 305.8, NWCAA 320 and 321: Updated and clarified language, NWCAA 400: Revised to reference chapter 173-476 WAC and NWCAA 460: Updated and clarified language; and new NWCAA 300.14: Based on former NWCAA 300.5b, NWCAA 300.16: Based on WAC 173-400-560, NWCAA 300.17: Based on former NWCAA 301, NWCAA 300.25: Renumbered from former NWCAA 300.13 with clarifications, and NWCAA 304: Based on WAC 173-400-930.

Distributions for Section Being Replaced: Former NWCAA 300.2: See NWCAA 300.1, NWCAA 300.3: See NWCAA 300.1(B), NWCAA 300.4: See, NWCAA 300.3, NWCAA 300.5: See, NWCAA 300.4, NWCAA 300.5b): See, NWCAA 300.14, NWCAA 300.6: See, NWCAA 300.1(D), NWCAA 300.13: See, NWCAA 300.25, NWCAA 300.15: See, NWCAA 300.13, NWCAA Section 301: See, NWCAA 300.17, NWCAA 305.4: See, NWCAA 305.3(B), NWCAA 305.7: Deleted, NWCAA 305.8: See, NWCAA 305.7, NWCAA 401, 402, 403, 410, 420, 422, 424, 426, and 428: Deleted.

Reasons Supporting Proposal: See list above.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141(1).

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

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

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

Is exempt under RCW 70.94.141.

Explanation of exemptions: Not applicable under RCW 70.94.141.

December 26, 2018  
Mark Buford  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 19-03 issue of the Register.

**WSR 19-02-059**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed December 27, 2018, 4:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-22-074.

Title of Rule and Other Identifying Information: WAC 458-16-340 Multipurpose senior citizen centers, is a new rule that explains the requirements for the property tax exemption under RCW 84.36.670 for real and personal property owned by a senior citizen organization that is used for the operation of a multipurpose senior citizen center.

Hearing Location(s): On February 13, 2019, at 10:00 a.m., Conference Room 114C, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: February 20, 2019.

Submit Written Comments to: Leslie Mullin, ITA Division, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by February 13, 2019.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule will incorporate legislation from SHB 1526, 2017 regular session (chapter 301, Laws of 2017) and provide guidance to senior citizen organizations that operate a multipurpose senior citizen center.

Reasons Supporting Proposal: The proposed new rule is necessary to explain the application process and various exemption requirements to senior citizen organizations.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.670.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule language for this new property tax exemption only clarifies the application of RCW 84.36.670 and 84.40.360. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in chapter 84.36 RCW for the administration of property tax exemptions.

December 27, 2018  
Erin T. Lopez  
Rules Coordinator

NEW SECTION

**WAC 458-16-340 Multipurpose senior citizen centers.** (1) **Introduction.** This rule explains the property tax exemption available under RCW 84.36.670 for the operation of a multipurpose senior citizen center.

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

(a) "Assessment year" means the calendar year preceding the tax year in which real and personal property is listed and valued by the assessor.

(b) "Farmers market" means a regular assembly of vendors at a location for the main purpose of promoting the sale of agricultural products grown, raised, or produced in this state directly to the consumer.

(c) "Multipurpose senior citizen center" means a community facility that offers a broad spectrum of services to senior citizens, whether provided directly by the nonprofit senior citizen organization that owns the facility or by another person. These services may include health, social, nutritional, and educational services and recreational activities.

(d) "Senior citizen" means a person age sixty or older.

(e) "Senior citizen organization" means a private organization that:

(i) Has a mission, in whole or in part, to support senior citizens;

(ii) Is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; and

(iii) Operates a multipurpose senior citizen center.

(f) "Tax year" means the year in which property taxes are due.

(g) "Thrift store" means a retail establishment that:

(i) Is operated by a senior citizen organization;



(ii) Is located on the same parcel of real property as the senior citizen organization's multipurpose senior citizen center, or on a contiguous parcel of real property; and

(iii) Sells goods including, but not limited to, donated goods, as part of the senior citizen organization's fund-raising efforts for the operation of its multipurpose senior citizen center and the provision of services and activities for senior citizens. If the establishment sells nondonated goods, its gross annual sales of nondonated goods cannot exceed ten percent of its total combined gross annual sales of all goods.

**(3) Exemption availability.**

(a) Qualifying use of exempt property. Real property that is located on one or more contiguous parcels and personal property owned by a senior citizen organization are exempt from property tax if the property is used for the actual operation of a multipurpose senior citizen center. Additionally, the following activities may be conducted at the senior citizen center:

(i) Loan or rental. The senior citizen center may be loaned or rented if the rent and donations received for the use of the center are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented.

Example. A 501 (c)(3) nonprofit organization formed with the mission to support senior citizens owns real property that is used for the operation of a multipurpose senior citizen center. The center offers a broad spectrum of health, fitness, and nutrition services for senior citizens on a weekly basis and operates a thrift store. The thrift store is located within the senior citizen center, is open four days each week, and sells donated items as part of the organization's fund-raising efforts for the operation of the senior citizen center. The center may also be rented on weekends, for a reasonable fee that does not exceed the maintenance and operations expenses attributable to the rented property, to the public for events such as weddings and family reunions. Based on the information provided, the senior citizen center would qualify for the property tax exemption.

(ii) Fund-raising events. The exempt property may be used for fund-raising events and activities, including the operation of a farmers market or a thrift store, as defined in subsection (2) of this rule, with the purpose of providing financial support for the multipurpose senior citizen center or providing financial support for services and activities for senior citizens. If the exempt property is used to conduct a fund-raising event for purposes other than described in this subsection, then:

(A) The event or activity must be conducted by a nonprofit organization eligible for exemption under chapter 84.36 RCW; and

(B) The rent and donations received, if any, for the use of the senior citizen center are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented.

(b) Inadvertent use of exempt property. An inadvertent use of the exempt property in a manner inconsistent with the purposes of this exemption does not nullify the exemption if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive years.

(c) The multipurpose senior citizen center must be available to all regardless of race, color, religion, creed, gender, gender expression, national origin, ancestry, the presence of any sensory, mental, or physical disability, marital status, sexual orientation, or honorably discharged veteran or military status.

(d) This exemption is not subject to the provisions of RCW 84.36.805.

(4) **Application and renewal.** This exemption is available beginning with property taxes levied in the 2017 assessment year (for collection in the 2018 tax year) through the 2026 assessment year (for collection in the 2027 tax year). RCW 82.32.805(1).

(a) Initial application. In order to be considered timely, initial applications must be received on or before:

(i) March 31st for taxes to be collected in the following year; or

(ii) Within sixty days of either acquiring the property or converting the property to an exempt use, whichever is later.

(b) Retroactive application. Retroactive applications to claim the exemption for prior years will be accepted up to a maximum of three years from the date taxes were due on the property. The last day to file a retroactive application for this exemption is April 30, 2030, for taxes that were due in the 2027 tax year. The applicant must:

(i) Provide the department with acceptable proof that the property qualified for exemption during the pertinent assessment years; and

(ii) Pay the late filing penalties under RCW 84.36.825.

(c) Renewal application. After the department approves an initial or retroactive application, the exemption applies for one year and must be renewed by March 31st of each year to exempt the property from taxes due the following year. See WAC 458-16-110 *Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds*, for more information about procedures property owners must follow to apply for and renew property tax exemptions.

(5) **Loss of exemption.** If the property is no longer used for the actual operation of a multipurpose senior citizen center, it will lose the exemption for the remaining part of the assessment year. When the property no longer retains its exempt status, it will be subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date the property lost its exempt status. See RCW 84.40.360.

**WSR 19-02-070**

**PROPOSED RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed December 28, 2018, 2:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-069.

Title of Rule and Other Identifying Information: To update rules for the Disclose Act of 2018. The 2018 legislature passed SSB 5991, chapter 111, Laws of 2018, pertaining to campaign finance disclosure.

Hearing Location(s): On February 28, 2019, at 9:45 a.m., at the Public Disclosure Commission, 711 Capitol Way South, Suite 206, Olympia, WA 98504.

Date of Intended Adoption: March 28, 2019.

Submit Written Comments to: Barbara Sandahl, 711 Capitol Way South, Suite 206, Olympia, WA, email [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov), by February 27, 2019.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, email [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov), by February 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update rules for the Disclose Act of 2018. The 2018 legislature passed SSB 5991, chapter 111, Laws of 2018, pertaining to campaign finance disclosure. New rules will need to be added to the WAC to reflect the changes.

Reasons Supporting Proposal: To fulfill the intent of the Disclosure [Disclose] Act of 2018.

Statutory Authority for Adoption: RCW 42.17A.110(1) and chapter 111, Laws of 2018.

Statute Being Implemented: Chapter 111, Laws of 2018.

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

Name of Agency Personnel Responsible for Drafting: Sean Flynn, public disclosure commission, 360-753-1111; Implementation and Enforcement: Barbara Sandahl, public disclosure commission, 360-753-1111.

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

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

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

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

December 28, 2018

B. G. Sandahl

Deputy Director

#### NEW SECTION

**WAC 390-05-521 Definition—Payments received by incidental committees.** For purpose of reporting the top ten largest sources of payments to an incidental committee, pursuant to RCW 42.17A.235, a "payment" means any monetary transfers or in-kind value accepted by the incidental committee, regardless of the donative intent or benefit received by the person making the transfer.

#### NEW SECTION

**WAC 390-05-535 Definition—Nonprofit organization within the meaning of incidental committee.** A "nonprofit organization," as the term is used in the definition of incidental committee in RCW 42.17A.005, means an entity that meets one or more of the following criteria:

(1) An entity that is eligible for an exemption from income tax under section 501(c) of the federal Internal Revenue Code;

(2) An organization, association or corporation whose income is not paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state; or

(3) A limited partnership or limited liability company where an entity described in subsection (1) or (2) of this section is a general partner or managing member, respectively.

#### NEW SECTION

**WAC 390-16-013 Incidental committees—Registration and reporting for incidental committees.** (1) The official form for providing the statement of organization by incidental committees is designated the incidental committee registration "C-1-IC."

(2) The official form for reporting top ten payments and expenditures by incidental committees as required under RCW 42.17A.240 is designated "C-8." Reports must be filed electronically where the commission has provided an electronic option.

(3) For purposes of reporting the sources of the top ten largest cumulative payments of ten thousand dollars or greater, and payments received by an incidental committee, as required under RCW 42.17A.240, the C-8 report must include:

(a) The top ten sources of payments within the current calendar year through the applicable reporting period, including any changes to the top ten sources from the previous reporting period; and

(b) The total cumulative payment value, within the current calendar year through the applicable reporting period, made from a person who is reported on the current report as a source of a top ten payment.

(4) An incidental committee may request a modification or suspension of reporting requirements in cases of manifestly unreasonable hardship pursuant to RCW 42.17A.120, as set forth in these rules under chapter 390-28 WAC.

(5) Each incidental committee is automatically dissolved at the end of the calendar year in which it was registered, or upon completion of all reporting requirements for that year, whichever is later. Dissolution does not absolve the nonprofit organization that registered as an incidental committee from responsibility for any obligations resulting from the finding before or after dissolution of a violation committed prior to dissolution.

#### NEW SECTION

**WAC 390-16-013A Incidental committees—Filing reports for incidental committees.** All incidental committees required to file reports under chapter 42.17A RCW must file them electronically where the commission has provided an electronic option. The executive director may make exceptions on a case-by-case basis for an incidental committee that lacks the technological ability to file reports electronically. To the extent an electronic option is not provided, copies of

this form are available on the PDC's web site, [www.pdc.wa.gov](http://www.pdc.wa.gov), and at the PDC office, Olympia, Washington.

**WSR 19-02-075**  
**WITHDRAWAL OF PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 31, 2018, 10:50 a.m.]

The Washington horse racing commission would like to withdraw proposed rule making (CR-102), WSR 18-24-043, filed on November 28, 2018.

Contact Douglas L. Moore if you have any questions.

Douglas L. Moore  
 Executive Secretary

**WSR 19-02-076**  
**WITHDRAWAL OF PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 31, 2018, 10:51 a.m.]

The Washington horse racing commission would like to withdraw proposed rule making (CR-102), WSR 18-24-042, filed on November 28, 2018.

Contact Douglas L. Moore if you have any questions.

Douglas L. Moore  
 Executive Secretary

**WSR 19-02-088**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed January 2, 2019, 9:49 a.m.]

WAC 388-826-0090, 388-826-0095, 388-826-0131 and 388-826-0132, proposed by the department of social and health services in WSR 18-12-108, appearing in issue 18-13 of the Washington State Register, which was distributed on July 5, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 19-02-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 2, 2019, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-076.

Title of Rule and Other Identifying Information: Acupuncture, WAC 296-20-01505 Provider types and services not covered, 296-20-03002 Treatment not authorized, and 296-23-238 Acupuncture rules.

Hearing Location(s): On February 5, 2019, at 1:00, at the Department of Labor and Industries (L&I) Headquarters, 7273 Linderson Way S.W., Room S118, Tumwater, WA 98501.

Date of Intended Adoption: April 30, 2019.

Submit Written Comments to: Jami Lifka, L&I, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, 7273 Linderson Way S.W., Tumwater, WA 98501, email [Jami.Lifka@Lni.wa.gov](mailto:Jami.Lifka@Lni.wa.gov), fax 360-902-6315, by February 5, 2019.

Assistance for Persons with Disabilities: Contact Jami Lifka, phone 360-902-4941, fax 360-802-6315 [360-902-6315], TTY 711 for 360-902-4941, email [Jami.Lifka@Lni.wa.gov](mailto:Jami.Lifka@Lni.wa.gov), by January 11, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will allow the department and self-insurers to pay for acupuncture as specified in WAC 296-23-238. When this rule is effective, the acupuncture medical coverage decision's approved conditions will only list "low back pain related to an accepted condition on the claim." Other conditions may be considered at a later date based on the best available scientific and clinical evidence. In addition, the proposed rules will allow acupuncturists, including East Asian medicine practitioners (EAMP), to treat injured workers. EAMPs have fifteen different treatment modalities within their scope of practice (RCW 18.06-010). These proposed rule changes will only apply to acupuncture.

Under Title 51 RCW, treatment allowed on workers' compensation claims must be curative or rehabilitative. As with other treatment used to help injured and ill workers to heal, acupuncture focuses on recovery from workplace injury, functional improvement, and return to work.

L&I used a pilot project as authorized by RCW 34.05-313 to determine how acupuncture treatment can best be incorporated into the workers' compensation setting. Current rules state that the department or self-insurer will not allow nor pay for acupuncture (WAC 296-20-03002) and will not pay for services performed by acupuncturists (WAC 296-20-01505). Under the pilot, these current provisions related to acupuncture and acupuncturists have been waived for pilot participants. Pilot program results have been considered in developing this proposed rule language. The pilot will continue until the adoption and effective date of final rules, after which time the criteria in the proposed rule language will take effect. Acupuncture treatment may then be administered by any L&I provider acting within the scope of their licensure.

Reasons Supporting Proposal: L&I previously reviewed the best available scientific and clinical evidence related to the efficacy and safety of acupuncture and concluded that acupuncture may be effective for treating low back pain. The goal for this pilot is to collect information in order to inform the provision of acupuncture treatment for low back pain to injured workers covered by Washington's workers' compen-

sation system. Data being gathered through the course of the pilot includes functional questionnaires, billing data, and discharge reasons. Through over one year of data gathering, the consistency of the claims, as well as the low error rate in the submitted data, was determined to be sufficient to move forward with finalizing rule language.

Statutory Authority for Adoption: RCW 51.04.020 and 51.04.030.

Statute Being Implemented: RCW 51.04.020 and 51.04.030.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Karen Jost, L&I, 7273 Linderson Way S.W., Tumwater, WA 98501, 360-902-6699; and Enforcement: Vickie Kennedy, L&I, 7273 Linderson Way S.W., Tumwater, WA 98501, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jami Lifka, L&I, P.O. Box 44321, Olympia, WA 98504-4321, phone 360-902-4941, fax 360-902-6315, TTY 711 for 360-902-4941, email Jami.Lifka@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The associated costs for the proposed rule are medical costs to pay for the treatment that is associated with the workers' compensation claim and effect the premium employers pay. Premiums are based on the risk classifications assigned to an employer and the employer's experience factor.

Under the proposed rule, acupuncture treatment is limited to a maximum of ten visits, may only be used to treat low back pain related to an accepted condition on the claim, and has a maximum cost per visit of \$107.78.

The department initiated pilot rule making, filed on September 5, 2017 (WSR 17-18-076) to determine how best to incorporate acupuncture treatment into the workers' compensation setting. The pilot began October 1, 2017. As of October 15, 2018, the provision of acupuncture within the pilot has incurred \$276,847.70 in costs on three hundred sixty-nine claims. When the total cost of these three hundred sixty-nine claims is summed, the current incurred cost is near \$23.5 million with the current incurred cost and reserved or expected costs is nearly \$32.7 million. Therefore, acupuncture represents 1.18 percent and 0.85 percent of the current and projected costs respectively.

For the three hundred sixty-nine claims, the median total costs incurred on the claim was \$35,765 with the median costs for acupuncture treatment of \$970 (2.7 percent of costs incurred), the average total costs were \$88,586 with the average costs for acupuncture treatment of \$782 (less than one percent of the cost incurred).

Based on the pilot rule experience, acupuncture treatment represents a small percentage of the costs on the claims receiving it and are limited to medical rate component to the premium and therefore, it is not expected that the costs associated with acupuncture treatment would affect the base rates

for a classification or the experience factor of an employer. As such, the proposed rules are not expected to add additional costs.

In addition, the employers pay premiums on a per worker-hour/unit basis for each assigned risk class. Because the premium is based on the number of worker hours, it eliminates the potential for any disproportionate impact on small businesses.

January 2, 2019

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 94-14-044, filed 6/29/94, effective 7/30/94)

**WAC 296-20-01505 Provider types and services not covered.** The department will not pay for services performed by the following practitioners:

((Acupuncturists))

Herbalists

Christian Science practitioners or theological healers

Homeopathists

Noncertified physician assistants

Operating room technicians

Certified surgical technicians

Certified surgical assistants

Any other licensed or unlicensed practitioners not otherwise specifically provided for by the department.

AMENDATORY SECTION (Amending WSR 12-12-059, filed 6/5/12, effective 7/6/12)

**WAC 296-20-03002 Treatment not authorized.** The department or self-insurer will not allow nor pay for following treatment:

(1) Use of diapulse, thermatic (standard model only), spectrowave and superpulse machines on workers entitled to benefits under the Industrial Insurance Act.

(2) Iontophoresis; prolotherapy; ((acupuncture;)) injections of colchicine; injections of fibrosing or sclerosing agents; and injections of substances other than anesthetic or contrast into the subarachnoid space (intra-theal injections).

(3) Treatment to improve or maintain general health (i.e., prescriptions and/or injection of vitamins or referrals to special programs such as health spas, swim programs, exercise programs, athletic-fitness clubs, diet programs, social counseling).

(4) Continued treatment beyond stabilization of the industrial condition(s), i.e., maintenance care, except where necessary to monitor prescription of medication necessary to maintain stabilization i.e., anti-convulsive, anti-spasmodic, etc.

(5) After consultation and advice to the department or self-insurer, any treatment measure deemed to be dangerous or inappropriate for the injured worker in question.

(6) Treatment measures of an unusual, controversial, obsolete, or experimental nature (see WAC 296-20-045). Under certain conditions, treatment in this category may be approved by the department or self-insurer. Approval must be obtained prior to treatment. Requests must contain a descrip-

tion of the treatment, reason for the request with benefits and results expected.

(7) Therapeutic medial branch block injections, therapeutic intradiscal injections, and therapeutic facet injections of the spine.

(8) Transcutaneous, interferential, and percutaneous nerve stimulators used in the home setting, and all associated supplies and equipment.

#### NEW SECTION

**WAC 296-23-238 Acupuncture rules.** (1) The department or self-insurer may pay for acupuncture treatment when ordered by the worker's attending provider or physician assistant and only for specific conditions related to the accepted condition on a claim and per department policy.

(2) The department may amend the list of covered conditions for acupuncture treatment as documented in the medical coverage decision on acupuncture.

(3) Acupuncture services may be administered by a provider acting within the scope of their licensure.

(4) The department or self-insurer will pay for a maximum of one acupuncture treatment per day for not more than ten visits per worker's compensation claim.

(5) The acupuncture provider must submit documentation of functional status to the attending provider and the department or the self-insurer at baseline, at the middle visit and following the end of treatment or ten visits, whichever comes first. Providers must use validated instruments per department policy to track and document the worker's pain and functional status during the course of acupuncture treatment.

(6) The department or self-insurer may review the quality of acupuncture services provided to workers.

(7) Providers should refer to WAC 296-20-01002 for the definition of "proper and necessary treatment." See WAC 296-20-010 for general information and WAC 296-20-125 for billing procedures.

(8) Billing codes, reimbursement levels and payment policies for acupuncture are listed in the department's *Medical Aid Rules and Fee Schedules*.