

WSR 19-08-013
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed March 22, 2019, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-089.

Title of Rule and Other Identifying Information: WAC 182-513-1340 Determining excluded income for long-term care (LTC) services, 182-512-0600 SSI-related medical—Definition of income, and 182-512-0820 SSI-related medical—Child-related income exclusions and allocations.

Hearing Location(s): On May 7, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Apple Conference Room 127, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 8, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 7, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by May 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to clarify excluded income requirements by striking references to nonexcluded income (child support received from the noncustodial parent) from sections pertaining to excluded income and adding a definition of child support from the noncustodial parent in the appropriate WAC section.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Centers for Medicare and Medicaid Services.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-2716 [98504-5534], 360-725-1343.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The changes to

the proposed rules apply to clients, so they do not impose any costs on businesses.

March 22, 2019
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0600 SSI-related medical—Definition of income. (1) Income is anything a ~~((person))~~ client receives in cash or in-kind that can be used to meet his/her needs for food or shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above. Some types of receipts that are not income are:

(a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;

(b) Some in-kind payments that are not food or shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;

(c) Payments for repair or replacement of an exempt resource;

(d) Refunds or rebates for money already paid;

(e) Receipts from sale of a resource;

(f) Replacement of income already received (see 20 C.F.R. 416.1103 for a more complete list of receipts that are not income); and

(g) Receipts from extraction of exempt resources for a member of a federally recognized tribe.

(3) Earned income includes the following types of payments:

(a) Gross wages and salaries, including garnished amounts;

(b) Commissions and bonuses;

(c) Severance pay;

(d) Other special payments received because of employment;

(e) Net earnings from self-employment (WAC 182-512-0840 describes earnings exclusions);

(f) Self-employment income of tribal members unless the income is specifically exempted by treaty;

(g) Payments for services performed in a sheltered workshop or work activities center;

(h) Royalties earned by a ~~((person))~~ client in connection with any publication of ~~((his/her))~~ their work and any honoraria received for services rendered; and

(i) In-kind payments made in lieu of cash wages, including the value of food or shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

(a) Annuities, pensions, and other periodic payments;

(b) Alimony and support payments;

(c) Voluntary or court-ordered child support payments, including arrears, received from a noncustodial parent for the benefit of a child are the income of the child;

(d) Dividends and interest;

~~((d))~~ (e) Royalties (except for royalties earned by a ~~((person))~~ client in connection with any publication of

((his/her)) their work and any honoraria received for services rendered which would be earned income);

((e)) (f) Capital gains;

((f)) (g) Rents;

((g)) (h) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;

((h)) (i) Gifts;

((i)) (j) Inheritances;

((j)) (k) Prizes and awards; and

((k)) (l) Amounts received by tribal members from gaming revenues with the exceptions cited in WAC 182-512-0770(3).

(5) Some items which may be withheld from income, but which the agency considers as received income are:

(a) Federal, state, or local income taxes;

(b) Health or life insurance premiums;

(c) SMI premiums;

(d) Union dues;

(e) Penalty deductions for failure to report changes;

(f) Loan payments;

(g) Garnishments;

(h) Child support payments, court ordered or voluntary (WAC 182-512-0900 has an exception for deemons);

(i) Service fees charged on interest-bearing checking accounts;

(j) Inheritance taxes; and

(k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.

(6) Countable income, for the purposes of this chapter, means all income that is available to the ((person)) client:

(a) If it cannot be excluded; and

(b) After deducting all allowable disregards and deductions.

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0820 SSI-related medical—Child-related income exclusions and allocations. (1) For the purposes of Washington apple health ((WAH)) SSI-related medical eligibility determinations under chapter 182-512 WAC, a child is defined as a person who is:

(a) Unmarried;

(b) Living in the household of the SSI-related applicant;

(c) The natural, adopted or stepchild of the SSI-related applicant or the applicant's spouse;

(d) Not receiving a needs-based cash payment such as TANF or SSI; and

(e) Either:

(i) Age seventeen or younger; or

(ii) Age twenty-one or younger and meets the SSI-related definition of a student described in subsection (6) of this section.

(2) The agency allows an allocation for the support of a child when determining the countable income of an SSI-related applicant. The allocation is calculated as follows:

(a) For ((WAH)) apple health categorically needy (CN) health care coverage, the allocation is deducted from the

countable income of a nonapplying spouse before determining the amount of the nonapplying spouse's income to be deemed to the SSI-related applicant. Allocations to children are not deducted from the income of an unmarried SSI-related applicant.

(b) For ((WAH)) apple health medically needy (MN) medical coverage, the allocation is first deducted from the income of the nonapplying spouse as described in subsection (2)(a) of this section when the SSI-related applicant is married, and from the income of the applicant when the applicant is not married.

(3) The child's countable income, if any, is subtracted from the maximum child's allowance before determining the amount of allocation.

(4) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or child-care agency are excluded from income regardless of whether the ((person)) client requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

(5) Adoption support payments, received by an adult for a child in the household that are designated for the child's needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

(6) The agency excludes the earned income of a ((person)) client age twenty-one or younger if that ((person)) client is a student. In order to allow the student earned income exclusion, a student must:

(a) Attend a school, college, or university a minimum of eight hours a week; or

(b) Pursue a vocational or technical training program designed to prepare the student for gainful employment a minimum of twelve hours per week; or

(c) Attend school or be home schooled in grades seven through twelve at least twelve hours per week.

(7) Any portion of a grant, scholarship, fellowship, or gift used for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income and not counted as a resource for nine months after the month of receipt.

(8) One-third of child support payments received for a child who is an applicant for ((WAH)) SSI-related medical is excluded from the child's income. Child support payments that are subject to the one-third deduction may be voluntary or court-ordered payments for current support or arrears.

~~(9) ((The one-third deduction described in subsection (8) of this section does not apply to child support payments received from an absent parent for a child living in the home when the parent(s) or their spouse is the applicant for SSI-related medical. Voluntary or court-ordered payments for current support or arrears are always considered the income of the child for whom they are intended and not income to the parent(s).))~~

~~(10))~~ The following gifts to, or for the benefit of, a ((person)) client under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is

exempt from taxation under section 501(a) of that code, are excluded:

- (a) In-kind gifts that are not converted to cash; and
- (b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((H))~~ (10) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children are excluded from income. Any portion of a veteran's payment that is designed as the dependent's income is countable income to the dependent and not the applicant (assuming the applicant is not the dependent).

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the agency or its designee excludes when determining a ~~((person's))~~ client's eligibility and participation in the cost of care for long-term care (LTC) services.

(1) When determining a ~~((person's))~~ client's eligibility and participation in the cost of care for LTC services, the agency excludes:

- (a) Crime victim's compensation;
- (b) Earned income tax credit (EITC) for twelve months after the month of receipt;
- (c) American Indian/Alaskan native benefits excluded by federal statute (refer to WAC 182-512-0770);
- (d) Tax rebates or special payments excluded by other statutes;
- (e) Any public agency's refund of taxes paid on real property and/or on food;
- (f) Supplemental security income (SSI) and certain state public assistance based on financial need;
- (g) The amount a representative payee charges to provide services when the services are a requirement for the ~~((person))~~ client to receive the income;
- (h) The amount of expenses necessary for a ~~((person))~~ client to receive compensation, e.g., legal fees necessary to obtain settlement funds;
- (i) Education benefits under WAC ~~((182-509-0335))~~ 182-512-0760;
- (j) ~~((Child support payments received from a noncustodial parent for a child living in the home are the income of the child;~~
- ~~((k))~~ Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);
- ~~((H))~~ (k) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;
- ~~((m))~~ (l) Assistance (other than wages or salary) received under the Older Americans Act;
- ~~((n))~~ (m) Assistance (other than wages or salary) received under the foster grandparent program;
- ~~((o))~~ (n) Certain cash payments a ~~((person))~~ client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- ~~((p))~~ (o) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrange-

ment that are left to accumulate and become part of the separately identified burial funds set aside;

~~((q))~~ (p) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;

~~((r))~~ (q) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

~~((s))~~ (r) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

~~((t))~~ (s) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

~~((u))~~ (t) Payments made under the Energy Employees Occupational Illness Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

~~((v))~~ (u) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

~~((w))~~ (v) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

~~((x))~~ (w) Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

~~((y))~~ (x) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

~~((z))~~ (y) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

~~((aa))~~ (z) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

~~((bb))~~ (aa) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

~~((cc))~~ (bb) Interest or dividends received by the institutionalized individual is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bonds, or savings accounts. Institutional status is defined in WAC 182-513-1320;

~~((dd))~~ (cc) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ~~((person))~~ client, e.g., chore services~~((;))~~;

(2) The agency or its designee treats Department of Veterans Affairs (VA) benefits as follows:

(a) Any VA dependent allowance is ~~((considered))~~ countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) UME, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance are third-party resources;

(c) Benefits in subsection (2)(b) of this section for a ~~((person))~~ client who receives long-term care services are excluded when determining eligibility, but are available as a third-party resource (TPR) as defined under WAC 182-513-1100 when determining the amount the institutionalized ~~((individual))~~ client contributes in the cost of care.

(3) Any other income excluded by federal law is excluded.

WSR 19-08-017
PROPOSED RULES
HORSE RACING COMMISSION

[Filed March 25, 2019, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-04-031.

Title of Rule and Other Identifying Information: WAC 260-70-630 Threshold levels.

Hearing Location(s): On June 14, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: June 14, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by June 5, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by June 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct and [an] error discovered in the threshold level in urine for geldings on testosterone.

Reasons Supporting Proposal: Rule currently has a minimum threshold level and the correct term should be maximum.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

March 25, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 19-03-081, filed 1/14/19, effective 2/14/19)

WAC 260-70-630 Threshold levels. (1) Permitted medications.

(a) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in urine:

Acepromazine - 10 ng/ml
Albuterol - 1 ng/ml
Bupivacaine - 5 ng/ml
Butorphanol - 300 ng/ml
Carboxydetomidine - 1 ng/ml
Clenbuterol - 140 pg/ml (in quarter horse and mixed breed races the presence of clenbuterol is prohibited)
Mepivacaine - 10 ng/ml
Promazine - 25 ng/ml
Pyrilamine - 25 ng/ml

(b) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in serum or plasma:

Betamethasone - 10 pg/ml
Butorphanol - 2 ng/ml
Clenbuterol - 2 pg/ml (in quarter horse and mixed races the presence of clenbuterol is prohibited)
Cetirizine - 6 ng/ml
Cimetidine - 400 ng/ml
Dantrolene - 100 pg/ml
Detomidine - 1 ng/ml
Dexamethasone - 5 pg/ml
Diclofenac - 5 ng/ml
DMSO - 10 mcg/ml
Firocoxib - 20 ng/ml
Glycopyrrrolate - 3 pg/ml
Guaifenesin - 12 ng/ml
Isoflupredone - 100 pg/ml
Lidocaine - 20 pg/ml
Methocarbamol - 1 ng/ml
Methylprednisolone - 100 pg/ml
Omeprazole - 10 ng/ml
Prednisolone - 1 ng/ml
*Procaine penicillin - 25 ng/ml
Ranitidine - 40 ng/ml
Triamcinolone acetone - 100 pg/ml
Xylazine - 200 pg/ml

* Administration of procaine penicillin to those horses entered must be reported to the commission and may require surveillance up to six hours prior to post time.

(c) Hair samples in pre- or post-race testing for quarter horses and mixed breed races may not be found to contain clenbuterol, ractopamine, zilpaterol, or albuterol in any concentration.

(d) Where a permitted medication has thresholds in both urine and serum or plasma, as set forth in this section, it is not a defense to a violation that the permitted medication does not exceed both thresholds.

(2) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations after hydrolysis of conjugates in urine:

Boldenone (Equipoise) - 15 ng/ml urine in male horses other than geldings - 1 ng/ml in urine for geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5 α -oestrane-

3 β ,17 α -diol) - 45 ng/ml urine in male horses other than geldings.

Testosterone - Not ((less)) greater than 20 ng/ml urine in geldings. Not greater than 55 ng/ml urine in fillies and mares (unless in foal). Samples from male horses other than geldings will not be tested for the presence of testosterone.

(b) The following androgenic-anabolic steroids are permissible in test samples up to the stated free (not conjugated), concentration in plasma or serum:

Boldenone (equipose) - 25 pg/ml for all horses regardless of sex.

Nandrolone (durabolin) - 25 pg/ml for fillies and mares and geldings, male horses other than geldings shall be tested for nandrolone in urine.

Testosterone - 100 pg/ml in fillies, mares, and geldings.

(c) The sex of the horse must be identified to the laboratory on samples submitted for all pre- and post-race testing designated specifically for AAS screening.

(d) If an anabolic steroid is reported as administered to any horse to assist it with recovery from injury or illness, the horse may be placed on the official veterinarian list until such time as a sample is submitted and the levels are reported below the approved thresholds.

(e) All other androgenic-anabolic steroids are prohibited in race horses.

WSR 19-08-018

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 25, 2019, 1:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-037.

Title of Rule and Other Identifying Information: WAC 182-558-0010 Premium payment program (PPP), 182-558-0020 Definitions, 182-558-0030 Overview of eligibility, 182-558-0040 PPP for a client with an individual health insurance plan, 182-558-0050 PPP for a client with an employer-sponsored group health insurance plan, and 182-558-0060 PPP for a client with a qualified employer-sponsored group health insurance plan.

Hearing Location(s): On May 7, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Apple Conference Room 127, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 8, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 7, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by May 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending chapter 182-558 WAC to clarify and update eligibility criteria for clients receiving premium assistance subsidies for comprehensive health insurance. Amendments include the following:

WAC 182-558-0010 clarifies that the agency pays premium assistance subsidies when the agency determines it is cost effective to maintain the available health care coverage.

The agency added a definition for "premium tax credit" in WAC 182-558-0020, as the agency used that term in WAC 182-558-0030 (3)(f).

The agency added subsection (3)(g), which provides that a comprehensive health insurance plan does not include a plan that is the legal obligation of a noncustodial parent or other liable party. As a result, the agency will not pay a client if a third party is obligated to make the payment.

Changes to the eligibility requirements in WAC 182-558-0030(4) for the exception to the comprehensive insurance requirement provide that only premium payment plan participants who have been enrolled in the same health insurance plan since January 1, 2012, are eligible for participation in the program. This change limits eligibility for the program.

Proposed WAC 182-558-0040 and 182-558-0050 include the alternative benefit plan to the list of eligibility coverage options, allowing more people to be eligible for the premium payment program.

The agency revised WAC 182-558-0060 to clarify that non-medicare eligible parents of clients under age nineteen may receive cost-sharing reimbursements for medicare-covered services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Centers for Medicare and Medicaid Services.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Melissa Bruce, P.O. Box 45518, Olympia, WA 98504-5518, 360-725-1572.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose any costs on small businesses.

March 25, 2019

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0010 Premium payment program (PPP). The medicaid agency may pay a premium assistance subsidy for comprehensive health insurance premiums and other cost-sharing (defined in WAC 182-500-0020) when the agency determines it would ~~((cost less))~~ be cost-effective to maintain a client's available health care coverage ~~((than it would cost to provide comparable medicaid coverage))~~.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0020 Definitions. The following definitions, and those definitions found in chapter 182-500 WAC, apply to this chapter.

"Average cost per user" means the average medicaid expenditure for a person of the same age, sex, and eligibility type as the applicant, per fiscal year, as calculated by the agency.

"Comprehensive" means coverage comparable to the services offered under the agency's medicaid state plan that provides at least the following: Physician-related services, inpatient hospital services, outpatient hospital services, prescription drugs, immunizations, and laboratory and X-ray costs.

"Cost-effective" means it would cost less for the agency to pay premium assistance than not to pay premium assistance. The agency determines cost-effectiveness by comparing the anticipated cost of premiums, cost-sharing, and administrative costs to:

- (a) The average cost per user; or
- (b) The medicaid expenditures to be incurred if the client does not receive the premium assistance, based on the client's documented medical condition.

"Employer-sponsored group health insurance" means a comprehensive group health plan provided through an employer or other entity, for which the employer or entity pays some portion of the cost. Group health plans must cover all applicants whose employment qualifies them for coverage and cannot increase the cost for an applicant with a preexisting condition.

"Flexible health spending arrangement" means the portion of an employee's wages set aside in an account to pay for qualified expenses such as medical or child care costs.

"Health savings account" means a medical savings account available to employees enrolled in a high-deductible health insurance plan.

"High-deductible health insurance plan" means coverage that meets the definition in Section 223 (c)(2) of the Internal Revenue Code.

"Overpayment" has the same definition for purposes of this chapter as that term is defined in RCW 41.05A.010.

"Premium tax credit" has the same definition for purposes of this chapter as defined in 26 C.F.R. 1.36B-1 through 1.36B-5.

"Qualified employer-sponsored group health insurance" means a comprehensive group health plan provided through an employer that is offered in a nondiscriminatory manner under 26 U.S.C. Sec. 105(h)(3), and for which the

employer subsidizes at least forty percent of the cost of the premium.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0030 Overview of eligibility. (1) To be eligible for the premium payment program (PPP):

(a) A member of the client's medical assistance unit, as described in chapter 182-506 WAC, must be receiving benefits under:

- (i) Alternative benefits plan coverage;
- (ii) Categorically needy coverage; or
- (iii) Medically needy coverage.

(b) The client must provide the medicaid agency with proof of:

- (i) Enrollment in a comprehensive individual or comprehensive employer-sponsored health insurance plan;
- (ii) A Social Security Number or tax identification number for the policy holder; and
- (iii) Premium expenditures.

(2) A comprehensive health insurance plan includes:

- (a) An individual health insurance plan;
- (b) An employer-sponsored group health insurance plan;

or

(c) A qualified employer-sponsored group health insurance plan.

(3) A comprehensive health insurance plan does not include:

- (a) A health savings account or flexible health spending arrangement;
- (b) A high-deductible plan;
- (c) A high-risk plan, including a Washington state health insurance pool (WSHIP) plan;
- (d) A limited or supplemental plan, including a medicare supplemental plan; ~~((or))~~
- (e) A medicare advantage plan (medicare Part C)~~((-~~

~~(4) Exceptions to comprehensive health insurance requirement in subsection (1)(b)(i) of this section:~~

~~(a) The agency will continue eligibility for clients currently in the premium payment program with a plan as described in subsection (3)(c), (d), or (e) of this section as long as:~~

~~(i) The client remains continuously eligible for medicaid benefits under subsection (1)(a) of this section; and~~

~~(ii) The client was approved for the premium payment program on or before January 1, 2012.~~

~~(b) The agency limits the premium assistance subsidy for a client eligible under subsection (4)(a) of this section to an amount the agency determines cost-effective);~~

~~(f) A qualified health plan (QHP) purchased through the health benefit exchange with a premium tax credit; or~~

~~(g) A plan that is the legal obligation of a noncustodial parent, or any other liable party under RCW 74.09.185.~~

~~(4) Exception to comprehensive insurance requirement:~~

~~(a) The agency allows an exception to the comprehensive health insurance requirement for clients enrolled in the PPP based on a plan as described in subsection (3)(c), (d), and (e) of this section when the client:~~

(i) Has been enrolled in the same plan continuously since January 1, 2012;

(ii) Was approved for and continuously enrolled in the PPP since January 1, 2012; and

(iii) Remained eligible for a medicaid program identified in subsection (1)(a) of this section continuously since January 1, 2012.

(b) If a client's medicaid eligibility or their enrollment in their health plan changes or terminates, the exception to the comprehensive health insurance requirement terminates.

(5) A comprehensive health insurance plan must be cost effective as defined in WAC 182-558-0020.

(6) If a client's comprehensive health insurance premium is more than the average cost per user, the client must provide the agency proof from the client's provider(s):

(a) Of an existing medical condition that requires or will be requiring extensive medical care; and

(b) That the cost of the medicaid expenditures would be greater if the agency does not pay premium assistance.

(7) The agency pays no more than one premium per client, per month. PPP enrollment begins no sooner than the date on which:

(a) A client is approved for medicaid;

(b) The agency receives and accepts the completed Application for HCA Premium Payment Program (HCA 13-705) form; and

(c) A client's apple health managed care enrollment, if applicable, ends.

(8) A client enrolled in the PPP is exempt from ~~((other-wise))~~ mandatory managed care under chapter 182-538 and 182-538A WAC.

(9) The agency's premium assistance subsidy may not exceed the minimum amount required to maintain comprehensive health insurance for the medicaid-eligible client.

(10) Proof of premium expenditures must be submitted to the agency no later than the end of the third month following the last month of coverage.

(11) The agency's cost-sharing benefit for copays, coinsurance, and deductibles is limited to services covered under the medicaid state plan.

(12) Proof of cost-sharing must be submitted to the agency no later than the end of the sixth month following the date of service.

(13) The agency may review a client's eligibility for the PPP at any time including, but not limited to, when the client's:

(a) Health insurance plan has an annual open enrollment;

(b) Medicaid eligibility changes or ends;

(c) Medical assistance unit changes;

(d) Premium changes; or

(e) Private health insurance coverage changes or ends.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0040 PPP for a client with an individual health insurance plan. (1) **General rule.** Under section 1905(a) of the Social Security Act, the agency pays a premium assistance subsidy up to an eligible person's individual

health insurance premium obligation when the agency determines it is cost effective.

(2) **Eligible persons.** An eligible person is any client who:

(a) Has a comprehensive individual health insurance plan; and

(b) Is receiving categorically needy ~~((or))~~, medically needy ~~((coverage))~~, or alternative benefit plan scope of coverage.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0050 PPP for a client with an employer-sponsored group health insurance plan. (1) **General rule.** Under section 1906 of the Social Security Act, the agency pays a premium assistance subsidy:

(a) Up to an eligible person's employer-sponsored group health insurance plan premium obligation; and

(b) When the agency determines it is cost effective as defined in WAC 182-558-0020.

(2) **Eligible persons.** An eligible person is any client who:

(a) Has a comprehensive employer-sponsored group health insurance plan, which may be a Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance plan as described in 26 C.F.R. 54.4980; and

(b) Is receiving categorically needy ~~((or))~~, medically needy, or the alternative benefit plan scope of coverage.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0060 PPP for a client with a qualified employer-sponsored group health insurance plan. (1) **General rule.** Under section 1906A of the Social Security Act, the agency pays an eligible person's premium assistance subsidy and other cost-sharing obligations when the agency determines it is cost-effective as defined in WAC 182-558-0020.

(2) **Eligible persons.** An eligible person is:

(a) A client under age nineteen who is:

(i) Covered under a qualified employer-sponsored group health insurance plan as defined in WAC 182-558-0020;

(ii) Receiving benefits under:

(A) Alternative benefits plan coverage;

(B) Categorically needy coverage; or

(C) Medically needy coverage.

(b) The parent of the client in (a) of this subsection, if:

(i) Enrollment in the health plan depends on a parent's enrollment; and

(ii) The client is a dependent of the parents.

(3) **Cost-sharing benefit.** The ~~((PPP provides))~~ premium payment plan (PPP) may provide cost-sharing reimbursement ~~((limited to services for the medicaid-eligible client or their parents))~~ to nonmedicaid-eligible parents for medicaid-covered services under this section.

WSR 19-08-021
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed March 26, 2019, 10:02 a.m.]

The department of children, youth, and families withdraws from WSR 18-24-014 proposed WAC 110-15-0090 and 110-15-0275.

Brenda Villarreal
Rules Coordinator

WSR 19-08-036
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed March 28, 2019, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-058.

Title of Rule and Other Identifying Information: WAC 110-300-0148 Gardens in outdoor early learning program space, 110-300-0210 Immunizations and exempt children, 110-300-0235 Safe water sources, 110-300-0275 Infant and toddler care, 110-300-0291 Infant and toddler safe sleep practices, 110-300-0400 Application materials, 110-300-0410 License and program location, and 110-300-0465 Retaining facility and program records; chapter 110-300A WAC, Minimum licensing requirements for child care centers; and chapter 110-300B WAC, Licensed family home child care standards.

Hearing Location(s): On May 8, 2019, at 1:00 p.m., at 1110 Jefferson Street S.E., St. Helens Conference Room, Olympia, WA.

Date of Intended Adoption: June 30, 2019.

Submit Written Comments to: Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/> online, by May 8, 2019.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by May 1, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend early learning program, chapter 110-300 WAC, as negotiated with parents and representatives of the regulated community and repeal child care licensing, chapters 110-300A and 110-300B WAC. The amendments allow the use of certain composted soil for gardens in outdoor early learning program space; allow flexibility for record storage when administrative functions are performed in a separate location from the licensed early learning program; clarify time periods for certain reporting that is currently required "immediately" following the incident being reported; allow license applicants, when necessary, to submit septic system inspection reports from the last three years instead of six months and well water tests conducted in the last twelve instead of six months; eliminate

the need to produce letters of recommendation when applying for licensure; eliminate the application of safe sleep requirements to toddlers; and make nonsubstantive edits to improve clarity. Chapters 110-300A and 110-300B WAC are repealed as new, negotiated standards for licensed early learning programs take effect in chapter 110-300 WAC. Finally, proposed rules contain nonsubstantive housekeeping edits necessary after the decodification of Title 170 WAC and its recodification to Title 110 WAC.

Reasons Supporting Proposal: The proposed amendments were negotiated by parents and representatives of licensed child care centers, family home child cares, head start/ECEAP programs, families of enrolled children, and licensors from the former department of early learning. The modest, proposed amendments make the rules more user-friendly for the regulated community while continuing to protect the health and safety of children enrolled in early learning programs.

Statutory Authority for Adoption: RCW 43.216.250 and 43.216.255.

Statute Being Implemented: RCW 43.216.250 through 43.216.270 and RCW 43.216.280 through 43.216.340.

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

Name of Proponent: Department of children, youth, and families (DCYF), governmental.

Name of Agency Personnel Responsible for Drafting: Debbie O'Neil, Pasco, Washington, 509-544-5706; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies required to comply with RCW 34.05.328 (5)(a)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. WAC 110-300-0235, adopted April 26, 2017, requires early learning programs to submit to water tests to determine if unsafe levels are [of] lead are present at the time of licensing and every six years thereafter. A small business economic impact statement was prepared at the time of adoption that determined the average test cost was \$47, well below the minor cost threshold of \$1,548. Additionally, early learning programs whose water source is a private well must test for *E. coli* and of nitrates at the time of licensing and every twelve months. The average well water test cost was \$56 in 2017. Any remediation costs were indeterminate. Since the adoption of WAC 110-300-0235, all licensed programs have completed the initial tests and any required remediation. Future costs for licensed programs will be the periodic testing, which is below the minor cost threshold. If tests show unsafe levels, remediation will be required or the program may supply bottled water for drinking and preparing food and formula. This is not a new requirement.

March 27, 2019
Brenda Villarreal
Rules Coordinator

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

WAC 110-300-0148 Gardens in outdoor early learning program space. (1) A garden in an early learning program space must:

(a) Have safeguards in place to minimize risk of cross-contamination by animals;

(b) Use soil free from agricultural or industrial contaminants such as lead or arsenic if gardening directly in the ground;

(c) ~~((Use))~~ If gardening in raised beds use:

(i) New soil that is labeled ((s)) "organic" or "safe for children" and was obtained from a gardening supply store or other retail store ((if gardening in raised beds)); or

(ii) Composted soil made from material that is safe according to the Washington State University's extension master gardener composting guidelines; and

(d) Use water that comes from a private well approved by the local health jurisdiction or from a public water system. An early learning provider must make water for gardens inaccessible to children if the provider uses irrigation water.

(2) Garden beds must be made of materials that will not leach chemicals into the soil including, but not limited to, wood treated with chromated copper arsenate, creosote or pentachlorophenol, reclaimed railroad ties, or tires.

(3) Any herbicide or pesticide must be applied pursuant to the product manufacturer's directions. The product must not be applied ~~((during program hours))~~ while children are present. Children must not apply the product, or have access to the garden during the manufacturer's prescribed waiting period following application.

(4) Commonplace toxic plants or plants with poisonous leaves (for example: Tomato, potato, or rhubarb) may be grown in the garden. An early learning provider must actively supervise children who are able to access a garden where commonplace toxic plants or plants with poisonous leaves are growing.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0210 Immunizations and exempt children. (1) Before attending an early learning program, a child must be vaccinated against or show proof of acquired immunity for the vaccine-preventable disease, pursuant to chapter 246-105 WAC, as now and hereafter amended. An early learning provider may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) An early learning provider must receive for each enrolled child:

(a) A current and complete department of health certificate of immunization status (CIS) or certificate of exemption (COE) or other department of health approved form, pursuant to WAC 246-105-050, as now and hereafter amended; or

(b) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, an early learning provider must give written notice to that child's parent or guardian stating the child may be

accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) An early learning provider must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) An early learning provider may accept homeless or foster children into care without the records listed in this section if the child's family, ~~((case worker))~~ caseworker, or health care provider offers written proof that he or she is in the process of obtaining the child's immunization records.

(6) An early learning provider ~~((shall))~~ must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) An early learning provider may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

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

WAC 110-300-0235 Safe water sources. (1) Hot and cold running water ~~((shall be supplied to))~~ must be directly plumbed to the early learning program premises.

(2) An early learning provider must use a Washington state certified water laboratory accredited by the department of ecology to ~~((analyze drinking water to))~~ test the program water supply for lead and copper ~~((within six months of the date this section becomes effective))~~.

(a) All fixtures used to obtain water for preparing food or infant formula, drinking, or cooking must be tested prior to licensing approval and at least once every six years((-);

(b) Testing must be done pursuant to current environmental protection agency standards((-); and

(c) A copy of the water testing results must be kept on the licensed premises or in the program's administrative office.

(3) If the test results are at or above the current EPA lead action level, an early learning provider must ((immediately)) do the following within twenty-four hours:

(a) Consult with department of health for technical assistance;

(b) Close the early learning program to prevent children from using or consuming water, or supply bottled or packaged water to meet the requirements of this chapter;

~~((b)) Consult with the department of health for technical assistance;~~

~~(c) Contact and advise~~ (c) Notify all parents and guardians of enrolled children of the test results;

(d) Notify the department of the water test results and steps taken to protect the enrolled children~~((;~~

~~(d) Notify all parents and guardians of the test results));~~ and

(e) Notify the department once lead and copper levels are below the current EPA action level.

~~((3))~~ (4) If an early learning program space receives water from a private well, the well must comply with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(a) Well water must be tested at least once every twelve months for ~~((coliform))~~ *E. coli* bacteria and nitrates by a Washington state certified laboratory accredited by the department of ecology to analyze drinking water. To achieve desirable results the test must indicate:

(i) No presence of ~~((coliform))~~ *E. coli* bacteria; and

(ii) The presence of less than ten parts per million (ppm) for nitrates. If test results for nitrates are greater than five but less than ten ppm, the water must be retested within six months.

(b) If well water tests positive for ~~((coliform))~~ *E. coli* bacteria, or greater than ten ppm for nitrates, the ~~((early learning provider))~~ provider must:

(i) ~~((Immediately))~~ Stop using the well water in the child care premises within twenty-four hours; ~~((and))~~

(ii) ~~((Immediately))~~ Inform the local health jurisdiction ~~((or))~~, the department of health, and the department of the positive test results~~((;~~

~~((;))~~; and

(iii) If directed to do so by the department, ~~((an early learning provider must))~~ discontinue child care operations until repairs are made to the water system and water tests indicate desirable results pursuant to ~~((b))~~ (a) of this subsection.

~~((d))~~ (c) If the department determines that child care operations may continue while an unsafe water system is being repaired or while the provider installs treatment, ~~((an early learning))~~ the provider must:

(i) Provide an alternate source of water, approved by the department; and

(ii) ~~((Repair the well or install treatment as required and))~~ Retest until ~~((the))~~ water ~~((meets the water quality standards pursuant to (b)))~~ tests indicate desirable results pursuant to (a) of this subsection.

~~((4))~~ (5) An early learning provider must ~~((immediately))~~ notify the department within four hours of when the water connection to an early learning program space is interrupted for more than one hour, or the water source becomes contaminated~~((;))~~.

(a) The department may require the early learning provider to temporarily close until the water connection is restored or the water source is no longer contaminated; or

(b) The early learning provider must obtain an alternative source of potable water such as bottled or packaged water. The amount of the alternative source of potable water must be sufficient to ensure compliance with the requirements of this chapter for safe drinking water, handwashing, sanitizing, dishwashing, and cooking.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0275 Infant and toddler care. (1) An early learning program may care for infants if the department inspects the program space and approves care for infants:

(a) Prior to issuing the program its license; or

(b) Prior to caring for infants if the program has not previously done so.

(2) An early learning provider working directly with infants must complete the department required infant safe sleep training pursuant to WAC 110-300-0106(8).

(3) An early learning provider must not use or allow the use of wheeled baby walkers.

(4) A center early learning provider licensed to care for any infant ~~((shall))~~ must employ or contract with a child care health consultant to provide health consultation to support the practices of staff working with infants and to support the needs of individual infants.

(5) A center early learning provider ~~((shall))~~ must enter into a department approved written agreement for services with a child care health consultant.

(a) The child care health consultant must be a currently licensed registered nurse who:

(i) Has worked in pediatrics or public health in the past five years or has taken or taught classes in pediatric nursing at the college level in the past five years;

(ii) Has experience with state licensing and public health requirements; and

(iii) Attests in writing to knowledge and experience sufficient to provide service consistent with the health consultant competencies described in the most current version of *Caring for Our Children*.

(b) The child care health consultant must be available, or make available a designee who meets the requirements of (a) of this subsection ~~((2)(a) of this section))~~, for consultation by phone as needed.

(6) A center early learning provider ~~((shall))~~ must ensure that the child care health consultant:

(a) Conducts at least one on-site visit monthly, if an infant is enrolled, during which the consultant:

(i) Observes and assesses staff knowledge of infant health, development, and safety and offers support through training, consultation, or referral;

(ii) Observes and assesses classroom health practices including, but not limited to, infection control including cleaning, sanitizing, and disinfecting, and provides technical assistance to correct any practices of concern;

(iii) Observes and assesses behavior, development, and health status of individual infants in care and makes recommendations to staff or parents or guardians including if further assessment is recommended, as requested or otherwise determined appropriate.

(b) Provides a dated, signed, written summary to the early learning provider for each visit that includes topics discussed with parents or staff, any areas of concern related to discussion, observation, assessment, or screening outcomes; and

(c) Reports each visit to the department.

(7) A center early learning provider must keep on-site a copy of the child care health consultant's written reports along with any notes, recommended follow up, and any actions taken to address concerns identified.

(8) If a center early learning provider is unable to independently employ or contract with a child care health consultant within thirty calendar days of enrolling an infant, the provider ~~((shall))~~ **must** contact the department for assistance. The department ~~((shall))~~ **will** assist the provider ~~((obtain))~~ **in obtaining** the services of a child care health consultant or may grant a waiver until the services can be secured.

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

WAC 110-300-0291 Infant ~~((and-toddler))~~ safe sleep practices. (1) An early learning provider must follow safe infant sleep practices when infants ~~((and-toddler))~~ are napping or sleeping by following the current standard of American Academy of Pediatrics concerning safe sleep practices including SIDS/SUIDS risk reduction, including:

(a) Actively supervising infants ~~((or-toddler))~~ by visibly checking ~~((often))~~ every fifteen minutes and being within sight and hearing range, including when an infant ~~((or-toddler))~~ goes to sleep, is sleeping, or is waking up;

(b) ~~((Following the current standard of American Academy of Pediatrics concerning safe sleep practices including SIDS/SUIDS risk reduction;~~

~~((e)))~~ Placing an infant to sleep on his or her back or following the current standard of American Academy of Pediatrics. If an infant turns over while sleeping, the provider must return the infant to his or her back until the infant is able to independently roll from back to front and front to back;

~~((d)))~~ (c) Not using a sleep positioning device unless directed to do so by an infant's ~~((or-toddler's))~~ health care provider. The directive must be in writing and kept in the infant's ~~((or-toddler's))~~ file;

~~((e)))~~ (d) Sufficiently lighting the room in which ~~((an))~~ the infant ~~((or-toddler))~~ is sleeping to observe skin color;

~~((f)))~~ (e) Monitoring breathing patterns of an infant ~~((or-toddler))~~;

~~((g)))~~ (f) Allowing infants ~~((and-toddler))~~ to follow their own sleep patterns;

~~((h)))~~ (g) Not allowing ~~((loose))~~ blankets, stuffed toys, pillows, crib bumpers, and similar items inside ~~((an-occupied))~~ a crib, bassinet, or other equipment ~~((where infants commonly sleep))~~ if occupied by a resting or sleeping infant;

~~((i)))~~ (h) Not allowing a blanket or any other item to cover or drape over an occupied crib, bassinet, or other equipment where infants commonly sleep;

~~((j)))~~ (i) Not allowing ~~((a-blanket,))~~ bedding~~((;))~~ or clothing to cover any portion of an infant's ~~((or-toddler's))~~ head or face while sleeping, and readjusting these items when necessary; and

~~((k)))~~ (j) Preventing infants ~~((or-toddler))~~ from getting too warm while sleeping, which may be exhibited by indicators that include, but are not limited to, sweating; flushed, pale, or hot and dry skin, warm to the touch; a sudden rise in temperature; vomiting; refusing to drink, a depressed fontanelle; or irritability.

(2) An early learning provider who receives notice of a safe sleep violation must:

(a) Post the notice in the licensed space for two weeks or until the violation is corrected, whichever is longer, pursuant to WAC 110-300-0505; and

(b) Within five business days of receiving notice of the violation, provide all parents and guardians of enrolled children with:

(i) A letter describing the safe sleep violation; and

(ii) Written information on safe sleep practices for infants and toddlers.

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

WAC 110-300-0400 Application materials. (1) After completing a department orientation an applicant must submit a complete license application packet, pursuant to chapter ~~((43-215))~~ 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:

(a) Professional and background information about the applicant:

(i) A completed department application form for the type of license being applied for (center or family home);

(ii) A copy of the applicant's orientation certificate ~~((from an))~~ (orientation ~~((completed))~~) must be taken within twelve months of ~~((the))~~ license application);

(iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;

(iv) Liability insurance, if applicable;

(v) Certificate of incorporation, partnership agreement, or similar business organization document, if applicable;

(vi) The license fee;

(vii) A copy of current government issued photo identification;

(viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;

(ix) Employer identification number (EIN) if applicant plans to hire staff; and

(x) Employment ~~((or))~~ and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.

(b) Information about the facility to be licensed:

(i) A floor plan, including use of proposed licensed and unlicensed space, with identified emergency exits and emergency exit pathways;

(ii) Certificate of occupancy, if applicable;

(iii) ~~((An on-site septic system inspection report within six months of the inspection))~~ Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;

(iv) ~~((Well water coliform and nitrate testing results within six months of license application))~~ *E. coli* bacteria and nitrate testing results for well water that is no more than twelve months old, if applicable;

(v) A lead or arsenic evaluation agreement ~~((, only))~~ for sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston); and

(vi) Lead and copper test results for drinking water ~~((:))~~;

(c) Program days and hours of operation, including closure dates and holiday observances; and

(d) Information about early learning program staff:

(i) List of applicant ~~((, staff persons, volunteers,))~~ and household members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter ~~((170-06))~~ 110-06 WAC; and

(ii) Resume for applicant, center director, assistant director, program supervisor, and family home lead teacher, if applicable ~~((; and~~

~~((iii) Three letters of professional reference for applicant, director, assistant director, program supervisor, and family home lead teacher)).~~

(2) An applicant must include the following policy documents with the application, which will be reviewed by the department and returned to the applicant:

(a) Parent and program policies;

(b) Staff policies;

(c) An emergency preparedness plan; and

(d) Health policies ~~((; and~~

~~((e) A plan to prevent exposure to blood and body fluids)).~~

(3) An applicant must submit the completed application packet at least ninety calendar days prior to the planned opening of the early learning program. The department will inspect the early learning program space and approve all application submissions required in this chapter prior to issuing a license:

(a) The ninety calendar days begins when the department receives a complete application packet.

(b) Incomplete application packets will be returned to the applicant for completion.

(c) An applicant who is unable to successfully complete the application and licensing process within ninety days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ninety days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.

(d) An applicant who is unable to meet the application requirements and has not withdrawn his or her application will be denied a license, pursuant to RCW ~~((43.215.300))~~ 43.216.325.

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

WAC 110-300-0410 License and program location.

(1) An applicant for a license under this chapter must be at least eighteen years old.

(2) A licensee refers to the individual or organization:

(a) Whose name appears on a license issued by the department;

(b) Responsible for complying with the standards in this chapter, chapter ~~((43.215))~~ 43.216 RCW ~~((including, but not limited to, liability insurance requirements pursuant to RCW 43.215.535)), chapter ((170-06))~~ 110-06 WAC, ~~((DEL background check rules,))~~ and other applicable laws ~~((or))~~ and rules; ~~((and))~~

(c) Responsible for training early learning program staff on the foundational quality standards in this chapter ~~((:~~

~~((3) An early learning provider must comply with and implement all requirements in this chapter unless another code or ordinance is more restrictive (for example: A local municipal, building, or health authority code).~~

~~((4) An early learning provider must have the character, suitability, and competence pursuant to chapter 170-06 WAC to meet the needs of children in care.~~

~~((5) Early learning program space must be located:~~

~~((a) On a site free from environmental hazards;~~

~~((b) In an area where nonemergency services and utilities can serve the early learning program space; and~~

~~((c) In an area served by emergency fire, medical, and police during the hours the early learning provider provides care to children.~~

~~((6) An early learning provider must prevent child exposure to the following within and around the licensed premises:~~

~~((a) Lead-based paint;~~

~~((b) Plumbing and fixtures containing lead or lead solders;~~

~~((c) Asbestos;~~

~~((d) Arsenic, lead, or copper in the soil or drinking water;~~

~~((e) Toxic mold; and~~

~~((f) Other identified toxins or hazards.~~

~~((7) An early learning provider must place address numbers on the outside of the house or building containing the early learning program space, and the numbers must be legible and plainly visible from the street or road serving the premises.~~

~~((8)); and~~

~~((d) Who resides on the early learning program premises (family home child care only), pursuant to RCW 43.216.010.~~

~~((3) Early learning program space must be located:~~

~~((a) On a site free from known environmental hazards;~~

~~((b) In an area where nonemergency services and utilities can serve the early learning program space; and~~

~~((c) In an area served by emergency fire, medical, and police during the hours the early learning provider provides care to children.~~

~~((4) An early learning provider must prevent enrolled children from being exposed to the following known hazards within and around the licensed premises:~~

~~((a) Lead based paint;~~

~~((b) Plumbing and fixtures containing lead or lead solders;~~

~~((c) Asbestos;~~

~~((d) Arsenic, lead, or copper in the soil or drinking water;~~

~~((e) Toxic mold; and~~

~~((f) Other identified toxins or hazards.~~

(5) An early learning provider must place address numbers or signage on the outside of the house or building that contains the early learning program space. The numbers or signage must be legible and plainly visible from the street or road serving the premises.

(6) A license applicant planning to open an early learning program in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) must contact the state department of ecology (DOE) and complete and sign an access agreement with DOE to evaluate the applicant's property for possible arsenic and lead soil contamination.

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

WAC 110-300-0465 Retaining facility and program records. (1) An early learning provider must keep ~~((a))~~ the records required in this chapter for a minimum of ~~((five))~~ three years unless otherwise indicated.

(2) ~~((All records from the previous twelve months must be kept in the licensed space and be immediately available for the department or other state agency's review. Immediately accessible records include:~~

- ~~(a) Child records;~~
- ~~(b) Staff records; and~~
- ~~(c) Attendance records.~~

~~((3))~~ Attendance records must be kept for a minimum of five years.

(3) Facility and program records from the previous twelve months must be easily accessible and kept on-site or in the program's administrative office for department or other state agency's review.

(4) Records older than twelve months must be provided within two weeks of a written request by the department.

~~((4))~~ (5) An early learning provider must keep ~~((other required and applicable))~~ the following records available for department review ~~((according to each record's specific retention schedule. These records include:~~

- ~~(a) A nondiscrimination policy;~~
- ~~(b) Strengthening Families Program Assessment or a department approved equivalent;~~

~~(c)):~~

- (a) The parent or guardian handbook;
- (b) Furniture, sleep, and play equipment forms and specifications;

~~((d))~~ (c) Chromated copper arsenate test results, if applicable;

~~((e))~~ (d) Annual fire inspection by qualified fire professional, if applicable;

~~((f))~~ (e) Annual inspection of chimney, wood stove, and fireplace, if applicable;

~~((g))~~ (f) Monthly inspection to identify fire hazards and elimination of such hazards;

~~((h))~~ (g) Monthly testing of smoke and carbon monoxide detectors;

~~((i))~~ (h) Monthly fire extinguisher inspection and annual maintenance;

~~((j) Menus (six months) per CACFP;~~

~~((k))~~ (i) Food temperature logs ((per CACFP)) pursuant to CACFP, if applicable;

~~((l))~~ (j) Child incident and illness logs;

~~((m) Medication administration logs;~~

~~((n))~~ (k) Vaccination records for pets or animals housed at the early learning provider program;

~~((o) Private well and septic systems inspection and testing results;~~

~~((p))~~ (l) Lead and copper testing results;

~~((q) Center or family home cleaning schedule;~~

~~(r) Alternative cleaning, sanitizing, and disinfecting products approval from department health specialist;~~

~~((s))~~ (m) Private well and septic systems inspection and testing results, if applicable;

(n) Cleaning log for large area rugs or carpets;

~~((t))~~ (o) Pesticide use (seven years);

~~((u))~~ (p) Car insurance policy, if applicable;

(q) Monthly site visit from ~~((nurse))~~ child care health consultant, if applicable;

~~((v))~~ (r) Tacoma smelter inspection results;

~~((w) Restraint and expulsion policy;~~

~~(x) Daily schedule;~~

~~((y))~~ (s) Curriculum planning ~~((time))~~ schedule;

~~((z) Parent or guardian handbook;~~

~~((aa))~~ (t) Strengthening families program self-assessment or an equivalent assessment;

(u) Documents from ~~((any))~~ department visits (inspections, monitoring, compliance agreements, and safety plans); and

~~((bb))~~ (v) Waivers or variances from department rules, if applicable;

~~((cc) Written emergency preparedness plan and drills;~~

~~((dd) Transportation policy;~~

~~((ee) Car insurance policy;~~

~~((ff) Termination of services policy;~~

~~((gg) Continuity of care policy; and~~

~~((hh) Health policy)).~~

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-300A-0001	What gives the authority to the department to license child care and charge licensing fees?
WAC 110-300A-0010	What definitions under this chapter apply to licensed child care providers?
WAC 110-300A-0020	Who needs to become licensed?
WAC 110-300A-0030	Eligibility to receive state child care subsidies.
WAC 110-300A-0040	Do I have to follow any other regulations or have any other inspections?
WAC 110-300A-0050	Can I get a waiver (exception) to the minimum licensing requirements or to licensing fees?
WAC 110-300A-0055	Can I get a dual license?

WAC 110-300A-0070	What personal characteristics do my volunteers, all staff and I need to provide care to children?	WAC 110-300A-2010	What types of play materials, equipment and activities must I provide for the children?
WAC 110-300A-0080	How is my licensed capacity determined?	WAC 110-300A-2020	How long can a child be at the center?
WAC 110-300A-0090	Initial and nonexpiring full licenses—Licensing fees.	WAC 110-300A-2030	How should staff interact with children?
WAC 110-300A-0095	Nonexpiring full license.	WAC 110-300A-2040	What behavior management and guidance practices must I have in place?
WAC 110-300A-0100	When can my license application be denied and when can my license be suspended or revoked?	WAC 110-300A-2050	Must we provide rest periods?
WAC 110-300A-0110	Civil fines.	WAC 110-300A-2060	What are the requirements for evening and nighttime care?
WAC 110-300A-0120	How much can I be fined?	WAC 110-300A-2070	What do I need to transport the children on offsite trips?
WAC 110-300A-0130	When can an individual be fined for operating an unlicensed program?	WAC 110-300A-2080	What must I communicate to parents?
WAC 110-300A-0140	Probationary licenses.	WAC 110-300A-2090	What are the required staff to child ratios and maximum group sizes for my center?
WAC 110-300A-1010	Who can be the director of a child care center?	WAC 110-300A-2100	What are the exceptions to group sizes and staff to child ratios?
WAC 110-300A-1020	What if the director does not meet the minimum qualifications?	WAC 110-300A-2110	Are children allowed in the kitchen when they are doing supervised activities?
WAC 110-300A-1030	Who can be a lead teacher in a child care center?	WAC 110-300A-2120	Are there special program requirements for infants and toddlers?
WAC 110-300A-1040	Who can be an assistant or aide in a child care center?	WAC 110-300A-2130	Do I need an outdoor play area?
WAC 110-300A-1050	Who can be a volunteer in a child care center?	WAC 110-300A-3010	What kind of health policies and procedures must I have?
WAC 110-300A-1060	What initial and ongoing state training and registry system (STARS) training is required for child care center staff?	WAC 110-300A-3020	How often must staff wash their hands?
WAC 110-300A-1070	What continuing state training and registry system (STARS) training is required for child care center staff?	WAC 110-300A-3030	When is a child or staff member too ill to be at child care?
WAC 110-300A-1080	What topics must my new staff orientation include?	WAC 110-300A-3040	How often must children wash their hands?
WAC 110-300A-1090	What kind of meetings or ongoing training must I provide my staff?	WAC 110-300A-3050	Am I required to give medications to the children in my care?
WAC 110-300A-1100	What are the requirements regarding first aid and cardiopulmonary resuscitation (CPR) training?	WAC 110-300A-3060	Who can provide consent for me to give medication to the children in my care?
WAC 110-300A-1110	Who must have human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS) and bloodborne pathogen training?	WAC 110-300A-3070	How must I store medications?
WAC 110-300A-1120	What are the tuberculosis (TB) testing requirements for the staff?	WAC 110-300A-3080	Can I use bulk medications (use one container for all the children such as with diaper ointments)?
		WAC 110-300A-3090	How do I handle left over medication?
		WAC 110-300A-3100	When can children take their own medication?

WAC 110-300A-3110	Do I need special equipment to give medication?	WAC 110-300A-5010	What first-aid supplies are required in my center?
WAC 110-300A-3120	What documentation is required when giving children medication?	WAC 110-300A-5020	How do I maintain a safe environment?
WAC 110-300A-3130	Can anyone else give medication to children in my care?	WAC 110-300A-5030	What do I need to include in my disaster plan?
WAC 110-300A-3140	What kind of milk can I serve?	WAC 110-300A-5040	How do I maintain a clean and sanitized environment?
WAC 110-300A-3150	How many meals and snacks must I serve?	WAC 110-300A-5050	How can I make sure water activities are as safe and sanitary as possible?
WAC 110-300A-3160	What kind of food and menus must I have?	WAC 110-300A-5060	How must I store maintenance and janitorial supplies?
WAC 110-300A-3170	What are the food service standards I am required to meet?	WAC 110-300A-5080	How do I safely get rid of sewage and liquid wastes?
WAC 110-300A-3180	What are approved food sources?	WAC 110-300A-5090	What are the fence requirements?
WAC 110-300A-3190	How can I be sure that the food I serve is safe?	WAC 110-300A-5100	What are the requirements for toilets, handwashing sinks and bathing facilities?
WAC 110-300A-3200	How do I safely store food?	WAC 110-300A-5110	What are the requirements if I do laundry on the premises or offsite?
WAC 110-300A-3210	How do I safely thaw foods?	WAC 110-300A-5120	What kind of sleep and nap equipment do I need for children not in cribs, bassinets, infant beds or playpens?
WAC 110-300A-3220	What type of kitchen material and equipment is required?	WAC 110-300A-5140	Are there any requirements for storage space provided for children?
WAC 110-300A-3230	What type of eating and drinking equipment must I provide?	WAC 110-300A-5150	Are there temperature requirements for my facility?
WAC 110-300A-4010	At what age can I accept infants into care?	WAC 110-300A-5160	What do I need to know about pesticides?
WAC 110-300A-4020	How do I meet the nutritional needs of the infants in my care?	WAC 110-300A-5170	Can we have animals at the center?
WAC 110-300A-4030	What is a safe way to prepare bottles?	WAC 110-300A-6010	What are the regulations regarding discrimination?
WAC 110-300A-4040	What is a safe way to store infant formula and food?	WAC 110-300A-6020	What are the regulations regarding religious activities?
WAC 110-300A-4050	What is a safe way to store breast milk?	WAC 110-300A-6030	What are the special requirements regarding American Indian children?
WAC 110-300A-4060	What is a correct way to clean bottles and nipples?	WAC 110-300A-6040	What are the requirements regarding child abuse and neglect?
WAC 110-300A-4070	Are there specific rules for feeding infants and toddlers?	WAC 110-300A-6050	What substances are prohibited in the child care center or on the premises?
WAC 110-300A-4080	When should I begin toilet training a child?	WAC 110-300A-6060	Who is allowed to have unsupervised access to children in care?
WAC 110-300A-4090	Can I use potty-chairs for toilet training?	WAC 110-300A-7010	Information to be kept in the child's individual file.
WAC 110-300A-4100	What sleep equipment do I need for infants?		
WAC 110-300A-4120	What must I do to be sure that diaper changing is safe and does not spread infections?		
WAC 110-300A-4130	Do I need a nurse consultant?		
WAC 110-300A-4140	When are children required to have a change of clothing on-site?		

WAC 110-300A-7020	Am I required to track immunizations?	WAC 110-300B-1600	Multiple licenses, certifications or authorizations.
WAC 110-300A-7030	Attendance records.	WAC 110-300B-1625	Exception to rule.
WAC 110-300A-7032	Electronic attendance records—Records retention.	WAC 110-300B-1650	Exception to rule—Alternate method of meeting a requirement.
WAC 110-300A-7040	Facility records.	WAC 110-300B-1700	Licensee minimum age.
WAC 110-300A-7050	What personnel records and policies must I have?	WAC 110-300B-1725	Licensee minimum education.
WAC 110-300A-7060	What injuries and illnesses or child abuse and neglect must I report?	WAC 110-300B-1735	Minimum education—Licensees licensed prior to March 31, 2012.
WAC 110-300A-7070	What circumstantial changes must I report to my licensor?	WAC 110-300B-1750	Tuberculosis.
WAC 110-300A-7080	Materials that must be posted.	WAC 110-300B-1800	Ongoing training.
		WAC 110-300B-1825	First aid and cardio pulmonary resuscitation (CPR) certification.
		WAC 110-300B-1850	HIV/AIDS training—Bloodborne pathogens plan.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-300B-0001	Authority.	WAC 110-300B-1875	Primary staff person.
WAC 110-300B-0005	Intent.	WAC 110-300B-1900	Primary staff person minimum age.
WAC 110-300B-0010	Definitions.	WAC 110-300B-1910	Basic STARS training.
WAC 110-300B-0050	Special needs accommodations.	WAC 110-300B-1925	Assistants and volunteers—Supervision.
WAC 110-300B-1000	License required.	WAC 110-300B-1950	Assistants and volunteers—Minimum age.
WAC 110-300B-1025	Who must be licensed.	WAC 110-300B-1975	Licensee/staff qualifications and requirements table.
WAC 110-300B-1050	The licensee.	WAC 110-300B-2025	Child records—Confidentiality.
WAC 110-300B-1075	Child care subsidy.	WAC 110-300B-2050	Child records—Contents.
WAC 110-300B-1100	Tribal or military regulated or operated child care—Certification for payment.	WAC 110-300B-2075	Licensee and staff records.
WAC 110-300B-1125	Orientation required.	WAC 110-300B-2100	Required records for household members.
WAC 110-300B-1150	Preservice training.	WAC 110-300B-2125	Child attendance records—Staff to child ratio records.
WAC 110-300B-1175	Basic STARS training.	WAC 110-300B-2126	Electronic attendance records—Records retention.
WAC 110-300B-1200	Background checks.	WAC 110-300B-2150	Facility records.
WAC 110-300B-1225	Noncriminal background checks for individuals thirteen to sixteen years of age.	WAC 110-300B-2175	Materials that must be posted.
WAC 110-300B-1300	Withdrawing an incomplete application.	WAC 110-300B-2200	Reporting incidents to 911 (emergency services).
WAC 110-300B-1325	Fees—When due.	WAC 110-300B-2225	Reporting incidents to Washington poison center.
WAC 110-300B-1375	Private septic system—Inspection and maintenance.	WAC 110-300B-2250	Reporting incidents to a child's parent or guardian and the department.
WAC 110-300B-1410	Department inspection.	WAC 110-300B-2275	Other incident reporting to the department.
WAC 110-300B-1420	Licensee declaration.	WAC 110-300B-2300	Reporting to DSHS children's administration intake.
WAC 110-300B-1430	Initial license.		
WAC 110-300B-1450	Nonexpiring full license.		
WAC 110-300B-1475	Moves.		
WAC 110-300B-1525	Change in circumstances.		

WAC 110-300B-2325	Reporting notifiable condition to health department.	WAC 110-300B-3375	Medication permission.
WAC 110-300B-2350	Policies.	WAC 110-300B-3425	Medication requirements.
WAC 110-300B-2375	Parent/guardian policies (handbook).	WAC 110-300B-3450	Sedating a child prohibited.
WAC 110-300B-2400	Program/operations policies.	WAC 110-300B-3475	Prescription medication.
WAC 110-300B-2425	Staff policies.	WAC 110-300B-3525	Nonprescription medications.
WAC 110-300B-2450	Off-site activity policy.	WAC 110-300B-3550	Children taking their own medication.
WAC 110-300B-2525	Building codes.	WAC 110-300B-3575	Injuries requiring first aid only.
WAC 110-300B-2550	Requesting local fire department visit.	WAC 110-300B-3600	Injuries or illness requiring professional medical treatment.
WAC 110-300B-2575	Combustible and flammable materials.	WAC 110-300B-3625	Handwashing.
WAC 110-300B-2600	Furnaces and other heating devices.	WAC 110-300B-3650	Hand sanitizers.
WAC 110-300B-2625	Electrical motors.	WAC 110-300B-3675	When handwashing is required.
WAC 110-300B-2650	Inspection of fireplaces, wood stoves, or similar wood-burning heating devices.	WAC 110-300B-3700	Carpets.
WAC 110-300B-2675	Open flame devices, candles, matches and lighters.	WAC 110-300B-3725	Where children may sleep.
WAC 110-300B-2700	Emergency flashlight.	WAC 110-300B-3750	Mats, cots and other sleeping equipment.
WAC 110-300B-2725	Portable heaters and generators.	WAC 110-300B-3775	Bedding.
WAC 110-300B-2775	Telephone.	WAC 110-300B-3800	Overnight sleeping.
WAC 110-300B-2825	Fire evacuation plan.	WAC 110-300B-3825	Loft style and bunk beds.
WAC 110-300B-2850	Disaster plan.	WAC 110-300B-3850	Cleaning laundry.
WAC 110-300B-2875	Fire, disaster training for staff and volunteers.	WAC 110-300B-3875	Cleaning and sanitizing toys.
WAC 110-300B-2900	Emergency drills.	WAC 110-300B-3925	Cleaning, sanitizing, and disinfecting table.
WAC 110-300B-2925	Record of emergency drills.	WAC 110-300B-3950	Pest control.
WAC 110-300B-2950	Smoke and carbon monoxide detectors.	WAC 110-300B-4025	Drugs and alcohol.
WAC 110-300B-2975	Additional method to sound an alarm.	WAC 110-300B-4050	No smoking.
WAC 110-300B-3000	Fire extinguishers.	WAC 110-300B-4075	First-aid kit.
WAC 110-300B-3025	Fire extinguisher, smoke/carbon monoxide detector use and testing.	WAC 110-300B-4100	Poisons, chemicals and other substances.
WAC 110-300B-3050	Monthly fire inspection.	WAC 110-300B-4200	Toys, equipment, and recalled items.
WAC 110-300B-3200	Health plan.	WAC 110-300B-4225	Indoor licensed space—Minimum space.
WAC 110-300B-3210	Contagious disease procedure.	WAC 110-300B-4250	Indoor temperature.
WAC 110-300B-3250	Immunization tracking.	WAC 110-300B-4275	Fans, air conditioning or cross ventilation.
WAC 110-300B-3275	Accepting a child who does not have current immunizations.	WAC 110-300B-4300	Window coverings.
WAC 110-300B-3300	Immunizations—Exemption.	WAC 110-300B-4325	Stairs.
WAC 110-300B-3315	Medication management.	WAC 110-300B-4350	Electrical outlets, cords and power strips.
WAC 110-300B-3325	Medication storage.	WAC 110-300B-4360	Area lighting.
		WAC 110-300B-4375	Lighting safety.
		WAC 110-300B-4400	Exit doors.
		WAC 110-300B-4425	Night latches, deadbolts and security chains.

WAC 110-300B-4450	Interior door and locks.	WAC 110-300B-5625	Capacity and ratio.
WAC 110-300B-4475	Emergency exit pathways.	WAC 110-300B-5700	Capacity and ratio table—Birth through twelve year license.
WAC 110-300B-4500	Emergency exits—General.	WAC 110-300B-5750	Supervision.
WAC 110-300B-4525	Emergency exit doors.	WAC 110-300B-5775	Licensee absence.
WAC 110-300B-4550	Emergency exit windows.	WAC 110-300B-5810	Licensee notice of absences.
WAC 110-300B-4575	Emergency exits from areas used only for sleeping/napping areas.	WAC 110-300B-5825	Licensee absence—Retraining for staff if standards are violated.
WAC 110-300B-4600	Commercial use areas—Fire wall.	WAC 110-300B-6000	Interactions with children.
WAC 110-300B-4625	Bathrooms.	WAC 110-300B-6025	Prohibited interactions.
WAC 110-300B-4650	Bathroom floors.	WAC 110-300B-6050	Guidance and discipline.
WAC 110-300B-4675	Bathroom sinks.	WAC 110-300B-6075	Positive options for discipline.
WAC 110-300B-4700	Water temperature.	WAC 110-300B-6100	Separating a child from the group.
WAC 110-300B-4725	Guns and other weapons.	WAC 110-300B-6125	Harmful or aggressive acts of children.
WAC 110-300B-4750	Storage for each child's belongings.	WAC 110-300B-6150	Prohibited actions.
WAC 110-300B-4800	Pet and animal policy.	WAC 110-300B-6175	Using alternate methods before using physical restraint.
WAC 110-300B-4850	Pet/animal health and safety.	WAC 110-300B-6200	Physical restraint—Prohibited uses or methods.
WAC 110-300B-4875	Pets or other animals interacting with children.	WAC 110-300B-6225	Physical restraint—Holding method allowed.
WAC 110-300B-4900	Pet wastes.	WAC 110-300B-6250	Notice and documenting use of physical restraint.
WAC 110-300B-4925	Licensed outdoor space.	WAC 110-300B-6275	Abuse and neglect—Protection and training.
WAC 110-300B-4950	Rails on platforms, decks, and stairs.	WAC 110-300B-6400	Off-site activities—Parent or guardian permission.
WAC 110-300B-5000	Play equipment.	WAC 110-300B-6425	Off-site activity supervision.
WAC 110-300B-5025	Outdoor physical activities.	WAC 110-300B-6450	Off-site activity—Emergency information and supplies.
WAC 110-300B-5050	Bouncing equipment prohibited.	WAC 110-300B-6475	Transportation.
WAC 110-300B-5075	Playground equipment—Ground cover—Fall zones.	WAC 110-300B-6500	Using public transportation.
WAC 110-300B-5125	Daily outdoor activity.	WAC 110-300B-6525	Transporting children—Limited periods.
WAC 110-300B-5150	Water activity—Supervision.	WAC 110-300B-6550	Developmental activities.
WAC 110-300B-5175	Wading pools—Defined—Supervision.	WAC 110-300B-6575	Activities to promote child growth and development.
WAC 110-300B-5200	Swimming pools defined—Barriers and supervision.	WAC 110-300B-6600	Toys and play materials.
WAC 110-300B-5225	Bodies of water or water hazards on the licensed premises.	WAC 110-300B-6625	Art materials.
WAC 110-300B-5250	Bodies of water outside and near licensed space.	WAC 110-300B-6650	Screen time.
WAC 110-300B-5400	Infant-toddler only license (birth to two years old).	WAC 110-300B-6675	Screen time—Limitations.
WAC 110-300B-5450	Two through five year old only license.	WAC 110-300B-6700	Limiting screen time for children under two.
WAC 110-300B-5500	School age only license (over five years through twelve years).	WAC 110-300B-6775	Diversity.
WAC 110-300B-5550	Birth through twelve years license.	WAC 110-300B-6800	Rest periods.
WAC 110-300B-5600	Staff-to-child ratio.	WAC 110-300B-6850	Overnight care.

WAC 110-300B-7000	Wheeled baby walkers prohibited.	WAC 110-300B-8250	Probationary license.
WAC 110-300B-7025	Infant "tummy time" positioning.	WAC 110-300B-8275	Probationary license—Cause.
WAC 110-300B-7075	Infant and toddler sleeping or napping equipment.	WAC 110-300B-8300	Issuing a probationary license.
WAC 110-300B-7085	Cribs.	WAC 110-300B-8325	Refusing a FLCA or probationary license.
WAC 110-300B-7125	Infant bottles.	WAC 110-300B-8350	Providing unlicensed care—Notice.
WAC 110-300B-7150	Breast milk.	WAC 110-300B-8375	Unlicensed care—Fines and other penalties.
WAC 110-300B-7175	Bottle feeding infants.	WAC 110-300B-8400	Hearing process.
WAC 110-300B-7200	Feeding solid food to infants.		
WAC 110-300B-7225	High chairs.		
WAC 110-300B-7250	Diapering and toileting.		
WAC 110-300B-7275	Diaper disposal.		
WAC 110-300B-7300	Diaper changing.		
WAC 110-300B-7350	Toilet training.		
WAC 110-300B-7375	Potty chairs or modified toilet seats.		
WAC 110-300B-7500	Food must meet USDA guidelines.		
WAC 110-300B-7525	Parent or guardian-provided food.		
WAC 110-300B-7550	Home canned foods.		
WAC 110-300B-7575	Drinking water.		
WAC 110-300B-7600	Serving milk.		
WAC 110-300B-7625	Meal and snack schedule.		
WAC 110-300B-7650	Serving foods.		
WAC 110-300B-7675	Food handler permits.		
WAC 110-300B-7680	Safe food handling.		
WAC 110-300B-7700	Washing dishes.		
WAC 110-300B-7725	Food containers and utensils.		
WAC 110-300B-7750	Food preparation area.		
WAC 110-300B-8000	Facility licensing compliance agreements.		
WAC 110-300B-8010	Nonreferral status.		
WAC 110-300B-8025	Time period for correcting a violation.		
WAC 110-300B-8050	Civil monetary penalties (fines).		
WAC 110-300B-8060	When fines are levied.		
WAC 110-300B-8075	Fines—Payment period.		
WAC 110-300B-8100	Notice of fine—Posting.		
WAC 110-300B-8125	Failure to pay a fine—Department action.		
WAC 110-300B-8150	Denial, suspension, revocation, modification, or noncontinuation of a license.		
WAC 110-300B-8175	Violations—Enforcement action.		
WAC 110-300B-8225	Notice of license denial, suspension, revocation, or modification.		

WSR 19-08-042
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed March 28, 2019, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-151.

Title of Rule and Other Identifying Information: Chapter 392-725 WAC, College in the high school rules.

Hearing Location(s): On May 8, 2019, at 9:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 Washington Street S.E., Brouillet Room, 4th Floor, Olympia, WA 98501. Those planning to comment should arrive in the meeting room by 9:00 a.m.

Date of Intended Adoption: May 13, 2019.

Submit Written Comments to: Jason Boatwright, OSPI, P.O. Box 47200, Olympia, WA 98504, email Jason.boatwright@k12.wa.gov [Jason.boatwright@k12.wa.us], by May 8, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by May 1, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to amend chapter 392-725 WAC to clarify provisions of the college in the high school (CHS) program that would explicitly define "college in the high school program," explain the process for colleges to regain eligibility to offer a CHS program after being held accountable for unmet program standards, modify a high school faculty standard pertaining to instructor participation in annual professional development, and add language from WAC 180-51-050 to the explanation of conferring high school credit.

Reasons Supporting Proposal: CHS allows tenth, eleventh, and twelfth grade students to enroll in courses offered by colleges in high schools. This proposal would clarify how college programs obtain and maintain accreditation to be able to offer these courses. The proposal would further clarify language in multiple sections and create a clear procedure for the allotment of CHS subsidies.

Statutory Authority for Adoption: RCW 28A.600.290.

Statute Being Implemented: RCW 28A.600.290.

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

Name of Agency Personnel Responsible for Drafting: Jason Boatwright, OSPI, 600 Washington Street S.E., Olympia, WA 98501, 360-725-6033; and Implementation: Tenille Jeffries-Simmons, OSPI, 600 Washington Street S.E., Olympia, WA 98501, 360-725-6033.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

March 27, 2019
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-015 Definitions. The following definitions in this section apply throughout this chapter.

(1) **"College in the high school course"** means a dual credit course provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college (~~level~~) course with a passing grade. College in the high school courses may be either academic or career and technical (vocational) education.

(2) **"College in the high school program"** means the subset of dual credit courses meeting NACEP quality standards and provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade.

(3) **"Eligible student"** means any student who meets the following conditions:

(a) The student meets the definition of an enrolled student pursuant to WAC 392-121-106.

(b) The student under the grade placement policies of the district, charter school, or tribal compact school through which the high school credits will be awarded has been deemed to be a tenth, eleventh, or twelfth grade student.

~~((c) The student has met the student standards pursuant to WAC 392-725-130 and the general requirements and conditions pursuant to WAC 392-725-225(2).~~

~~((3))~~ (4) **"Participating institution of higher education"** means an institution of higher education that:

(a) A district, charter school, or tribal compact school has contracted with to provide the college in the high school ~~((courses))~~ program;

(b) Meets the definition in RCW 28B.10.016, is authorized or exempt under the requirements of chapter 28B.85 RCW, or is a public tribal college located in Washington as noted in RCW 28A.600.290 (7)(a);

(c) Meets the college in the high school program standards outlined in WAC 392-725-130 through ~~((392-725-150))~~ 392-725-170; and

(d) Is accredited by National Alliance of Concurrent Enrollment Partnerships or commits to the ~~((annual))~~ reporting of evidence requirement outlined in WAC 392-725-120.

~~((4))~~ (5) **"National Alliance of Concurrent Enrollment Partnerships"** is the professional organization that works to ensure that college in the high school courses are as rigorous as courses offered on the sponsoring college campuses. National Alliance of Concurrent Enrollment Partnerships (NACEP) has defined a set of quality standards that is the basis of their accreditation process.

~~((5))~~ (6) **"Council of presidents"** is defined throughout this chapter as the organization representing the interest of public baccalaureate institutions, specific to RCW 28A.600.290(6).

~~((6) "Provisional status" is the status that a college in the high school program may be assigned after the program's evidence of meeting the standards submitted in the annual report was found to be unsatisfactory by the review committee. A program is in provisional status up to six months after the review of the annual report.)~~

(7) **"Fees."**

(a) **"College in the high school fees"** means the per credit or per course fee charged by the participating institution of higher education for the registration for the college course.

(i) The maximum ~~((dual credit))~~ college in the high school fee shall not exceed the college in the high school state-funded subsidies ~~((allocated in the current Omnibus Appropriations Act))~~ described in RCW 28A.600.290.

(ii) The ~~((dual credit))~~ college in the high school fee may be less than the college in the high school state-funded subsidies ~~((allocation))~~.

(iii) The institution of higher education must receive the corresponding fee for any student seeking to earn college credit from the college in the high school course in accordance with the general requirements identified in WAC 392-725-225 (2)(a) unless the student qualifies for the state-funded subsidies in accordance with WAC 392-725-325(4).

(b) **"Other associated college in the high school fees"** means additional fees required to fully participate in the college in the high school ~~((course))~~ program charged by the participating institution of higher education such as registration fees and fees for consumables.

(8) **"College in the high school state-funded subsidies"** means the amount provided in the Omnibus Appropriations Act that pays the ~~((dual credit))~~ college in the high school fee for specific eligible eleventh or twelfth grade students pursuant to RCW 28A.600.290 (1)(b)(i) only and for the limited amount provided in WAC 392-725-325(2).

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-050 ((Interlocal)) Local agreement requirement. Prior to the start of the college in the high school ((course(s), an interlocal) program(s), a local agreement between the district, charter school, or tribal compact school and the participating institution of higher education must be developed and in place. The agreement shall be for no more than one school year, meet the district, charter school, or tribal compact school's board policies and the policies of the institution of higher education regarding contracting agreements, and address the following requirements:

(1) List of college in the high school courses.
 (2) College in the high school student standards pursuant to WAC 392-725-130 will be met.

(3) College in the high school curriculum and assessment standards pursuant to WAC 392-725-140 will be met.

(4) College in the high school faculty standards pursuant to WAC 392-725-150 will be met.

(5) College in the high school evaluation standards pursuant to WAC 392-725-160 will be met.

(6) College in the high school partnership standards pursuant to WAC 392-725-170 will be met.

(7) Award of high school credits pursuant to WAC 392-725-200 will be met.

((7)) (8) District, charter school, or tribal compact school's responsibilities for offering college in the high school ((course)) program.

((8)) (9) Institution of higher education's ((dual credit)) fee amount per college credit or per college course and a description and amount of other associated college in the high school fees.

((9)) (10) Course materials including, but not limited to, textbooks for each college in the high school course, and which party will be responsible to provide.

((10) For any compensation paid to the instructor by the participating institution of higher education for work performed beyond the district, charter school, or tribal compact school contract, explanation of how the compensation will be calculated and provided and details of what duties the compensation represents.)

(11) Provide an explanation of how any compensation paid to the instructor for work performed beyond their contract with the district, charter school, or tribal compact school will be calculated and provide details of what duties the compensation represents.

(12) Method and collection of ((dual credit)) college in the high school fee and other associated college in the high school fees.

((12)) (13) Districts, charter schools, tribal compact schools, and institutions of higher education shall as necessary assure compliance with their respective duties under federal and state law.

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-120 Demonstration and reporting of evidence of required college in the high school standards.

(1) Participating institutions of higher education shall, unless

exempt under subsection (3) of this section, provide evidence that they meet the ((most recent National Alliance of Concurrent Enrollment Partnerships)) current NACEP student ((standards)), curriculum ((and)), assessment ((standards)), faculty ((standards)), partnership, and evaluation standards ((unless recommended differently)) as described in WAC 392-725-130 through ((392-725-160. National Alliance of Concurrent Enrollment Partnerships accreditation is recommended.

(2) As a condition of eligibility pursuant to WAC 392-725-015(3), after the college in the high school course concludes,) 392-725-170.

(2) Upon program completion, participating institutions of higher education shall ((provide an annual report consisting of)) submit to the college in the high school standards report review committee evidence that the required standards were met((, consistent with the evidence National Alliance of Concurrent Enrollment Partnerships requires to meet standards. The annual report shall be submitted no later than July 1st for review by the college in the high school standards report review committee.)), or receive accreditation, no later than the subsequent July 1st.

(3) Participating institutions of higher education that are accredited by the ((National Alliance of Concurrent Enrollment Partnerships)) NACEP for the current year of enrollment will be exempt from ((this)) the reporting requirement outlined in subsection (2) of this section.

(4) Institutions of higher education in the process of applying for NACEP accreditation are required to provide evidence in accordance with subsection (2) of this section.

((3)) (5) The Washington student achievement council shall be the convener of a college in the high school standards report review committee. This review committee will consist of a representative from the state board of community and technical colleges, the council of presidents, and the student achievement council. Additional members may be included at the discretion of college in the high school standards report review committee.

((4) The review committee will no later than)) (6) By the subsequent August 15th, the review committee will complete a review of participating institutions of higher education. The review committee will advise the institution of higher education whether the required standards have been met.

((5)) (7) Institutions of higher education that meet the required standards:

(a) Are eligible to offer the college in the high school program the following two academic years; and

(b) Must provide evidence in accordance with this section every other year beginning with the year in which they first meet the standards as determined by the review committee.

(8) If the review committee finds that the institution of higher education's evidence of meeting the required standards is not satisfactory, the institution of higher education will have ((no more than six months)) until the subsequent October 15th to make any necessary reporting corrections and/or program adjustments to provide ((satisfactory evidence. During this period, the program will be under provi-

sional status until evidence shows the program has met the standards or the program is made ineligible.

(6) If after review of the additional evidence, the review committee deems that the standards were not met, then the institution of higher education is ineligible and may not offer the college in the high school program starting with the following fall term. To regain eligibility, the institution of higher education must, by July 1, submit an updated plan for how the standards will be met.

(7) If the institution of higher education is deemed ineligible, the institution of higher education can appeal to a three person appeals committee convened by the student achievement council, and including representatives from the student achievement council, state board of community and technical colleges and council of presidents. The original review committee members would be excluded from the appellate process.

(8)) evidence of meeting outlined standards.

(9) The review committee will complete a final review of participating institutions of higher education no later than November 1st. The review committee will advise the institution of higher education whether the required standards have been met.

(10) If after the final review, the review committee deems that the standards were not met, then the institution of higher education is ineligible to offer the college in the high school program the following academic year.

(11) An institution of higher education may regain eligibility to offer the college in the high school program by providing evidence that they meet the current NACEP student, curriculum, assessment, faculty, partnership, and evaluation standards unless exempt in WAC 392-725-130 through 392-725-170 for the following state review cycle.

(12) The review committee will review the ((National Alliance of Concurrent Enrollment Partnerships)) NACEP standards beginning in 2019 and every three years thereafter, and update the college in the high school standards in WAC 392-725-130 through ((392-725-160)) 392-725-170 as informed by the current ((National Alliance of Concurrent Enrollment Partnerships)) NACEP standards and feedback from participating school districts, charter schools, tribal compact schools, and institutions of higher education.

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-130 College in the high school student standards. (1) Participating institutions of higher education shall:

(a) Ensure ((students meet the course)) registration and transcription policies and practices for students are consistent with those on campus.

(b) Ensure there is a process to meet the course prerequisites of the institution of higher education.

((b) ~~Officially register or admit students as degree-seeking, nondegree-seeking, or nonmatriculated students of the institution of higher education and record courses administered through college in the high school program on official institution of higher education transcripts.~~

(c) ~~Provide students and high schools with a comprehensive publication that outlines the rights and responsibilities of enrolled students.)~~ (c) Ensure students are advised about the benefits and implications of taking college courses, as well as the institution of higher education's policies and expectations.

(d) Provide, in conjunction with secondary partners, students with suitable access to learning resources and student support services.

(2) Participating institutions of higher education, not accredited by the ((National Alliance of Concurrent Enrollment Partnerships)) NACEP for the current year of enrollment, shall provide evidence of meeting the required student standards of this section.

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-140 College in the high school curriculum and assessment standards. (1) Participating institutions of higher education shall ((require that)):

(a) Ensure college in the high school courses are catalogued courses with the same departmental designations, course descriptions, numbers, titles, and credits ((as sections offered on campus)).

(b) Ensure college in the high school courses reflect the learning objectives, and the pedagogical, theoretical and philosophical orientation of the ((participating)) respective institution of higher education ((departments)) discipline.

(c) Faculty ((site visits ensure that courses offered through the college in the high school program are the same as the courses offered on campus:

(d) ~~Students are held to the same standards of achievement as those expected of students in on-campus sections.~~

(e) ~~Students are held to the same grading standards as those expected of students in on-campus sections.~~

(2) ~~Participating institutions of higher education are recommended to ensure students are assessed using the same methods (examples: Papers, portfolios, quizzes, labs, etc.) as students in on-campus sections.)~~ liaisons conduct site visits to observe course content and delivery, student discourse and rapport to ensure the course offered through the college in the high school program are equivalent to the courses offered on campus.

(d) Ensure students' proficiency of learning outcomes is measured using comparable grading standards and assessment methods to on campus sections.

(2) Participating institutions of higher education, not accredited by ((National Alliance of Concurrent Enrollment Partnerships)) NACEP for the current year of enrollment, shall provide evidence of meeting the required curriculum and assessment standards of this section.

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-150 College in the high school faculty standards. (1) Participating institutions of higher education shall require that:

(a) Instructors providing the college in the high school instruction in the high school classroom ((must be)) are approved by the ((participating institution of higher educa-

tion's respective academic department and meet the same institution's requirements for teaching the college course at the institution of higher education)) appropriate college/university academic leadership and meet the minimum qualifications for instructors teaching the course on the college campus.

(b) ~~((New instructors are provided with discipline specific training and orientation regarding, but not limited to, course curriculum, assessment criteria, pedagogy, course philosophy and administrative responsibilities and procedures prior to the instructor teaching the college in the high school course.~~

~~(c) Procedures address instructor noncompliance with the institution of higher education's expectations for courses offered through the institution.~~

~~(d) Noncompliance issues will be addressed in consultation with the district, charter school, or tribal compact school.~~

~~(2) Participating institutions of higher education are recommended to provide annual discipline specific professional development activities and ongoing collegial interaction to address course content, course delivery, assessment, evaluation, and/or research and development in the field.) Faculty liaisons at the institution of higher education provide all new instructors with course-specific training in course philosophy, curriculum, pedagogy and assessment prior to the instructor teaching the course.~~

(c) Instructors participate in college/university provided annual discipline-specific professional development and ongoing collegial interaction to further enhance instructors' pedagogy and breadth of knowledge in the discipline.

(d) Instructors are informed of and adhere to program policies and procedures.

(2) Participating institutions of higher education, not accredited by ((National Alliance of Concurrent Enrollment Partnerships)) NACEP for the current year of enrollment, shall provide the evidence of meeting the required faculty standards of this section.

(3) Any compensation paid to the instructor by the institution of higher education must be for work performed beyond their contract with the district, charter school, or tribal compact school.

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-160 College in the high school evaluation standards. (1) Participating institutions of higher education shall:

(a) Conduct an end-of-term student course evaluation for each college in the high school course section offered through the institution of higher education to provide instructors with student feedback.

~~(b) Conduct ((surveys of participating high school instructors, principals, and guidance counselors at least once every three years. Surveys shall include the following as outlined in the most current National Alliance of Concurrent Enrollment Partnerships survey guide:~~

~~(i) National Alliance of Concurrent Enrollment Partnerships essential questions (additional questions may be used);~~

~~(ii) One follow-up contact with nonrespondents within the methodology; and~~

~~(iii) Collaboration of a qualified institutional evaluator or researcher in the development of the survey and data analysis.~~

~~(2) Participating institutions of higher education are recommended to conduct an annual survey of alumni who are one year out of high school and who are four years out of high school, at least once every three years. Surveys shall include the following as outlined in the most current National Alliance of Concurrent Enrollment Partnerships survey guide:~~

~~(a) National Alliance of Concurrent Enrollment Partnerships essential questions (additional questions may be used);~~

~~(b) One follow-up contact with nonrespondents within the methodology; and~~

~~(c) Collaboration of a qualified institutional evaluator or researcher in the development of the survey and data analysis.~~

~~(3)) and report regular and ongoing evaluations of the college in the high school program effectiveness and use the results for continuous improvement.~~

(2) Participating institutions of higher education, not accredited by ((National Alliance of Concurrent Enrollment Partnerships)) NACEP for the current year of enrollment, shall provide the evidence of meeting the evaluation required standards of this section.

NEW SECTION

WAC 392-725-170 College in the high school partnership standards. (1) Participating institutions of higher education shall:

(a) Ensure alignment with the college/university mission and support by the institution's administration and academic leadership.

(b) Show ongoing collaboration with the secondary school partners.

(2) Participating institutions of higher education, not accredited by National Alliance of Concurrent Enrollment Partnerships for the current year of enrollment, shall provide the evidence of meeting the evaluation required standards of this section.

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-200 ((Prior)) Confirmation of high school credit. ~~((As a condition to an eligible student's enrollment in college courses;))~~ The eligibility of the college in the high school courses which the student intends to take for the award of high school credit and the amount of such credit shall ((first)) be established, as follows:

(1) The district, charter school, or tribal compact school shall establish on a course by course basis the amount of high school required or elective credit, or combination thereof, that shall be awarded for each college in the high school course ((successfully completed)). Successful course completion by the student based upon the conversion rate set forth in ((WAC 180-51-050)) RCW 28A.230.090(6) which states "At the college or university level, five quarter or three semester hours equals one high school credit." This conver-

sion rate holds true for all college in the high school classes regardless of whether or not the student elects to earn the available college credit.

(2) If a college in the high school course is not comparable to a district, charter school, or tribal compact (~~(school)~~) school's specific course required for high school graduation, the district, charter school, or tribal compact school superintendent shall determine the amount of required high school credit which shall be awarded following consultation with a representative of the institution of higher education designated for that purpose. The difference between the amount of credit required ascribed to that course and the amount of credit earned at the conversion rate set forth in (~~(WAC 180-51-050)~~) RCW 28A.230.090(6) shall be awarded as elective credit.

(3) Within five school days of a student's request for confirmation of credit, the district, charter school, or tribal compact school superintendent or other designated representative shall confirm in writing the amount of high school required or elective credit, or combination thereof, which shall be awarded upon successful completion of the college in the high school course(~~(s)~~).

(4) Upon confirmation by the college in the high school instructor of a student's successful completion of a college in the high school course under this chapter, the district, charter school, or tribal compact school shall record on the student's secondary school records and transcript the high school credit previously confirmed under the section with a notation that the courses were taken at an institution of higher education pursuant to WAC 392-415-070.

(5) Each district, charter school, or tribal compact school and institution of higher education shall independently have and exercise exclusive jurisdiction over academic and discipline matters involving a student's enrollment and participation in courses of, and the receipt of services and benefits from the district, charter school, tribal compact school or the institution of higher education.

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-225 College in the high school general requirements. (1) Participating districts, charter schools, or tribal compact schools must provide general information about the college in the high school program to all students in grades nine through twelve and to the parents and guardians of those students.

(2) The enrollment of a student who meets the definition of WAC 392-725-015(2) in the college in the high school program shall be governed as follows:

(a) An eligible student seeking to earn college credit is responsible for enrolling into an institution of higher education on or before the deadline established by the institution of higher education.

(b) An eligible student is entitled to enroll in an institution of higher education for college in the high school program purposes subject to each of the following conditions and limitations:

(i) Enrollment is limited to college (~~(level)~~) courses.

(ii) Prior confirmation pursuant to WAC 392-725-200 by the district, charter school, or tribal compact school of the amount of high school credit to be awarded for a college in the high school course on or before the deadline for enrollment established by the institution of higher education.

(iii) Acceptance of the student by the institution of higher education subject to enrollment requirements and limitations established by the institution.

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-300 Finance. (1) Districts, charter schools, and tribal compact schools claim the college in the high school courses for basic education funding based on the course's average enrolled weekly minutes pursuant to WAC 392-121-122. Courses that qualify for vocational enhanced funding can be claimed pursuant to WAC 392-121-138.

(2) The participating institution of higher education receives college in the high school fees as defined in WAC 392-725-015 (7)(a) and other associated college in the high school fees for eligible students as defined in WAC 392-725-015 (7)(b). The amount and method of collection of these fees shall be outlined in (~~(interlocal)~~) local agreement.

(3) For college in the high school courses that qualify for state funded subsidies as defined in WAC 392-725-015(8) and based on the per student limitations provided in WAC 392-725-325(2), these subsidies are provided in lieu of college in the high school fees as defined in WAC 392-725-015 (7)(a).

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-325 College in the high school state funded subsidies. Pursuant to RCW 28A.600.290 (~~(and subject to the amount appropriated for such purposes in the Omnibus Appropriations Act)~~), state funded subsidies may be available to pay the cost of college in the high school fees for specific eligible eleventh or twelfth grade students only enrolled in college in the high school courses provided by institutions of higher education that meet the definition in RCW 28B.10.016, or a public tribal college located in Washington as noted in RCW 28A.600.290 (7)(a), and for the limited amount provided in subsection (2) of this section. Public institutions of higher education that are outside of the state of Washington or private institutions of higher education do not qualify for the state funded subsidies.

(1) Prioritization of the available college in the high school state-funded subsidies will be allocated (~~(in the following method:~~

~~(a) High schools that are and students that reside twenty driving miles or more as measured by the most direct route from the nearest institution of higher education offering running start.~~

~~(b) High schools who receive small high school funding enhancement as provided in the Omnibus Appropriations Act.~~

~~(c) For the remaining high schools, eligible students who qualify for the new school year for free and reduced price lunch)) as provided under RCW 28A.600.290.~~

(2) Limitation of college in the high school state-funded subsidies are ~~((as follows:~~

~~(a) For each eligible eleventh and twelfth grade student, the annual credit amounts for subsection (1)(a) through (b) of this section are limited to the annual credit amounts provided in the Omnibus Appropriations Act but may not exceed ten credits for any school year.~~

~~(b) The annual credit amounts for subsection (1)(c) of this section are limited to the annual credit amounts provided in the Omnibus Appropriations Act but may not exceed five credits for any school year)) provided under RCW 28A.600.-290.~~

(3) The office of superintendent of public instruction will provide an application process that districts, charter schools, and tribal compact schools will use to apply annually for the college in the high school state-funded subsidies.

(a) Districts, charter schools, and tribal compact schools will apply by July 1st for the new school year's subsidies.

(b) The office of superintendent of public instruction will notify districts, charter schools, and tribal compact schools by September 1st the amount of subsidies awarded for the new school year.

(c) Through the application process, districts, charter schools, and tribal compact schools will provide a list of college in the high school courses per high school for the new school year. The award of subsidies will be limited to the courses provided in the application ~~((process))~~ and subsequent course/enrollment updates.

(d) The list of college in the high school courses will contain the amount of college quarter credits awarded for each course. For this section only, college semester credits will be converted into quarter credits by multiplying the semester credits by 1.5 and rounding up to the nearest whole credit.

(e) Districts, charter schools, and tribal compact schools will provide an estimate of eligible students expected to receive the subsidies within the per student credit limitation provided in the Omnibus Appropriations Act.

~~((i) For high schools that qualify for the priorities according to subsection (1)(a) and (b) of this section, applicant will provide an estimate of eligible eleventh and twelfth grade students.~~

~~(ii) For high schools that qualify for the priorities according to subsection (1)(b) and (c) of this section, applicant will provide an estimate of eligible eleventh and twelfth grade students that live more than twenty miles from a college offering running start.~~

~~(iii) For high schools that qualify for subsection (1)(c) of this section, applicant will provide an estimate of eligible eleventh and twelfth grade students that are expected to qualify for free and reduced price lunch.))~~

(4) High schools may submit changes to the course offering list, and/or update estimate of eligible eleventh and twelfth grade students expected to qualify for subsidy. A school may submit no more than three updates per academic year.

(a) Updated requests cannot exceed original subsidy award.

(b) Additional funds may be awarded to a school that has reached its maximum award only if other schools have failed to use their original subsidy amount.

(5) High schools participating in the college in the high school subsidy will report actual student participation counts at the midpoint of each high school term to the office of superintendent of public instruction. Failure to provide participant counts may result in the school's loss of future subsidies for the current academic year.

(6) Reimbursement of the college in the high school state-funded subsidies will occur as follows:

~~(a) ((Beginning with the 2015-16 school year, the))~~ College in the high school state-funded subsidies for college in the high school will be allocated at minimum sixty-five dollars per quarter credits.

(b) Starting with the ~~((2017))~~ 2019 calendar year, and ~~((for))~~ every four years after, the funding level for the college in the high school state-funded subsidies will be reviewed by the office of superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the council of presidents representing the public baccalaureate institutions and ~~((make))~~ a recommendation will be made to the legislature ((for)) when an increase to the funding level of the college in the high school state funded subsidies is warranted.

(c) The college in the high school state-funded subsidies will be paid after the completion of the course.

(d) Districts, charter schools, and tribal compact schools with high schools eligible for the college in the high school state-funded subsidies will submit a request for payment of subsidies form to the office of the superintendent of public instruction. The request for payment will include the actual number of completed credits for eligible eleventh and twelfth grade students who have not exceeded the credit limitation pursuant to subsection (2) of this section.

(e) The office of the superintendent of public instruction will review the request for payment of subsidies form and fund the reporting district, charter school, and tribal compact school one hundred percent of the approved college in the high school subsidies on the following monthly apportionment payment.

(f) One hundred percent of the subsidies generated will be forwarded to the participating institution of higher education that provided the college in the high school program.

WSR 19-08-043

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 29, 2019, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-102.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services?

and 388-837-9010 Must a client who is admitted by a residential habilitation center's ICF/IID be in need of and receiving active treatment services?

Hearing Location(s): On May 7, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than May 8, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on May 7, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by April 23, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules clarify eligibility criteria for residential habilitation centers by distinguishing between nursing facility level of care and ICF/IID level of care.

Reasons Supporting Proposal: These rules are necessary to comply with federal medicaid law and to receive federal funding. Under 42 C.F.R. 483.440, a client residing in an ICF/IID "must receive a continuous active treatment program."

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120, 42 C.F.R. 483.440.

Rule is necessary because of federal law, 42 C.F.R. 483.440.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Mick Petersen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1559.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

March 28, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services? (1) If you are twenty-one years of age or over, you are eligible to receive residential habilitation center (RHC) services if:

(a) You have been determined to meet DDA eligibility criteria;

(b) You choose to receive services in the RHC;

(c) ~~((You need the level of care provided at the RHC; and~~ ~~(d)))~~ DDA has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; ~~((or))~~ and

(d) You need the level of care provided at the RHC, which is either:

(i) Nursing facility level of care under WAC 388-106-0355 for a client admitted to, or seeking admission to, a state-operated nursing facility; or

(ii) Intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care under WAC 388-828-1020 for a client admitted to, or seeking admission to, a state-operated ICF/IID.

(2) If you are sixteen through twenty years of age, and meet (1)(a) through (d) above you may not be admitted to receive services at a residential habilitation center unless there are no service options available in the community to appropriately meet your needs. Such admission is limited to the provision of short-term respite or crisis stabilization services.

(3) If you are under age sixteen you are not eligible to receive services at a residential habilitation center.

(4) Admission to a nursing facility at a RHC also requires completion of preadmission screening and resident review (PASRR) requirements as described in chapter 388-97 WAC.

NEW SECTION

WAC 388-837-9010 Must a client who is admitted by a residential habilitation center's ICF/IID be in need of and receiving active treatment services? (1) An individual who is admitted by a residential habilitation center's intermediate care facility for individuals with intellectual disabilities must be in need of and receiving active treatment services.

(2) Active treatment services means a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services described in 42 C.F.R. 483.400 through 483.480, that is directed toward:

(a) The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(b) The prevention or deceleration of regression or loss of current optimal functional status.

WSR 19-08-054
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed March 29, 2019, 12:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-23-040.

Title of Rule and Other Identifying Information: WAC 315-38-020 Mega Millions definitions, changes language to align with national Mega Millions guidelines and eliminates player confusion; WAC 315-38-040 Ticket price, corrects the ticket price of a Mega Millions ticket; WAC 318-38-050 Play characteristics and restrictions, adds language to include lottery's mobile application; WAC 315-38-080 Prize structure and odds, eliminates the outdated prize structure table and includes the current one; WAC 315-38-090 Jackpot prize payments, updates annuity language from twenty-six annual installment payments to thirty graduated annual installment payments; and WAC 315-38-100 Second through ninth level prizes, eliminates unnecessary language related to the outdated prize structure table and provides language related to the current prize structure.

Hearing Location(s): On June 27, 2019, at 8:30 a.m., at Washington's Lottery, 814 4th Avenue East, Olympia, WA 98506.

Date of Intended Adoption: June 27, 2019.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300, Olympia, WA 98504-3000, email KWeeks@wa.lottery.com, fax 360-515-0416, by June 20, 2019.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, TTY 360-586-0933, email DRobinson@walottery.com, by June 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes to WAC 315-38-020 will eliminate language that no longer applies to current definitions and replaces it with language that coincides with national Mega Millions rules.

Proposed changes to WAC 315-38-040 corrects the ticket price to reflect current national Mega Millions tickets, keeping language in alignment and eliminating confusion.

Proposed changes to WAC 315-38-050 removes redundant information and adds pertinent language regarding lottery's mobile application to reflect future and present technology.

Proposed changes to WAC 315-38-080 removes the prize structure table that is invalid and replaces it with the updated version. This will eliminate confusion for any individual who views the table for either prizes or odds.

Proposed changes to WAC 315-38-090 provides clarifying language regarding annuity prize payments and their frequency.

Proposed changes to WAC 315-38-100 removes irrelevant information pertaining to the removed prize structure table and provides clarifying language in relation to the new table.

Reasons Supporting Proposal: The current definition language in WAC 315-38-020 contains information that is no longer relevant to the updated definitions and also includes incorrect language. By clarifying the language[,] confusion

will be eliminated in both players in [and] employees reading this section.

The current language in WAC 315-38-040 lists ticket prices that are no longer accurate. Changing the wording to reflect ticket prices that are in alignment with the correct national prices is necessary to remain transparent and truthful to lottery players.

The current language in WAC 315-38-050 does not allow for the lottery's mobile application to be included as a method of creating a digital barcode. By including this terminology[,] technological advancements in this area will be permitted.

The current prize structure table that is in WAC 315-38-080 is outdated and contains incorrect prize information and odds. Replacing this invalid table with a current one will reflect present prize levels, prize payout amounts, and odds.

The current annuity language in WAC 315-38-090 contains incorrect information regarding the amount of annuity installment payments that a claimant will receive. By updating this language to reflect current guidelines players will acquire pertinent information when choosing which payout method to select for their winnings.

The current language in WAC 315-38-100 comprises of information related to the outdated prize structure table that is no longer relevant or accurate. Removing this language that no longer applies and clarifying language on current prize structures will eliminate confusion both with players and employees.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No further information supplied by agency.]

March 21, 2019

Kristi Weeks

Legal Services Director

AMENDATORY SECTION (Amending WSR 05-11-050, filed 5/13/05, effective 6/13/05)

WAC 315-38-020 Definitions. Words and terms set forth below, when used herein, shall have the following meaning unless otherwise indicated:

(1) Annual/annuitized/annuity option: The manner in which the Mega Millions jackpot prize may be paid in ~~((twenty-six))~~ thirty consecutive graduated annual installments. ~~((In order to allow for the efficient purchase of securi-~~

ties, the first installment may be of a different value from the second through the twenty-sixth installment. The second through the twenty-sixth installments shall be of equal value.) Payments shall escalate by a factor of five percent annually, and annual payments shall be rounded to the nearest even \$1,000 increment to facilitate the purchase of securities.

(2) Authorized claim center: Any Mega Millions agent or retailer, or party lottery office, in the state where the winning official Mega Millions ticket was purchased.

(3) Cash option: The manner in which the Mega Millions jackpot prize may be paid in a single payment. ~~((The cash option amount shall be the proceeds of the sale of investments purchased to fund the particular winner's share of the annuitized jackpot prize. At the director's discretion, an initial payment of a portion of the cash option prize may be paid to the winner at the time the prize is claimed.))~~

(4) Claimant: Any person or entity submitting a claim form within the required time period to collect a prize for an official Mega Millions ticket. A claimant may be the purchaser, the person or entity named on a signed official Mega Millions ticket, the bearer of an unsigned official Mega Millions ticket, or any other person or entity who may seek entitlement to a Mega Millions prize payment in accordance with the Mega Millions rules and party lottery governing laws, policies and rules. No claimant may assert rights different from the rights acquired by the original purchaser at the time of purchase.

(5) Director(s): The chief officers of the party lotteries or any other persons to whom the directors' authority is lawfully delegated.

(6) Multistate agreement: The amended and restated multistate agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the Mega Millions official game rules, finance and operations procedures for Mega Millions, and online drawing procedures for Mega Millions.

(7) Official Mega Millions ticket: A game ticket, produced on official paper stock by a Mega Millions agent or retailer in an authorized manner, bearing player or computer selected numbers, game name, drawing date, amount of wager, and validation data.

(8) Party lottery or lotteries: One or more of the state lotteries ~~((established and operated pursuant to the laws of California, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Texas, Virginia, Washington state or any other state lottery))~~ authorized to become a member of Mega Millions.

(9) Parimutuel: Total amount of sales allocated to pay prize claimants at the designated prize level, divided among the number of winning official Mega Millions tickets at the designated prize level.

(10) Prize fund: That portion of Mega Millions gross sales ~~((in the party lottery states))~~ set aside for the payment of prizes. The prize fund for any drawing is expected to be fifty percent of sales, but may be higher or lower based upon the number of winners at each set prize level, as well as the funding required to meet the advertised jackpot.

(11) Purchaser(s): Player(s) of Mega Millions who purchase tickets in accordance with Mega Millions rules and party lottery governing laws, policies, and rules.

(12) Quick-pick, auto-pick or easy pick: A player option in which Mega Millions number selections are determined at random by computer software.

(13) Total prize liability: ~~((For any one Mega Millions drawing, total prize liability is calculated as all lower tier prizes won, plus the total sales for that drawing multiplied by 31.8% (allocation to the jackpot prize pool). The California state lottery's sales and prizes are excluded for purposes of this calculation.))~~ The liability of the participating states in any Mega Millions game prize, or any Mega Millions add-on game prize, will be in accordance with the finance and operations procedures for Mega Millions.

(14) Subscription/season ticket: An extended, multidraw purchase option, which may be offered in Washington state at the discretion of the director of the Washington state lottery, wherein the same set(s) of numbers may be played for a specified number of consecutive drawings (for example, 26, 52 or 104), effective on a future date. Subscription/season tickets are distinguished from multidraw tickets which are effective for specified future drawings and are sold at the retailer level.

(15) Mega Millions agent, sales agent or retailer: A location in one of the states which are party lotteries and which is licensed or contracted and equipped by its respective state lottery to sell official Mega Millions tickets.

(16) Mega Millions panel or play area: That area of an official Mega Millions ticket identified by an alpha character and containing one field of five one-digit or two-digit player or computer selected numbers, and a second field of one one-digit or two-digit player or computer selected number.

(17) Mega Millions play/bet slip: A computer-readable form, printed and issued by each party lottery, used in purchasing an official Mega Millions ticket, with each play area consisting of two fields. ~~((The first))~~ One field contains ~~((56))~~ seventy areas/spaces numbered ~~((+))~~ one through ~~((56; the second))~~ seventy; and one field contains ~~((46))~~ twenty-five areas/spaces numbered ~~((+))~~ one through ~~((46))~~ twenty-five.

(18) Mega Millions winning numbers - Five ~~((one digit))~~ one or ~~((two digit))~~ two digit numbers~~((;))~~ from ~~((+))~~ one through ~~((56))~~ seventy, and one ~~((one digit))~~ or ~~((two digit))~~ two digit number from ~~((1 through 46))~~ one to twenty-five, randomly selected at each Mega Millions drawing, which shall be used to determine winning Mega Millions plays contained on official Mega Millions tickets.

(19) Add-on game: A game that may provide prize amounts in addition to the Mega Millions prizes, other than the Mega Millions jackpot prize.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-040 Ticket price. (1) Official Mega Millions tickets may be purchased for ~~((one))~~ two dollars per play, or multiples thereof, at the discretion of the purchaser, in accordance with the number of game panels and inclusive drawings. The purchaser receives one play for ~~((each one))~~ every two dollars wagered in Mega Millions.

(2) Subject to the laws and regulations governing each party lottery, the directors may collectively authorize the sale of official Mega Millions tickets at a discount for promotional purposes.

(3) Individual directors may authorize sale of official Mega Millions tickets at a discount for promotional purposes within their respective jurisdictions, provided that such discounted sales shall be reported to the party lotteries at full gross sales value.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-050 Play characteristics and restrictions. (1) Official Mega Millions tickets may only be sold to persons eighteen years of age or older, providing such persons are not prohibited from playing Mega Millions in a party lottery state by the governing law, policies or rules of that party lottery, or any contract executed by that party lottery.

(2) Official Mega Millions tickets may not be purchased in any other party lottery state by any party lottery board member or commissioner; or any officer or employee; or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of any such person.

(3) Under no circumstances will a claim be paid (~~for either the jackpot prize or the second prize~~) without an official Mega Millions ticket matching all game play, serial number, and other validation data residing in the selling party lottery's online gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.

(4) Official Mega Millions tickets cannot be canceled.

(5) Purchasers may submit a manually completed Mega Millions play slip to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Mega Millions play slips shall be available at no cost to the purchaser and shall have no pecuniary or prize value, and shall not constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other nonmanual method of marking play slips is prohibited, provided, however, that use of the official Washington state lottery mobile application to create a digital barcode is not prohibited.

(6) Purchasers may orally convey their selections to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Such selections shall be manually entered into the computer terminal by the Mega Millions agent or retailer.

(7) If player operated sales terminals or self-service terminals are available, purchasers may use such terminals for the purchase of official Mega Millions tickets.

AMENDATORY SECTION (Amending WSR 05-11-050, filed 5/13/05, effective 6/13/05)

WAC 315-38-080 Prize structure and odds. Winning number matches (~~for the Field 1 of 5 of 56 and Field 2 of 1 of 46~~) shall win prizes as set forth below, based on an estimated anticipated prize fund of fifty percent of gross sales and estimated percents of prize fund, as defined in WAC 315-38-020(10) and the Mega Millions multistate agreement:

((PRIZE LEVEL	FIELD 1 MATCH- FIVE WHITE BALLS 1-56	FIELD 2 MATCH- MEGA BALL 1-46	PRIZE	ODDS (per \$1 play)	PERCENT OF PRIZE FUND
Jackpot Prize	5	1	Jackpot	1:175,711,536.00	63.60
Second	5	0	\$250,000*	1:3,904,700.80	12.80
Third	4	1	\$10,000*	1:689,064.85	2.90
Fourth	4	0	\$150*	1:15,312.55	1.96
Fifth	3	1	\$150*	1:13,781.30	2.18
Sixth	2	1	\$10	1:843.75	2.38
Seventh	3	0	\$7	1:306.25	4.58
Eighth	1	1	\$3	1:140.63	4.26
Ninth	0	1	\$2	1:74.80	5.34
Overall odds of winning: 1:40					

* Should total prize liability, exclusive of jackpot prize rollover from previous drawings, exceed three hundred percent of draw sales or fifty percent of draw sales plus \$50,000,000, whichever is less, (both hereinafter referred to as the "liability cap"), the second through fifth prizes shall be paid on a parimutuel rather than set prize basis, provided, however, that in no event shall the parimutuel prize be greater than the set prize. The amount to be used for the allocation of such parimutuel prizes shall be the liability cap less the amount paid for the jackpot prize and prize levels six through nine.)

<u>PRIZE LEVEL</u>	<u>MATCH (Field 1 + Field 2)</u>	<u>ODDS</u>	<u>PRIZE</u>
<u>Jackpot</u>	<u>5 numbers + mega ball</u>	<u>1 in 302,575,350</u>	<u>Jackpot</u>
<u>Second</u>	<u>5 numbers</u>	<u>1 in 12,607,306</u>	<u>\$1,000,000</u>
<u>Third</u>	<u>4 numbers + mega ball</u>	<u>1 in 931,001</u>	<u>\$10,000</u>
<u>Fourth</u>	<u>4 numbers</u>	<u>1 in 38,792</u>	<u>\$500</u>
<u>Fifth</u>	<u>3 numbers + mega ball</u>	<u>1 in 14,547</u>	<u>\$200</u>
<u>Sixth</u>	<u>3 numbers</u>	<u>1 in 606</u>	<u>\$10</u>
<u>Seventh</u>	<u>2 numbers + mega ball</u>	<u>1 in 693</u>	<u>\$10</u>
<u>Eighth</u>	<u>1 number + mega ball</u>	<u>1 in 89</u>	<u>\$4</u>
<u>Ninth</u>	<u>Mega ball only</u>	<u>1 in 37</u>	<u>\$2</u>

AMENDATORY SECTION (Amending WSR 18-17-086, filed 8/14/18, effective 9/14/18)

WAC 315-38-090 Jackpot prize payments. (1) Prior to each drawing, the directors shall determine the estimated annuitized jackpot prize amount to be advertised. The advertised jackpot prize amount shall be the basis for determining the amount to be awarded for each Mega Millions panel matching all five of the five Mega Millions winning numbers drawn for Field 1 and the one Mega Millions winning number drawn for Field 2. No annuitized jackpot prize, when there is only one jackpot prize winning ticket, shall be less than \$12 million.

(2) If, in any Mega Millions drawing, there are no Mega Millions panels that qualify for the jackpot prize category, the portion of the prize fund allocated to such jackpot prize category shall remain in the jackpot prize category and be added to the amount allocated for the jackpot prize category in the next consecutive Mega Millions drawing.

(3) If the annuitized jackpot prize divided by the number of Mega Millions panels matching all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, is equal to or greater than \$1,000,000, the jackpot prize(s) will be paid under the annuity option unless a cash option was selected by the winner(s), as follows:

(a) **Cash option:** When a player claims a jackpot prize or a share of a jackpot prize, the player may elect to be paid a one-time single cash option payment as defined by WAC 315-38-020(3), provided:

(i) The player must elect this cash option within sixty days of the presentation of his or her winning ticket, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within sixty days of the drawing for the prize, then (a)(i) of this subsection will not apply and instead, the player must elect this

cash option within sixty days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date;

(iv) Cash option jackpot prizes shall be paid in a single payment in accordance with the internal validation procedures and settlement procedures pursuant to the multistate agreement and the Washington state lottery. At the director's discretion, an initial payment of a portion of the cash option prize may be paid to the winner at the time the prize is claimed.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the sixty-day limit will be paid his or her prize in ~~((twenty-six))~~ thirty graduated annual installment payments. The initial payment shall be paid in accordance with the internal validation procedures and settlement procedures established by the multistate agreement and the Washington state lottery. The subsequent ~~((twenty-five))~~ twenty-nine payments shall be paid annually to coincide with the month of the federal auction date at which the bonds were purchased. All such payments shall be made within seven days of the anniversary of the actual auction date. This date of payment of the subsequent payments is subject to the discretion of the director of the Washington state lottery, acting in the best interest of the lottery.

(4) After the player has made his or her choice of payment method, the lottery will validate the claim, including a debt check pursuant to WAC 315-06-125, and pay the prize as appropriate.

(5) In the event multiple Mega Millions panels match all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, and the annuitized Mega Millions jackpot prize divided by the number of winning game panels is less than \$1,000,000, each Mega Millions jackpot prize winner shall be paid an amount equal to the "cash equivalent grand/jackpot prize," as defined by the multistate agreement, divided equally by the number of jackpot prize winners. Each such jackpot prize winner will be paid in a single cash payment.

AMENDATORY SECTION (Amending WSR 05-11-050, filed 5/13/05, effective 6/13/05)

WAC 315-38-100 Second through ninth level prizes.

(1) ~~Each Mega Millions ((panels matching five of the five Mega Millions winning numbers drawn for Field 1, but not matching the Mega Millions winning number drawn for Field 2 shall be entitled to receive a second prize of \$250,000 subject to subsection (5) of this section.~~

~~(2) Mega Millions panels matching four of the five Mega Millions winning numbers drawn for Field 1 and the Mega Millions winning number drawn for Field 2 shall be entitled to receive a third prize of \$10,000 subject to subsection (5) of this section.~~

~~(3) Mega Millions panels matching four of the five Mega Millions winning numbers drawn for Field 1 but not matching the Mega Millions winning number drawn for Field 2 shall be entitled to receive a fourth prize of \$150 subject to subsection (5) of this section.~~

~~(4) Mega Millions panels matching three of the five Mega Millions winning numbers drawn for Field 1 and the Mega Millions winning number drawn for Field 2 shall be entitled to receive a fifth prize of \$150 subject to subsection (5) of this section.~~

~~(5)) second through ninth prize shall be paid in one payment.~~

~~(2) Should total prize liability, exclusive of jackpot prize rollover from previous drawings, exceed three hundred percent of draw sales or fifty percent of draw sales plus \$50,000,000, whichever is less, (both hereinafter referred to as the "liability cap"), the second ((through fifth)) and third prizes shall be paid on a parimutuel rather than ((set)) fixed prize basis, provided, however, that in no event shall the parimutuel prize be greater than the set prize. The amount to be used for the allocation of such parimutuel prizes shall be the liability cap less the amount paid for the jackpot prize and prize levels ((six)) four through nine. The California state lottery's sales and prizes are excluded for purposes of the liability cap calculation.~~

~~((6) Mega Millions panels matching two of the five Mega Millions winning numbers drawn for Field 1 and matching the Mega Millions winning number drawn for Field 2 shall be entitled to receive a sixth prize of \$10.~~

~~(7) Mega Millions panels matching three of the five Mega Millions winning numbers drawn for Field 1 but not the Mega Millions winning number drawn for Field 2 shall be entitled to receive a seventh prize of \$7.~~

~~(8) Mega Millions panels matching one of the five Mega Millions winning numbers drawn for Field 1 and the Mega Millions winning number drawn for Field 2 shall be entitled to receive an eighth prize of \$3.~~

~~(9) Mega Millions panels matching no numbers of the five Mega Millions winning numbers drawn for Field 1 but matching the Mega Millions winning number drawn for Field 2 shall be entitled to receive a ninth prize of \$2.~~

~~(10) Each Mega Millions second through ninth prize shall be paid in one payment.))~~

WSR 19-08-059
PROPOSED RULES
GREEN RIVER COLLEGE

[Filed March 29, 2019, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-19-096.

Title of Rule and Other Identifying Information: Amending WAC 132J-276-090 relating to copying charges for public records.

Hearing Location(s): On May 9, 2019, at 5:15 p.m., at the AD Board Room, Green River College (GRC).

Date of Intended Adoption: June 4, 2019.

Submit Written Comments to: George Frasier, 12401 S.E. 320th Street, Auburn, WA 98092-3622, email gfrasier@greenriver.edu, fax 253-288-3460, by April 12, 2019, and May 9, 2019.

Assistance for Persons with Disabilities: Contact Phil Denman, phone 253-833-9111 ext. 2300, fax 253-288-3460,

email pdenman@greenriver.edu, see purpose above [below], by April 12, 2019, and May 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: GRC proposes amending chapter 132J-276 WAC to conform such chapter to: (1) Recent changes in the law concerning public records (RCW 42.56.120); (2) model rules recommended by attorney general's office (chapter 44-14 WAC), and (3) current agency practices.

Reasons Supporting Proposal: RCW 42.56.120 authorizes these changes involving charging for public records.

Statutory Authority for Adoption: RCW 42.56.120 and 28B.50.140(13).

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: GRC, public.

Name of Agency Personnel Responsible for Drafting: George Frasier, GRC, Auburn, Washington, 253-288-3338; Implementation and Enforcement: Public Records Manager, GRC, Auburn, Washington, 253-288-3361.

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. GRC 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; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

March 29, 2019

George Frasier
 Executive Director of
 Resource Development

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

WAC 132J-276-090 ((Copying)) Charges for public records. No fee shall be charged for the inspection of public records. The district ~~((shall charge a fee of 10¢ per page of copy for providing copies of public records and for use of the district's copy equipment. This charge is the amount necessary to reimburse the district for its actual costs incident to such copying. If a particular request for copies requires an unusually large amount of time, or the use of any equipment not readily available, the district will provide copies at a rate sufficient to cover any additional cost))~~ imposes a charge for providing copies of public records. Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and send-

ing requested records. Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the district charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b), as amended by section 3, chapter 304, Laws of 2017. The district may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. All fees must be paid ((by money order, cashier's check or cash)) in advance. The district may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

WSR 19-08-070
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed April 2, 2019, 8:49 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 357-31-100 Must an employer have a policy for requesting and approving leave? and 357-31-130 When may an employee use accrued sick leave?

Hearing Location(s): On May 9, 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: May 16, 2019.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by May 2, 2019.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 357-31-130 is to expand the amount of time employers must approve an employee's request to use their accrued sick leave for bonding purposes. This amendment also removes the requirement for employees to be approved for leave under the Family Medical Leave Act in order to use their accrued sick leave for this purpose. The proposed amendment to WAC 357-31-100 requires employers to update their leave policies to state the total amount of sick leave allowed to be used beyond eighteen weeks for bonding purposes.

Reasons Supporting Proposal: To become one step closer in becoming an employer of choice and to align with recent legislative changes to shared leave. An employee may request to receive donated leave for the purposes of parental

leave, therefore; employees should be able to use their own accrued sick leave for bonding purposes.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.133.

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: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-407-4136.

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.

April 2, 2019
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-05-032, filed 2/10/18, effective 3/13/18)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies((;)) or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim((;)) or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault((;)) or stalking as defined in RCW 49.76.020;

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault((;)) or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(4) Allow an employee to use sick leave for ((qualifying absences under the Family and Medical Leave Act (FMLA) for parental leave for)) the purpose of ((baby bonding with his/her)) parental leave to bond with a newborn, adoptive((;)) or foster child ((in accordance with WAC 357-31-495)). The policy must state the ((maximum)) total amount of sick leave allowed to be used ((during the twelve-week FMLA period))

beyond eighteen weeks in accordance with WAC 357-31-130;

(5) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; and

(6) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC.

AMENDATORY SECTION (Amending WSR 18-05-032, filed 2/10/18, effective 3/13/18)

WAC 357-31-130 ~~When ((ean))~~ may an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) An employee's mental or physical illness, disability, injury((:)) or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care((:)) or treatment of a mental or physical illness, injury((:)) or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury((:)) or health condition; care of a family member who needs medical diagnosis, care((:)) or treatment of a mental or physical illness, injury((:)) or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300((:)) and 357-31-305.

(f) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(g) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(h) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~(i) ((For qualifying absences under the Family and Medical Leave Act for parental leave))~~ When an employee requests to use sick leave for the purpose of ((bonding with their)) parental leave to bond with a newborn, adoptive((:)) or foster child ((in accordance with WAC 357-31-495. The amount of sick leave allowed to be used must be addressed in the employer's leave policy in accordance with WAC 357-31-400)) for a period up to eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement((:));

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255; or

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

WSR 19-08-071

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed April 2, 2019, 8:51 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 357-01-075 Class, 357-01-080 Class series, 357-01-187 Job family, 357-01-188 Job level, 357-01-317 Supervisor, 357-13-035 Must a standard form be used for each position description?, 357-13-058 What is the requirement for employers to develop procedures which address evaluating positions for placement in the information technology professional structure (ITPS)?, 357-28-215 When must an employee receive supervisory pay differential?, 357-46-035 Layoff option, and 357-46-045 How do employers establish competency and other position requirements?

Hearing Location(s): On May 9, 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: May 16, 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 May 2, 2019.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules and amendments address the new ITPS.

Reasons Supporting Proposal: Contingent on legislative funding, the state is implementing a new information technology (IT) professional/technical classification and compensation structure. This means that all state agency and higher education classified IT positions and some Washington management service IT positions, will be evaluated for allocation into the new ITPS. The draft rules expand on Title 357 WAC to cover employees that have been placed into this new structure.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

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.

April 2, 2019
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-075 Class. A level of work within the statewide job classification system. Where there is a professional structure that includes a job family and a job level, the combination of the job family and the job level constitutes a class, and a change in job family, job level or both is a change in class.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-01-080 Class series. A grouping of job functions having similar purpose and knowledge requirements, but different levels of difficulty and responsibility. Where there is a professional structure that includes a job family and

a job level, different job levels within one job family constitutes a class series.

NEW SECTION

WAC 357-01-187 Job family. A functional discipline involving work focused within a specific and specialized body of knowledge as established within a professional structure. This definition applies to professional structures only.

NEW SECTION

WAC 357-01-188 Job level. The measure of complexity of work performed. This definition applies to professional structures only.

NEW SECTION

WAC 357-01-317 Supervisor. (1) An employee who is assigned responsibility by management to participate in the following functions with respect to their subordinate employee(s):

- (a) Selecting staff;
- (b) Training and development;
- (c) Planning and assignment of work;
- (d) Evaluating performance;
- (e) Resolving grievances; and
- (f) Taking corrective action.

(2) Participation in these functions is not routine and requires the exercise of individual judgment.

(3) A supervisor must supervise a minimum of one full-time employee or equivalent (total of part-time FTEs).

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-035 Must a standard form be used for each position description? A standard form developed by the director or one containing components similar to those found in the director's form must be used for each position description. For positions in the information technology professional structure (ITPS), a standard form developed by the director, or an alternate form approved by the director must be used for requests to establish or reevaluate ITPS positions.

NEW SECTION

WAC 357-13-058 What is the requirement for employers to develop procedures which address evaluating positions for placement in the information technology professional structure (ITPS)? (1) Each employer must develop and document an information technology professional structure (ITPS) evaluation procedure consistent with this chapter and guidelines established by the director's office.

(2) The procedure must include the process for requesting and evaluating positions for placement within the ITPS. The procedure must require, at a minimum the establishment of a committee of three or more employees to include the following:

(a) A human resource (HR) professional who is designated as the employers ITPS coordinator and who also serves as the single point of contact for the director's office regarding ITPS issues;

(b) An information technology (IT) manager from the employer who has comprehensive knowledge of the employer's business; and

(c) At least one other HR professional or IT manager.

(3) Only those who have successfully completed training may participate on an ITPS committee. The training must satisfy the core curriculum as defined by the director's office.

(4) All evaluation results and a copy of the signed IT position description form must be uploaded in the tool identified by the director.

NEW SECTION

WAC 357-28-215 When must an employee receive supervisory pay differential? Employees within the information technology professional structure that are in the entry, journey and senior/specialist levels designated as and performing all the duties of a supervisor must receive a five percent supervisory pay differential in addition to their base pay as long as they meet the definition of supervisor.

AMENDATORY SECTION (Amending WSR 10-11-068, filed 5/14/10, effective 6/15/10)

WAC 357-46-035 Layoff option. (1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range maximum. If the employee has no option to take a position at the same salary range maximum, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) What if the employee has no option under subsection (1) of this section?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(iii) The position is comparable or less than comparable; and

(iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?

(a) If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

(b) For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT Assessment form along with any other documentation to determine the closest matching class to offer as a layoff option.

(4) Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?

General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-045 How do employers establish competency and other position requirements? In establishing competency and other position requirements, employers may use any of the following documented criteria:

(1) Licensing/certification requirements;

(2) Position description;

(3) Class specification;

(4) Information technology professional structure evaluator's handbook;

(5) Skills/competencies listed on the position's most recent recruitment announcement or the last announcement used to fill the position;

~~((5))~~ (6) Bona fide occupational requirement(s) approved by the Washington human rights commission; or

~~((6))~~ (7) Additional documented competencies or requirements not reflected in the position description.

WSR 19-08-077
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 2, 2019, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-04-093.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On May 9, 2019, at 10:00 a.m., at the Labor and Industries (L&I) Headquarters, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 21, 2019.

Submit Written Comments to: Chris Alcatraz, P.O. Box 44148, Olympia, WA 98504-4148, email Christina.Alcatraz@Lni.wa.gov, fax 360-902-4988, by May 9, 2019, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Chris Alcatraz, phone 360-902-4985, fax 360-902-4988, TTY 360-902-5797, email Christina.Alcatraz@Lni.wa.gov, by May 6, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department reviewed these chapters and made revisions to:

- Update and clarify information and references in multiple classifications in general, and in classifications impacted by the 2018 stores rule making;
- Correct errors in classification information that occurred in a past rule making;
- Correct typographical errors; and
- Implement changes required by chapter 278, Laws of 2018 (SB 6199) passed by the legislature in 2018.

The purpose of this rule making is not to make substantive changes to how employers are classified, but review and revise the reporting and classification rules to ensure they are accurate, clear and understandable. These amendments will not impact employer reporting or rates.

Amendments to WAC 296-17-31001 Introduction, 296-17-31006 Application process, 296-17-31007 Owner/officer coverage and coverage for exempt employments, 296-17A-2009, 2009-00 Building material dealers and lumber yards, 296-17A-2009, 2009-01 Electrical supply dealers, 296-17A-2009, 2009-04 Pump, plumbing, irrigation, and pipe supply dealers, 296-17A-2009, 2009-06 HVAC supply dealers, 296-17A-4502, radio, television, recording, video production, and cable service providers; all other employees, 296-17A-4504 Theatres, 296-17A-4903, 4903-09 Inspection for insurance or valuation, 296-17A-6303, sales personnel with outside duties, messengers, insurance producers or surplus line brokers, social workers and dieticians employed by a home health care service, 296-17A-6305, 6305-00 Stores: Clothing—Retail, 296-17A-6305, 6305-04 Stores: Western wear, including tack—Retail, 296-17A-6406, 6406-00 Retail sales and inventory services, N.O.C., 296-17A-6406, 6406-17 Variety and general stores, 296-17A-6407 Wholesale stores, N.O.C.—Including combined wholesale and retail store

operations, 296-17A-6411, 6411-19 Coin, stamp, rare metals, and collectible cards, 296-17A-6411, 6411-20 Book, videos, electronic games, newspapers, magazines, and comic books, 296-17A-6511 Chore services/home care assistants, 296-17A-6512, home care services/home care referral registry (HCRR), 296-17A-6603, 6603-01 Auction or estate sales: Antiques or general household furnishings, 296-17A-6605, 6605-01 Musicians, N.O.C., 296-17A-6605, 6605-03 Players, entertainers and musicians hired by a theatre, N.O.C., and 296-17A-6608 Motion picture production.

Reasons Supporting Proposal: As part of this rule making, the department also reviewed these chapters for need, clarity, and consistency as required by SSB 5679 (chapter 30, Laws of 2013 2nd sp. sess.) to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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: Chris Alcatraz, Tumwater, Washington, 360-902-4985; Implementation: Keith Bingham, Tumwater, Washington, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 2, 2019

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 07-12-045, filed 5/31/07, effective 7/1/07)

WAC 296-17-31001 Introduction. (~~WAC 296-17-31001 through 296-17-35204~~) Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance provides rules applicable to workers' compensation insurance coverage (industrial insurance) that employers in the state of Washington must provide for their workers. We refer to these rules (WACs) as sections and (~~the complete body of information as the workers' compensation underwriting manual~~

The workers' compensation underwriting manual contains sections (WACs that) they define or explain:

- Words and phrases which we use
- Who the workers' compensation system applies to
- How to obtain workers' compensation coverage
- Why a classification system is necessary
- How our classification plan is designed
- How our classification approach compares to other states
- How we assign classifications to your business
- How we classify your business if a specific classification treatment is not referenced in our classification plan
- How employers report and pay premiums to us
- How we compute base rates
- Audit and recordkeeping requirements
- Experience rating plan
- Base rate tables.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17-31006 Application process. (1) **Where can I buy workers' compensation insurance?** Washington law requires that you:

- Purchase your workers' compensation insurance through labor and industries. You will need to complete a *business license application* to obtain workers' compensation insurance from us; or
- Be certified as a self-insured employer by the self-insurance certification services section of the department of labor and industries. For more information on the self-insurance ((you can call 360-902-6867 and one of our self-insurance representatives will assist you-)) program go to www.lni.wa.gov/selfinsurance, additional resources and contact information are listed under "Contact Us."

Employers engaged exclusively in interstate or foreign commerce are permitted to purchase workers' compensation insurance from a private carrier in another state if they do business in that state. The workers' compensation laws of the other state must allow the Washington drivers to be covered in that state.

(2) Where can I get a business license application?

You can file and print a business license application online at www.business.wa.gov/BLS. You can pick up a paper business license application from:

- Any office of the department of labor and industries;
- Employment security;
- Department of revenue business licensing service office;
- The corporations division of the office of the secretary of state;
- For your convenience you can call us at 360-902-4817 and we will mail you one.

(3) Where do I send my completed business license application?

You can mail your completed business license application to the department of revenue address shown on the form, or you can return it to your local department of labor and industries office, or department of employment security district tax office. Be sure to include the appropriate fees indicated on the form.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

WAC 296-17-31007 Owner/officer coverage and coverage for exempt employments. (1) **As a business owner, can I buy workers' compensation insurance to cover myself or to cover workers who are exempt from mandatory coverage as defined in RCW 51.12.020, 51.12.035, or 51.12.170?**

Yes. Coverage is not required, but is available for sole proprietors, partners, qualifying corporate officers, qualifying members of a limited liability company, and for exempt employments defined in **RCW 51.12.020, 51.12.035, or 51.12.170**. We refer to this coverage as optional coverage. For owner optional coverage, you must meet certain conditions and requirements which are detailed on the *application for owner/officer optional coverage*. These requirements include:

- Completing an application for optional owner/officer coverage;
- Reporting owner/officer hours in the classification assigned to your business that is applicable to the work being performed by the owner/officer;
- Submitting a supplemental report which lists the name of each covered owner/officer; and
- Reporting four hundred eighty hours or actual hours worked each quarter for each covered owner/officer and in the applicable workers' compensation classification code.

(2) When will my owner/officer coverage or coverage for exempt employments become effective?

Your coverage will become effective the day after we receive your completed and signed application for optional coverage, unless you indicate that optional coverage should begin at a later date. Coverage cannot begin before the day after we receive your completed application.

(3) How does cancellation work? You may cancel your optional owner/officer coverage or elective coverage for exempt employments by notifying the department in writing. For sole proprietors (~~and~~), partners, and LLC partnership model, we will cancel your coverage either the same day we receive your written notice to cancel or on the future date you indicate. For corporations, LLC(~~s~~) corporate model, or elective coverage for exempt employment, we will cancel the coverage thirty days from the date we receive your written request to cancel.

The department may cancel optional coverage if any required payments have not been made. Cancellation will become effective no later than thirty days from the date of the cancellation notice the department sent to the employer.

When your account balance is paid, if you want to reestablish owner/officer coverage, you must **submit a new application** for owner/optional coverage.

(4) Where can I get an application for owner/officer coverage, or coverage for exempt employments? There are separate applications for owner/officer optional coverage and coverage for exempt employments. To get these applications, go to <http://www.lni.wa.gov/FormPub>, contact your local labor and industries office, or you can call the employer services division at 360-902-4817.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2009 Classification 2009.

2009-00 Building material dealers and lumber yards

Applies to establishments engaged as building material dealers or lumber yards. For purposes of this classification the term "building materials" includes, but is not limited to, such items as wallboard, roofing, insulation, sheet metal, bricks, blocks, windows, fixtures, cabinets, doors, linoleum, tile, paneling, interior wood and plastic trim and molding, concrete mix, pipe, plumbing, and electrical supplies. In addition, such establishments often carry a variety of paints and accessories, garden tools and accessories, and hardware items such as nails, nuts and bolts, tools, hinges, doorknobs, locks, and more. It is not uncommon for a building material dealer to specialize and sell only one of the above types of items. Establishments engaged as lumber yards carry a diverse line of wood and lumber products and usually with sufficient quantity to build an entire wood structure. This line of wood and lumber products could include beams, planks, boards, plywood, an array of dimensional lumber (1x2, 2x4, 2x12, etc.), fence posts, railroad ties, shakes and shingles, siding, wood paneling, as well as interior wood trim and molding. Such establishments often carry a variety of other building materials such as electrical supplies, pipe and plumbing supplies, fixtures, cabinets, doors, windows, wallboard, insulation, linoleum, tile, paneling, bricks, blocks, concrete mix, roofing materials, sheet metal and more. These establishments often utilize one or more covered sheds to protect less durable materials from the outside climate, and will also utilize an uncovered open yard type of environment for storage of more durable wood, lumber, and building materials. In addition, such establishments could also have an inside store operation to include a variety of items such as hand and power tools, table saws, paints and varnishes, caulking, and a variety of hardware type items such as nails, nuts and bolts, hinges, doorknobs, locks, and more. This classification also includes retail/wholesale fence material dealers. This classification includes all store and yard operations and the transfer of materials or inventory between related stores.

This classification excludes delivery drivers (other than those involved in (~~intrastore or intrayard transfers mentioned above~~)) transferring materials or inventory between related stores) who are to be reported separately in classification 1101; nondelivery activities conducted away from the store or yard; hardware stores with building materials or lumber which are to be reported separately in classification 2009-03; and warehouse centers which are to be reported separately in classification 2009-05.

2009-01 Electrical supply dealers

Applies to establishments engaged as electrical hardware and supply dealers who primarily sell electrical hardware and supplies in bulk to the contractor trades, such as electrical and construction, although sales also may be made to individuals for their own use. Supplies are typically received in bulk quantity and may include, but are not limited to, spools of electrical wiring and cable, wiring harnesses, plastic and flex hosing, panel boxes, brackets, electrical outlet boxes, fuses,

switches, plates, and residential and commercial canisters and light fixtures. This classification includes all store and yard operations and the transfer of materials or inventory between related stores.

This classification excludes delivery drivers (other than those involved in (~~intrastore or intrayard transfers mentioned above~~)) transferring materials or inventory between related stores) who are to be reported separately in classification 1101; nondelivery activities conducted away from the store or yard; all service or repair work which is to be reported separately in the applicable classification whether it is conducted at the store or a customer's location; retail lighting fixture stores which demonstrate lights and fixtures to walk-in customers which are to be reported separately in classification 6406; and establishments engaged as wholesale lighting fixture and light bulb dealers who buy direct from manufacturers and who sell wholesale to retail lighting fixture stores or other such stores or institutions who are to be reported separately in classification 6407.

2009-02 Farm supply stores

Applies to establishments primarily engaged in operating farm supply or farm cooperative stores. These establishments carry a diverse line of farm feeds, products, and accessories. Typical items may include, but are not limited to, bulk quantities of mixed and unmixed feeds, seeds, oats and grains; bales of alfalfa or hay; bag feed for dogs, cats, chickens, birds, and other animals; bulk and bag fertilizers; pesticides and other garden items including peat moss and bark; animal grooming and care accessories; horse tack; specialty clothing; feed and water bins; metal fencing and grates for livestock; fence posts; barbed wire; pumps and piping; hardware and tools; automotive and tractor parts and accessories; and miscellaneous homeowner or yard equipment such as mowers, rototillers, and a variety of small tractors and accessories. This classification includes all store and yard operations and the transfer of materials or inventory between related stores.

This classification excludes delivery drivers (other than those involved in transferring materials or inventory between related stores) who are to be reported separately in classification 1101; all other nondelivery activities conducted away from the store or yard; all service or repair work which is to be reported separately in the applicable classification whether it is conducted at the store or a customer's location; and establishments primarily engaged in the sale, service and/or repair of farm machinery and implements which are to be reported separately in classification 6408.

Special note: Farm supply or farm cooperative stores may conduct additional operations which are to be reported separately. These activities may occur at a single location operated by the business or at separate locations and may include an oil or gas dealership which is to be reported separately in classification 3407; self-service gas or diesel stations which are to be reported separately in classification 3409; or agricultural fertilizer dealers (not including the manufacture of raw materials) which are to be reported separately in classification 2106.

2009-03 Hardware stores with lumber or building material supplies

Applies to establishments engaged in operating hardware stores that also sell building material supplies. For purposes of this classification the term "building materials" includes, but is not limited to, such items as wallboard, roofing, insulation, sheet metal, bricks, blocks, and windows, cabinets, doors, windows, sheet metal, roofing materials, concrete mix, boards, plywood, dimensional lumber (1x2, 2x4, 2x12, etc.), fence posts, railroad ties, siding, and wood paneling, as well as interior wood trim and molding. The merchandise carried will vary from store to store. For the purposes of this classification, hardware includes items such as, but not limited to, nails, nuts, bolts, screws, door fixtures, hinges, locks, power and hand tools, garden tools and accessories, electrical and plumbing supplies, and paint and automobile supplies. Depending on their location and customer base, hardware stores may also sell a limited selection of giftware, housewares, sporting goods, athletic equipment, games or similar items. Other services provided could include making keys, threading pipe, mixing paint, and the sale of fishing or hunting licenses. This classification includes all store and yard operations and the transfer of materials or inventory between related stores.

This classification excludes delivery drivers (other than those involved in transferring materials or inventory between related stores) who are to be reported separately in classification 1101; all other nondelivery activities conducted away from the store or yard operation; and all service or repair work which is to be reported separately in the applicable classification whether it is conducted at the store or a customer's location.

Special note: Hardware stores with lumber or building material supplies are smaller and offer a smaller product selection than warehouse centers which are reported separately in classification 2009-05. Establishments primarily engaged as building material dealers and lumber yards are to be reported separately in classification 2009-00.

2009-04 Pump, plumbing, irrigation, and pipe supply dealers

Applies to establishments engaged as pump, plumbing, irrigation, and pipe supply dealers. Merchandise includes, but is not limited to, pumps, above and below ground irrigation systems and supplies, pipe, fittings, elbows, adapters, connectors, hoses, valves, water softeners, filters, disposals, hot water tanks, heaters, sinks, tubs, toilets, and shower units. Merchandise is typically received in bulk quantity by the pallet, sling, crate or box. Merchandise is sold primarily to plumbing and irrigation contractors. This classification includes all store and yard operations, including showrooms or display areas and in-shop services such as the rebuilding or repair of pumps, and cutting and threading pipe. Also included in this classification is the transfer of product or material inventory between related stores.

This classification excludes delivery drivers (other than those involved in transferring materials or inventory between related stores) who are to be reported separately in classification 1101; all other nondelivery activities conducted away from the store or yard; and all service or repair work not described above which is to be reported separately in the

applicable classification whether it is conducted at the store or a customer's location.

2009-05 Warehouse centers

Applies to establishments engaged in operating warehouse centers with lumber or building material supplies. For purposes of this classification a warehouse center is an enclosed building or structure which serves to protect the majority of the items or products contained within the warehouse environment. Warehouse centers are larger than traditional hardware stores and offer a wider product selection. A dominant characteristic of a warehouse center is that excess stock is stacked up to 25 feet high throughout the building. The term "building materials" as used in this classification includes, but is not limited to, such items as wallboard, roofing, insulation, sheet metal, bricks, blocks, and windows. Merchandise carried by warehouse centers may include hardware, variety items, building materials, as well as wood or lumber. Hardware items may include such items as nails, nuts, bolts, door fixtures, hinges, locks, hand or power tools, garden tools, garden supplies and accessories, lawn mowers, electrical supplies, plumbing supplies, paint, and auto supplies. Variety items may include giftware, housewares, sporting goods, athletic equipment, games, rugs, and lawn chairs. Wood and lumber products may include beams, planks, boards, plywood, dimensional lumber (1x2, 2x4, 2x12, etc.), fence posts, railroad ties, shakes and shingles, siding, and wood paneling. This classification includes all store and yard operations and the transfer of materials or inventory between related stores.

This classification excludes delivery drivers (other than those involved in transferring materials or inventory between related stores) who are to be reported separately in classification 1101; all other nondelivery activities conducted away from the store or yard; and all service or repair work which is to be reported separately in the applicable classification whether it is conducted at the store or a customer's location.

Special note: Hardware stores with lumber or building material supplies are smaller and offer a smaller product selection than warehouse centers and are reported separately in classification 2009-03. Establishments primarily engaged as building material dealers and lumber yards are to be reported separately in classification 2009-00.

2009-06 HVAC supply dealers

Applies to establishments engaged as heating, ventilation, and air conditioning product and supply dealers. Merchandise includes, but is not limited to, furnace units, gas fireplaces, air conditioning and heater units, hot water tanks, thermostats, vents, venting duct and pipe, vent collars and reels, registers, fittings, adapters, galvanized pipe, insulation wrap, preformed or bent duct portions, flat sheets of metal, concrete pads and gas logs. Merchandise is typically received in bulk quantity by the pallet, sling, crate or box. Merchandise is primarily sold to heating and ventilation contractors, furnace contractors and sheet metal contractors. This classification includes all store and yard operations and the transfer of product or material inventory between related stores.

This classification excludes sheet metal fabrication shops which are to be reported separately in classification 3404; delivery drivers (other than those involved in (~~intra-store or intrayard transfers~~)) transferring materials or inventory between related stores) who are to be reported separately in classification 1101; all other nondelivery activities conducted away from the store or yard; and all service or repair work which is to be reported separately in the applicable classification whether it is conducted at the store or a customer's location.

AMENDATORY SECTION (Amending WSR 13-11-128, filed 5/21/13, effective 7/1/13)

WAC 296-17A-4502 Classification 4502.

Radio, television, recording, video production, and cable service providers; all other employees

Classification 4502 is limited to employees who do **not** install, test, or repair electrical wiring, cable lines, antennas, satellite dishes, or hook-up subscribers, unless the work is performed inside buildings on their employers' premises. Occupations reported in this classification include clerical office and sales workers, but may also include:

- Account managers;
- Administrative staff;
- Advertising, marketing, and promotions staff;
- Animation production staff;
- Announcers;
- Art, design, wardrobe staff;
- Billing, customer service staff;
- Camera operators, videographers, photographers;
- Commercial productions staff;
- Control room engineers and operators;
- Facility operations, maintenance staff;
- Film and video editors;
- Meteorologists;
- Music DJs;
- Musicians, performers, actors, and personalities;
- Producers, directors, reporters;
- Sales staff;
- Set construction staff, lighting technicians;
- Studio engineers, studio technicians;
- Stunts staff.

This classification excludes:

- Field employees for cable television or communication providers installing or maintaining extension lines and subscriber hook-ups, who are reported separately in classification 1305;
- Technical staff employed by a radio or television station, recording studio, or video production company installing, testing, or repairing electrical wires, cable, antennas, satellite dishes, or any other equipment outside their employers' studios, offices, or facilities;
- Large-scale theatrical/movie productions reported separately in classification 6608;
- Videotaping by photography studios reported separately in classification 6506; and
- Entertainers, musicians, recording engineers, etc., who are not employees of the broadcasting or recording company.

Special note: Care should be exercised when assigning this classification as the entertainers or musicians may be exempt from coverage as specified in RCW 51.12.020(9).

Businesses may be assigned either classification 4501 or 1305 in addition to classification 4502; however, employers must maintain records that permit the department to confirm hours worked in each classification. If employers do not or cannot maintain these records, they must report all hours in question in the classification with the higher rate.

For administrative purposes classification 4502 is divided into the following subclassification(s):

4502-00 Radio stations, N.O.C.

4502-01 Television stations and video production

4502-02 Recording studios

4502-03 Cable companies, including homeowners' associations or cooperatives offering a central cable system

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4504 Classification 4504.

4504-00 (~~Theatres~~) Theaters

Applies to establishments engaged in the operation of indoor motion picture (~~theatres~~) theaters, drive-in (~~theatres~~) theaters, and live production (~~theatres~~) theaters. This classification includes, but is not limited to, managers, stage hands, box office employees, projectionists, ushers, snack bar employees, parking lot attendants, security guards, sound system and lighting engineers, set builders, clerical office employees, and sales personnel. This classification includes the organization and management of nontheatrical events on (~~theatre-owned~~) theater-owned property, such as a "swap meet" on the grounds of an outdoor (~~theatre~~) theater, when done by employees of an employer having operations subject to this classification.

This classification excludes performers in live (~~theatre~~) theater such as, but not limited to, actors, entertainers, and musicians who are to be reported separately in 6605 or 6620 as applicable; nontheater employees engaged in setting up stage lighting and sound systems who are to be reported separately in classification 0601 or 0608 as applicable; and non-theater employees engaged in building and setting up props and sets who are to be reported separately in classification 0516.

Special note: Theatrical productions often involve independent contractors. The independent contractor tests found in RCW 51.08.180 and 51.08.195 should be applied when reviewing the status of individuals such as, but not limited to, the playwright, composer, set designer, costume designer, lighting and sound designers, and videographer. Care should be exercised when assigning this classification as the entertainers or musicians may be exempt from coverage as specified in RCW 51.12.020(9).

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-6305 Classification 6305.

6305-00 Stores: Clothing - Retail

Applies to establishments engaged in the retail sale of new or used clothing. Merchandise varies, but generally includes shoes, jewelry, giftware, or accessories in addition to wearing apparel. Some establishments will specialize in certain types of clothing such as, but not limited to, athletic wear, T-shirts, coats, socks, or vintage clothing. This classification also applies to stores that rent clothing such as, but not limited to, costumes, tuxedos, or wedding apparel. This classification includes all store employees including specialty services such as alterations personnel and delivery drivers.

This classification is distinguishable from ~~((department stores in classification 6304 or))~~ retail variety stores in classification 6406 in the limited number of specialized departments and the variety of nonclothing or giftware merchandise for sale.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6305-01 Stores: Dry goods - Retail

Applies to establishments engaged in the retail sale of a variety of new or used dry goods. For purposes of this classification dry goods include, but are not limited to, fabric, embroideries, veiling, laces, textile trimmings, curtains, draperies, blankets, bedspreads, sheets, pillowcases, tablecloths, napkins, and towels. This classification includes all store employees.

This classification is distinguishable from retail fabric stores in classification 6406 in that dry good stores will carry primarily finished piece goods for sale while fabric stores will carry primarily fabric, sewing notions and a limited supply of finished goods.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

**6305-02 Stores: Shoe - Retail
Shoe shine stands**

Applies to establishments engaged in the retail sale of new or used shoes. Establishments may sell a full line of shoes or they may specialize in certain types such as athletic shoes, safety shoes, work boots, women's, men's, or children's shoes. It is customary for shoe stores to sell some related products such as, but not limited to, handbags, socks, belts, or shoe care products. This classification includes all store employees. This classification also applies to shoe shine stands.

This classification excludes establishments engaged in the manufacture or repair of shoes or boots which are to be reported separately in classification 3802.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6305-04 Stores: Western wear, including tack - Retail

Applies to establishments engaged in the retail sale of new or used western style clothing. Merchandise varies, but may also include western style shoes and boots, jewelry, giftware, or horse tack. This classification includes all store employees including specialty services such as alterations personnel and delivery drivers.

~~((This classification is distinguishable from department stores in classification 6304 in that classification 6305 businesses are not comprised of specialized departments and do not carry furniture, housewares, and similar items required as part of the department store classification.))~~

This classification excludes establishments engaged exclusively in the sale of horse tack and related animal grooming and care products which are to be reported separately in classification 2009 "farm supply stores."

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6305-05 Stores: Wig or hat - Retail

Applies to establishments engaged in the retail sale of new or used wigs or hats. Merchandise varies, but generally these establishments will also sell related hair care products, hat pins, brooches or similar accessory items. This classification includes all store employees.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6305-06 Custom dressmaking, tailoring, alterations

Applies to establishments who provide custom dressmaking, tailoring, or alterations services to others. Activities include the showing of sketches and fabrics, modeling samples, taking individual orders and measurements, cutting, basting and fitting. Employees use sewing machines, but much of the work is hand sewing, steaming or pressing. Materials include fabrics, buttons, zippers, and sewing notions. Tools and machinery include, but are not limited to, scissors, steam presses and irons, dress forms, and sewing machines with attachments to perform a variety of sewing functions. Custom dressmakers and tailors may sell fabrics and sewing notions, or limited supply ready-made apparel. The sale of these items by establishments engaged in custom dressmaking or tailoring is included in this classification. This classification is distinguishable from clothing manufacturers in classification 3802 in that establishments subject to classification 6305 make custom clothing for individuals rather than making garments on a quantity basis. However, customers of a 6305 business may order several items of a kind such as for a wedding party or small theater group.

This classification excludes the mass production of wearing apparel which is to be reported separately in classification 3802.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

AMENDATORY SECTION (Amending WSR 17-05-095, filed 2/14/17, effective 1/1/18)

WAC 296-17A-6406 Classification 6406. Retail store operations primarily providing any combination of the following merchandise, supplies, or services:

- Architect and surveyor supplies;
- Athletic outfits, team uniforms and other specialty clothing;
- Blenders, food processors, juicers, microwaves, toasters, portable ovens, and other countertop appliances;
- Candy stores;
- Cleaning supplies;
- Copy services;
- Desktop computers;
- Game arcades;
- Hobby and craft supplies;
- Inventory services;
- Luggage;
- Mail and safety deposit box services;
- Office and school supplies;
- Office equipment, including:
 - Copy machines;
 - Fax machines;
 - Printers.
- Pets (other than cats and dogs) and pet supplies;
- Picture frames;
- Pots, pans, bowls, dishes, eating utensils, and all other kitchenware products;
- Prescription and nonprescription drugs;
- Souvenirs, knickknacks, candles, ornaments, and novelties;
- Sporting goods, including:
 - All types of sports equipment;
 - Archery supplies;
 - Bicycles and accessories;
 - Camping supplies;
 - Children's pools;
 - Fishing gear;
 - Guns, ammunition, and accessories;
 - Knives;
 - Motorized toy vehicles meant to carry a child.
 - Stained glass supplies;
 - Unfinished fabric, thread, and yarn, and other sewing supplies;
- Store demonstrator services.

Notes: Stores selling a combination of merchandise and/or services found in store classifications **6406** and **6411** are classified **6406**. Stores primarily selling merchandise included in classifications **6406** and **6411**, but also selling groceries and/or merchandise normally found in classification **6309**, are classified **6406**. Stores primarily selling merchandise included in classification **6406**, but also selling goods described by a store classification rated higher than classification **6309**, are classified **6309**.

Classification 6406 includes:

- Assembling merchandise from prepackaged kits for display and/or sale;
- Cashiering;
- Classes for customers;

- Cleaning and maintenance of store, storage areas, and associated business offices;
- Inventory work by store employees;
- Parts and batteries for products included in classification **6406**;
- Packaging, addressing, and mailing articles for shipment;
- Receiving and returning merchandise at store's loading ramp;
- Renting items normally sold in classification **6406**;
- Sales work inside store;
- Store security and surveillance;
- Stocking.

Classification 6406 excludes:

- Workers assembling products for sale, when these products are not purchased and sold as a kit. Assembling goods from component parts that do not come as a kit, is reported separately in the applicable manufacturing classification;
- Delivery drivers who are to be reported separately in classification **1101**;
- Door to door sales, reported separately in subclassification **6309-22**;
- Stores primarily selling merchandise described by a higher rated store classification, which are assigned the classification that best represents their inventory;
- Stores primarily selling merchandise included in classification **6406**, but also merchandise described by a store classification higher rated than **6309**, such as:
 - Large appliances;
 - Automobiles or boats;
 - Antique variety;
 - Furniture;
 - Tires;
 - Motorized exercise equipment or machines;
 - Meat cutting/packaging;
 - Pianos and/or organs;
 - Large entertainment systems and televisions;
 - Secondhand or used variety store type merchandise.

Note: Stores primarily selling merchandise included in classification **6406**, but also selling goods described by a classification rated higher than classification **6309** are classified **6309**.

- Stand-alone distribution centers or warehouses which are reported in classification **6407**;
- Any repair or installation work;
- Workers installing, servicing, and/or stocking vending equipment, which are reported separately in **0606**;
- Coffee, snack, lunch counters or any on-site food preparation which are reported separately in classification **3905**;
- Stores with wholesale operations, reported in classification **6407**.

High volume warehouse and distribution facilities which are reported separately in classification **6407**.

For administrative purposes, classification **6406** is divided into the following subclassification(s):

6406-00 Retail sales and inventory services, N.O.C.

This subclassification differs from **6406-17** in that the stores in ~~((this subclassification will be specialized))~~ **6406-00** specialize and have inventories around themes such as "pet supplies," "sporting goods," or "gifts."

Excludes:

- Stores selling cats or dogs, reported in classification **7308**;
- Stores that *specialize* in selling bicycles or guns, which are reported in classification **6309**;
- Pet grooming, reported separately in classification **7308**;
- Pet food stores, which are reported in classification **6403**;
- Installation, removal, or repair of arcade equipment, reported separately in classification **0606**.

6406-11 Desktop computers, school and office supplies and equipment stores

Excludes:

- Worker hours repairing computers and other office equipment, which is to be reported separately in classification **4107**;
- Stores selling office furniture, which are reported separately in classification **6306**.

6406-12 Crafts, hobbies, fabric, yarn, and sewing supplies stores

Excludes:

- Worker hours for custom framing, which are reported separately in subclassification **6309-20**;
- Stores primarily selling sewing machines and vacuum cleaners, which are reported in **6309-19**.

6406-16 Pharmacies, supplements and drug stores

Excludes:

Sale and/or rental of hospital beds, motorized wheel chairs or mobility aids, and other patient appliances, which are reported separately in classification **6306**.

6406-17 Variety and general stores

This subclassification differs from **6406-00** in that the stores in ~~((this subclassification))~~ **6406-17** tend to be larger and less specialized.

6406-18 Private mail, safe deposit box, and copy services**6406-23 Candy stores**

Excludes:

- Manufacturing and retail sales of candy or confection at store site, which is classified in **3905**;
- Manufacturing candy or confection away from the store site, which is reported separately in classification **3906**.

6406-29 Toy stores

Excludes:

Small specialty toy stores with inventory limited to smaller items, such as playing cards, puzzles, games, blocks, small dolls, and other hand toys, which is classified **6411**.

6406-40 Retail product demonstrator services

This special exception classification applies only to manufacturers, wholesalers, and businesses specializing in providing product demonstrators and their services to others.

Workers reported in this classification can have no duties during their work shift other than those permitted for product demonstrators.

The classification includes:

- Set up and break down of a demonstration display space;
 - Providing samples without charge;
 - Use of kitchen appliances and utensils to prepare food samples;
 - Use of nonpowered hand tools and battery-powered screwdrivers to assemble and disassemble displays.
- This classification excludes:
- Stocking shelves;
 - Selling;
 - Setting up product displays intended to remain after the product demonstration;
 - Delivery;
 - Demonstrating machinery or equipment.

Product demonstrators employed by a retail store are to be reported under the store's basic classification; product demonstrators employed by a temporary help service are to be reported in classification **7106**.

AMENDATORY SECTION (Amending WSR 17-05-095, filed 2/14/17, effective 1/1/18)

WAC 296-17A-6407 Classification 6407.**6407-00 Wholesale stores, N.O.C. - Including combined wholesale and retail store operations**

Applies to establishments engaged in the wholesale, or combined wholesale and retail sales of merchandise that is not covered by another classification (N.O.C.). Establishments subject to classification 6407 usually own the merchandise they sell, but may also be marketing goods on consignment, in which case classification 6407 still applies because the exposure and processes are the same. This classification is primarily the wholesale counterpart (supplier) for establishments assigned to retail store classification ~~((6304,))~~ 6305, 6406, and 6411.

Classification 6407 also applies to retail stores with high volume warehouse and distribution facilities without the normal exposures associated with a retail store.

Work contemplated by classification 6407 includes, but is not limited to, maintaining warehouse inventories, sorting and grading goods, and breaking down bulk quantities to repack into smaller lots. Equipment typically used includes, but is not limited to:

- Balers to bind merchandise into bundles;
- Strapping equipment to secure palletized goods;
- Forklifts; and
- Hand tools.

This classification excludes:

- Delivery which is to be reported separately in classification 1101;
- Large high volume sales operations where retail customers select and carry out the goods they purchase, which are reported in the classification applicable to the merchandise sold.

Special notes: When assigning classification 6407, care must be exercised to look beyond the words "wholesale" or "retail." The manufacturer of a product will also "wholesale" their merchandise (or a combination of their own merchandise and finished products bought from other manufacturers) to a customer. These sales are an integral part of the manufacturing/marketing process and is an inclusion in the manufacturing classification. Establishments that buy goods, such as clothing or cloth goods, in wholesale quantities, then screen print or embroider them for resale are performing manufacturing operations and are to be reported separately in the appropriate manufacturing classification.

Warehouse operations in classification 2102, with the exception of grocery dealers, do not own the product they are warehousing and are not in the business of selling the goods they store. Businesses in classification 6407 may operate a warehouse, but only as an integral part of the wholesaling/distribution process, which is included in classification 6407.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-6411 Classification 6411. Retail store operations limited to providing any combination of the following merchandise, supplies, or services:

- All types of phones;
- Beads;
- Books, newspapers, magazines, and comic books;
- Cameras;
- Cards (greeting, post, and sports);
- Cosmetics and fragrances;
- Laptops, electronic notebooks and pads, and other small electronic devices;
- Musical instruments (string, wood, brass, wind, and percussion);
- Photography and darkroom supplies;
- Records, music discs, tapes, videos, video games, and software disks;
- Small or portable entertainment players (or parts of player), radios, for homes, offices, or automobiles;
- Smoking accessories and tobacco products;
- Vaporizers and e-liquids;
- Other smaller items, such as playing cards, cups, calendars, puzzles, games, costume jewelry, cosmetics, pencils, pens, notebooks, etc.

Note: Stores in classification 6411 may also carry inventory listed in the scopes language of lower rated store risk classifications, along with the goods listed below, as long as the majority of the merchandise is described by the above list.

Classification 6411 includes:

- Cashiering;
- Cleaning and maintenance of store, storage areas, and associated business offices when performed by store employees;
- Inventory work by store employees;
- Sales of already-prepared snacks, and beverages (for off-site consumption), and/or promotional clothing;
- Parts and batteries for products included in classification 6411;

- Receiving and returning merchandise at store's loading area;
- Renting items normally sold in classification 6411;
- Sales work inside store;
- Store security and surveillance;
- Stocking.

Classification 6411 excludes:

- Stores selling merchandise described by a higher rated store classification;
- Delivery drivers who are reported separately in classification 1101;
- Door to door sales, which are reported separately in subclassification 6309-22;
- Stores using pallet jacks, fork lifts, conveyors, or other mechanized means of moving merchandise into and within store premises, which are classified in 6406 when merchandise is described by classification 6411 and/or classification 6406;
- Stand-alone distribution centers or warehouses which are to be reported separately in classification 6407;
- Repair or installation work, which must be reported separately;
- Sales of pets; see classifications 6406 and 7308;
- Working at coffee stands, lunch counters, or any on-site food preparation or manufacturing of candy, where employees' hours are to be reported separately in classification 3905;
- Employees doing custom framing; see classifications 6406 and 6309;
- Product demonstration services which are to be reported in subclassification 6406-40;
- Businesses providing inventory services which are to be reported in subclassification 6406-00;
- Wholesales, reported in classification 6407;
- High volume warehouse and distribution facilities which are reported separately in classification 6407.

For administrative purposes, classification 6411 is divided into the following retail store subclassification(s):

6411-00 Stores meeting the criteria for classification 6411, but not specifically described in any other subclassification. N.O.C.

6411-14 Wind, string, brass, and percussion musical instruments

Includes hand held keyboards and music instruction.

Excludes:

- Stores selling pianos and organs, see classifications 6406, 6309, and 6306;
- Repair of instruments, which is reported separately in classification 2906 or 3602; (if more than one is applicable, assign only the highest rated classification for all repair).

6411-19 Coins, stamps, rare metals, and collectible cards
6411-20 Books, videos, electronic games, music, newspapers, magazines, and comic books

Excludes establishments with coin or token arcades, to be reported in subclassification 6406-00.

6411-24 Tobacco and marijuana products, vaporizers and liquids, and smoking accessories

Excludes:

- Retail stores primarily selling marijuana infused grocery items or marijuana, see classification **6403**;
- Retail bakeries selling a variety of baked goods infused with marijuana; see subclassification **3901-00**.

6411-25 Phones, cameras, electronic tablets, laptops, and notebooks, GPS displays, small stereo components and other small portable electronic devices, N.O.C.

Includes stores and kiosks selling and/or arranging DSL, cable, or dish services for phones, computers, televisions and other devices.

Excludes:

- Stores selling office or school supplies, reported in subclassification **6406-11**;
- Stores selling furniture or furniture kits; see classification **6406**, **6309**, or **6306**;
- Stores providing photo development and printing, see classification **6406** or **6506**;
- Workers performing repair work, which is to be reported separately in classification **3602**.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

WAC 296-17A-6511 Classification 6511.**Chore services/home care assistants****Applies to:**

Entities providing chore services/home care assistants to private individuals.

Chore services performed by the chore workers/home care assistants include, but are not limited to:

- General household chores;
- Meal planning and preparation;
- Shopping and errands, either with or without the client;
- Personal care, such as bathing, body care, dressing, and help with ambulating;
- Companionship.

Note: Some common terms to describe these types of services include supported living, tenant support, and intensive tenant support services.

Also included in this classification are:

- Supervising visits between children and parents, including transporting the child;
- Packing up senior homes;
- Organizing homes prior to customers putting a home on the market;
- Organizing homes prior to customers having an estate auction;
- Pet sitting;
- House sitting.

Excluded activities in this classification:

- Firms involved in organizing homes and also conducting estate auctions (report in 6603).
- Social workers and dieticians employed by home health care service establishments (report in 6303-21). Workers in classification 6303-21 are teaching people living with physical or developmental disabilities living in their own

home to manage daily living skills such as caring for themselves, dressing, cooking, etc. Workers in classification 6511 are performing this work as a service to individuals.

- Individuals working under a welfare special works training program (report in classification 6505).
- Residential cleaning or janitorial services (report in classification 6602).
- Skilled or semi-skilled nursing care (report in classification 6110).
- Home health care providers covered under the (~~Washington state home care referral registry~~) consumer directed employer program (report in classification 6512).
- Household furnishings moving and storage (report in classification 6907).
- Staging services (report in classification 0607).
- Any construction related work. Example: If a business builds shelving as part of organizing homeowner's personal belongings, this employer would not be eligible to report in classification 6511.

For administrative purposes, classification **6511** is divided into the following subclassification(s):

6511-00 Chore services/home care assistants**6511-20 Community action organizations - Chore services/home care assistants**

Applies to organizations providing two or more services to support the local community and people in need. See subclassifications 1501-20, 4904-20, and 5308-20 for other community action organization classifications. If the entity provides only chore services, then 6511-00 applies.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-6512 Classification 6512.**6512-00 Home care services/((~~home care referral registry (HCRR)~~) consumer directed employer program**

Applies to persons who are employed by people who are ill, people with disabilities, or vulnerable individuals to provide home care services that enable those individuals to remain in their own homes. Services provided may include, but are not limited to:

- Household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; and delegated tasks of nursing under RCW 18.79.260 (3)(e);
- Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care.

Special note: Premiums are paid by the (~~home care referral registry (HCRR)~~) consumer directed employer on behalf of the persons who provide the home care services.

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

WAC 296-17A-6603 Classification 6603.**6603-00 Auction sales: Industrial or commercial equipment or machinery**

Applies to establishments engaged in auction sales of industrial or commercial plant equipment or machinery such

as, but not limited to, tractors, farm implements, backhoes, cranes, booms, asphalt pavers, trailers, conveyors, stone crushers, lifts, bulldozers, forklifts, dump trucks, and logging equipment. Auctions are held at the auctioneer's permanent location or at the client's place of business. Work contemplated by this classification includes, but is not limited to, picking up merchandise from clients, advertising, preparing catalog listings of items for auction, preparing the auction site, demonstrating equipment at preauction inspections, estimating values, ensuring that there is title for the goods, numbering and tagging items into lots, conducting the auction, and receiving payment from buyers and paying the consignor. This classification includes clerical office and outside sales personnel, snack bars, concession stands, and lunch counters when operated by employees of the auction company.

This classification also applies to auctions performed online via the internet.

This classification excludes establishments engaged as equipment or machinery dealers which are to be reported separately as applicable.

6603-01 Auction or estate sales: Antiques or general household furnishings

Applies to establishments engaged in auction or estate sales of collectibles and antiques or of general household furnishings such as, but not limited to, furniture, pictures, vases, dishes, musical instruments, books, clothing, or lawn and garden furniture, ornaments, tools and equipment. Auctions are held at the auctioneer's permanent location or at the client's location. Work contemplated by this classification includes, but is not limited to, picking up merchandise from clients, advertising, preparing catalog listings of items for auction, preparing the auction site, opening boxes with razor blades and knives, moving merchandise with the use of hand carts, estimating values, ensuring that there is title for the goods, numbering and tagging items into lots, conducting the auction, and receiving payment from buyers and paying the consignor. This classification includes clerical office and outside sales personnel, snack bars, concession stands, and lunch counters when operated by employees of the auction company.

This classification also applies to auctions performed online via the internet.

This classification excludes establishments engaged as antique variety stores which are to be reported separately in classification ((6304)) 6309.

6603-02 Auction sales: Specialty merchandise, N.O.C.

Applies to establishments engaged in auction sales of specialty merchandise such as, but not limited to, fine art, furs, collectibles, cars and trucks. Auctions are held at the auctioneer's permanent location or at the client's place of business. Depending on the value of items, these types of auctions may operate on a wholesale only basis, or for dealers or qualified buyers only. Work contemplated by this classification includes, but is not limited to, picking up merchandise from clients, advertising, preparing catalog listings of items for auction, preparing the auction site, opening boxes with razor blades and knives, moving merchandise with the use of hand carts, estimating values, ensuring that there is title for

the goods, numbering and tagging items into "lots," conducting the auction, and receiving payment from buyers and paying the consignor. This classification includes clerical office and outside sales personnel, snack bars, concession stands, and lunch counters when operated by employees of the auction company. This classification excludes livestock auctions, which are to be reported in classification 4304.

This classification also applies to auctions performed online via the internet.

This classification excludes establishments engaged as stores or dealers which are to be reported separately as applicable.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6605 Classification 6605.

6605-00 Actors and performers, N.O.C.

Applies to establishments or individuals providing performances that are not of a physical or strenuous nature, and who are not specifically covered by another classification (N.O.C.). For purposes of this classification, entertainment that is not physical or strenuous includes, but is not limited to, comedians, magicians or clowns at parties, or nightclubs. Physical or strenuous activities which are not covered by this classification include, but are not limited to, ballet, dancing, skating, gymnastics, or performing stunts.

This classification excludes actors, players, performers, entertainers, or musicians whose routines or performances are of a physical or strenuous nature who are to be reported separately in classification 6620; players, entertainers or musicians N.O.C., hired by ((theatres)) theaters, who perform nonstrenuous routines or performances who are to be reported separately in classification 6605-03; musicians performing nonstrenuous routines or performances at dance halls who are to be reported separately in classification 6605-04; musicians, N.O.C. performing nonstrenuous routines or performances who are to be reported separately in classification 6605-01; entertainers engaged in television or radio company operations who are to be reported separately in classification 4502; and entertainers engaged in motion picture production company operations who are to be reported separately in classification 6608.

Special note: Classifications 6620 and 6605 may be assigned to a single establishment provided the establishment maintains accurate records which distinguishes actors and performers whose routines are of a physical and strenuous nature, from the routines which are not physical or strenuous. Care should be exercised when assigning this classification as the actors and performers may be exempt from coverage as specified in RCW 51.12.020(9).

6605-01 Musicians, N.O.C.

Applies to establishments or individuals engaged as musicians whose entertainment is not of a physical or strenuous nature, and who are not specifically covered by another classification (N.O.C.). For purposes of this classification, entertainment that is not physical or strenuous includes disk jockeys or members of a musical band playing at nightclubs, concerts, or other events, as well as members of the enter-

tainer's road crew who set up or disassemble musical equipment or sound systems. Physical or strenuous activities which are not covered by this classification include, but are not limited to, ballet, dancing, skating, gymnastics or performing stunts.

This classification excludes actors, players, performers, entertainers or musicians whose routines or performances are of a physical or strenuous nature who are to be reported separately in classification 6620; players, entertainers or musicians hired by (~~(theatres)~~) theaters performing nonstrenuous routines or performances who are to be reported separately in classification 6605-03; actors or performers performing nonstrenuous routines or performances who are to be reported separately in classification 6605-00; musicians performing nonstrenuous routines or performances at dance halls who are to be reported separately in classification 6605-04; entertainers engaged in television or radio company operations who are to be reported separately in classification 4502 and entertainers engaged in motion picture production company operations who are to be reported separately in classification 6608.

Special note: Classifications 6620 and 6605 may be assigned to a single establishment provided the establishment maintains accurate records which distinguishes musicians whose routines are of a physical and strenuous nature, from the routines which are not physical or strenuous. Care should be exercised when assigning this classification as the musicians may be exempt from coverage as specified in RCW 51.12.020(9).

6605-03 Players, entertainers and musicians hired by a (~~(theatre)~~) theater, N.O.C.

Applies to establishments or individuals engaged as players, entertainers, and musicians who are hired by (~~(theatres)~~) theaters to provide entertainment of a nonphysical or strenuous nature, and who are not covered by another classification (N.O.C.). For purposes of this classification, entertainment that is not physical or strenuous includes players, entertainers, and musicians in theatrical productions such as plays, programs, or operas. Physical or strenuous activities which are not covered by this classification include, but are not limited to, ballet, dancing, skating, gymnastics, or performing stunts.

This classification excludes actors, players, performers, entertainers or musicians whose routines or performances are of a physical or strenuous nature who are to be reported separately in classification 6620; actors and performers performing nonstrenuous routines or performances who are to be reported separately in classification 6605-00; musicians, N.O.C. performing nonstrenuous routines or performances who are to be reported separately in classification 6605-01; entertainers engaged in television or radio company operations who are to be reported separately in classification 4502; and entertainers engaged in motion picture production company operations who are to be reported separately in classification 6608.

Special note: Classifications 6620 and 6605 may be assigned to a single establishment provided the establishment maintains accurate records which distinguishes players, entertainers and musicians whose routines are of a physical and strenuous nature, from the routines which are not physi-

cal or strenuous. Care should be exercised when assigning this classification as the players, entertainers and musicians hired by a (~~(theatre)~~) theater may be exempt from coverage as specified in RCW 51.12.020(9).

6605-04 Dance halls, N.O.C.

Applies to establishments engaged in operating dance halls that are not covered by another classification (N.O.C.). Establishments contemplated by this classification may provide only the dance hall facility, or may also provide disc jockey services or live musicians, singers, and/or dancers. Some charge a cover charge; some will allow customers to bring their own beverages and/or snacks. This classification applies to all employees including, but not limited to, bouncers, security personnel, attendants, and food and beverage servers.

This classification excludes entertainers or musicians whose routines or performances are of a physical or strenuous nature who are to be reported separately in classification 6620; and lounges or restaurants that provide entertainment for customers which are to be reported separately in classification 3905.

Special note: Care should be exercised when assigning this classification as the entertainers or musicians may be exempt from coverage as specified in RCW 51.12.020(9).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6608 Classification 6608.

6608-00 Motion picture production

Applies to establishments engaged in the production of motion pictures. Elaborate sets are often constructed at the production sites and filmed with cameras mounted on large booms. This classification includes all employment such as, but not limited to, staff who design and construct the sets, actors and entertainers, stunt personnel, camera and lighting personnel, musicians, writers, costume designers, make-up artists, film editing, directors, producers, sales personnel, and clerical office employees.

This classification excludes video taping or production work conducted in a studio or on location for a television broadcasting company which is to be reported separately in classification 4502.

Special note: Care should be exercised when assigning this classification as the entertainers or musicians may be exempt from coverage as specified in RCW 51.12.020(9).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4903 Classification 4903.

4903-06 Marine appraising

Applies to establishments engaged in providing marine appraisal services. Type of property appraised includes, but is not limited to, boats, yachts, marinas, wharves, and dry-docks. This service may be provided to a prospective buyer or to insurance companies for determining the value of a piece of property or for evaluating damage.

This classification excludes maritime appraisers who provide their service exclusively to insurance companies who are to be reported separately in classification 4903-09, and nonmaritime building appraisers who are to be reported separately in the classification applicable to the employer's business.

4903-07 Boiler inspecting, N.O.C.

Applies to establishments engaged in providing boiler inspection services not covered by another classification (N.O.C.). These establishments inspect pressurized vessels, including air tanks and liquefied gas tanks, in addition to boilers. The inspections involve determining if a vessel conforms to safety standards in regard to their design, fabrication, installation, repair and operation. The inspections may take place at a manufacturer's plant or where the vessel has been installed. These inspections will generally be conducted at the request of a manufacturer or an insurance company. Activities of the inspectors include, but are not limited to, inspecting the safety devices and welding, performing tests to verify the condition, calculating allowable limits of pressure, recommending changes to correct unsafe conditions, and investigating accidents involving pressurized vessels.

This classification excludes boiler inspectors employed by a state agency or municipality who are to be reported separately in the appropriate state agency or municipality classification; boiler manufacturing, repair or installation which is to be reported separately in the appropriate manufacturing, repair or installation classification; inspectors of the manufacturing company who are to be reported separately in the classification applicable to the employer's business; and establishments who provide inspections exclusively for insurance companies who are to be reported separately in classification 4903-09.

4903-08 Elevator inspecting

Applies to establishments engaged in providing elevator inspection services. Types of devices inspected include, but are not limited to, elevators, escalators, ski lifts, amusement rides and moving sidewalks. The inspections involve determining if the device conforms to safety standards in connection with their design, fabrication, installation, repair and operation. The inspections may take place at the manufacturing plant or where the conveyance device has been installed. These inspections are usually conducted at the request of a manufacturer or an insurance company. Activities of the inspectors include, but are not limited to, reviewing the design, inspecting the mechanical and electrical features, inspecting the cables and guide rails, conducting time tests for speed, computing allowable load, observing running and drop tests to determine if brakes and safety devices are working properly, recommending changes to correct unsafe conditions, and investigating accidents involving conveyance devices.

This classification excludes elevator inspectors employed by a state agency or municipality who are to be reported separately in the appropriate state agency or municipality classification; repair or service to the elevator or conveyance device which is to be reported separately in the appropriate repair classification assigned to the type of conveyance device; inspectors employed by the manufacturer

who are to be reported in the appropriate manufacturing classification; and establishments who provide inspection exclusively for insurance companies who are to be reported separately in classification 4903-09.

4903-09 Inspection for insurance or valuation

Applies to establishments engaged in providing inspection and valuation services exclusively for insurance companies. These establishments inspect damaged goods or property for loss valuation or to determine the value of an article or property the insurance company is underwriting. The property inspected includes, but is not limited to, personal property, real estate, and manufactured goods.

This classification excludes inspectors employed by a state agency or municipality who are to be reported separately in the appropriate state agency or municipality classification and boiler, elevator, or building inspectors or maritime appraisers who do not provide ~~((the))~~ service to insurance companies exclusively who are to be reported separately in classifications 4903-07, 4903-08, 4903-10 or 4903-06 as applicable and employees of insurance companies who are to be reported separately in the applicable classifications; and independent appraisal businesses not working exclusively for insurance companies which are to be reported in classification 6303.

4903-10 Inspection of buildings

Applies to establishments engaged in providing building inspection services. These establishments inspect all types of buildings including new or existing residential, commercial, industrial, multifamily, and temporary structures. The inspections may be provided for prospective buyers to determine the condition of the building, for contractors to assist in interpreting legal requirements and recommending procedures for compliance, or for insurance companies in assessing damages. Activities of the inspectors include, but are not limited to, inspecting all components of a building for structural soundness, dry rot, pest problems, energy efficiency, and compliance with grading, zoning and safety laws.

This classification excludes building inspectors employed by a state agency or municipality who are to be reported separately in the appropriate state agency or municipality classification and establishments who provide inspections exclusively for insurance companies who are to be reported separately in classification 4903-09.

AMENDATORY SECTION (Amending WSR 16-14-085, filed 7/5/16, effective 1/1/17)

WAC 296-17A-6303 Classification 6303.

Sales personnel with outside duties, messengers, insurance producers or surplus line brokers, social workers and dieticians employed by a home health care service

Although referenced as sales personnel, this classification also applies to others with similar type activities. While some duties may be performed in a business office, the work is often conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "outside sales."

Classification **6303** is a standard exception classification, as described in WAC 296-17-31018 Exception classifi-

cations, with restrictions on both the type of work and where the work can take place. If any of a worker's duties are excluded from **6303** because of restrictions described in this rule, then none of the worker's hours may be reported in classification **6303**.

Special note: Care must be taken to:

- Look beyond job titles such as salesperson, social worker, or messenger. Job titles do not ensure the work satisfies the restrictions for classification **6303**;
- Ensure standard exceptions are permitted - Some basic classifications include sales work;
- Ensure workers assigned classification **6303** perform no work other than what is allowed by this classification or that permitted in WAC 296-17-4904.

Classification **6303** includes all activities allowed by WAC 296-17A-4904 (office workers) as well as:

- Meeting with customers off premises;
- Showing and demonstrating products and merchandise;
- Off-site classroom instructional training;
- Driving oneself or being transported to or from meeting or training locations;
- Delivering interoffice mail, correspondence and legal documents necessary for administering the employer's business;
- Providing counseling or verbal direction to clients of a home health care service;
- Performing public relations for employers' business; and
- Estimating (nonconstruction) or appraising.

Classification **6303** excludes:

- Stocking, shipping, receiving, or delivering merchandise;
- The demonstration of machinery or equipment;
- Workers who perform any duties not specifically allowed by WAC 296-17A-4904 or 296-17A-6303;
- Specialty services merchandising products in stores, reported in classification **0607-19**;
- Directly supervising workers not included in classifications **4904** or **6303**;
- Providing samples to retail customers, reported in classification **6406-40** or **7106-01**;
- Working as a driver for a service that transports or chauffeurs others;
- Driving, cooking, or cleaning for, or physically assisting others for home health care services;
- Employees of collection agencies, who are reported separately in **5301-13**;
- Door-to-door sales persons who are reported separately in **6309-22**;
- ~~((Employees of services (WAC 269-17A-4903) providing inspection or valuation services to others;))~~ Businesses engaged in providing inspections and valuations exclusively for insurance companies which are to be reported separately in classification **4903**:
 - Employees of messenger services who are reported separately in **1101-09**;
 - Employees working for a legal messenger service who are reported separately in **6601-07**;

- Construction estimators, who are reported in classification **4911**, when their work is limited to time and material estimating for a full work shift.

Special note: Hands on training outside of a classroom setting has to be reported separately in the applicable basic classification. For example, a karate instructor is reported in classification 6204, not 6303.

For administrative purposes, classification **6303** is divided into the following subclassifications:

6303-00 Outside sales personnel, messengers, N.O.C.

6303-03 Insurance sales personnel and claims adjusters

Special note: Individuals licensed by the insurance commissioner as insurance producers for soliciting, negotiating, and selling insurance are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010. To elect coverage, these individuals must submit a completed optional coverage form to the department.

6303-21 Home health care services: Social workers and dietitians

Applies to social workers and dietitians employed by home health care services agencies. These agencies provide care for the elderly, or individuals who need the continuous care and supervision that hospitals and nursing facilities provide, or people living with disabilities. Duties in this classification include teaching people with physical or developmental disabilities in their own homes to manage daily living skills to care for themselves, and assessing clients to determine level of care needed.

Note: Employees working in this classification are only assessing level of need, and teaching clients how to perform duties and tasks; they do not provide direct care to individuals.

Teaching duties of social workers could include teaching clients to:

- Shop for groceries;
- Dress and use proper hygiene;
- Use public transportation;
- Attend medical appointments or go to work;
- Cook meals;
- Write checks;
- Budget finances;
- Do laundry;
- Access recreational or social activities.

Patients are referred to dietitians (also called nutritionists) by the patients' physicians. The dietitian assesses the patient's current nutritional status, and then develops a food plan to meet the patient's needs.

Classification 6303-21 excludes:

- Direct care of clients, such as: Cooking, cleaning, transporting and physically assisting clients, which is to be reported in the applicable classification;
- Nursing and home therapy services which are classified in **6110-00**;
- Domestic servants who are classified in **6510**;
- Chore workers who are classified in **6511**;
- Home care services provided through the ~~((home care referral registry (HCRR)))~~ consumer directed employer program, which are classified in **6512-00**.

Special note: Subclassification **6303-21** should be assigned only to accounts that also have classifications 6110, 6511, or both.

WSR 19-08-078
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 (Board of Boiler Rules)
 [Filed April 2, 2019, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-154.

Title of Rule and Other Identifying Information: Proposed amendments to the boiler rules, specifically WAC 296-104-010 Administration—What are the definitions of terms used in this chapter?, 296-104-040 Administration—When should inspectors submit inspection reports and on what forms?, and 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Hearing Location(s): On May 22, 2019, at 10:00 a.m., at the Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA 98402-4453.

Date of Intended Adoption: July 23, 2019.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m., on May 14, 2019.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by May 8, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules and department of labor and industries is [are] proposing amendments to the boiler rules in chapter 296-104 WAC, Board of boiler rules—Substantive.

Proposed amendments to this chapter:

WAC 296-104-010 What are the definitions of terms used in this chapter? The proposed rule amends the definition of "place of public assembly or assembly hall" to define an assisted living facility as housing and basic services for seven or more residents. The proposed amendment aligns with department of social and health services (DSHS) rules.

WAC 296-104-040 Administration—When should inspectors submit inspection reports and on what forms? The proposed rule allows authorized inspection agencies or inspectors to submit inspection reports using the state's online database (Jurisdiction Online or J.O.) or submit reports to the department to submit in the database if they are not a subscriber. The department would charge a fee(s) to process the inspection reports.

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The proposed rule creates a new fee of \$7.00 per object in the fee schedule for processing of inspection reports by the department for authorized inspection agencies and inspectors.

Reasons Supporting Proposal: The proposed rules provide clarity for customers about the types of assisted living facilities inspected by the department, which improves public safety. The proposed rules also help to alleviate costs for the department for manual processing of inspection reports into the state's online database.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

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

Name of Proponent: Board of boiler rules, department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tony Oda, Program Manager, Tumwater, Washington, 360-902-5270; Implementation and Enforcement: David Puente, Jr., Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act RCW 34.05.328 (5)(b)(vi) rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 2, 2019

Terry Chapin, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 18-23-092, filed 11/20/18, effective 1/1/19)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Accident" shall mean a failure of the boiler or unfired pressure vessel resulting in personal injury or property loss or an event which renders a boiler or unfired pressure vessel unsafe to return to operation.

"Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

"Boilers and/or unfired pressure vessels" - Below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Boiler/unfired pressure vessel status"** shall mean:
 - * Active - Boilers or pressure vessels that are currently in service.
 - * Inactive - Boilers or pressure vessels still located at the facility but are physically disconnected from the energy input and system.
 - * Out-of-service - Boilers or pressure vessels that are no longer at the facility.
 - * Scrapped - Boilers or pressure vessels that have been condemned as defined below.
- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements. The following procedure shall be utilized:
 - (a) The inspector will issue and follow the department's "red tag" procedure.
 - (b) The object will be immediately removed from service.
 - (c) The existing national board and state number shall be obliterated by the inspector.
 - (d) The ASME nameplate and/or stamping shall be physically removed by the owner/user and verified by the inspector.
 - (e) If required by the inspector, a portion of the pressure vessel shall be physically removed by the owner/user. This action will render the object incapable of holding pressure.
 - (f) The inspector shall document this procedure on the boiler/pressure vessel inspection report and change the object status to "scrapped."
- **"Corrosion"** shall mean the destruction or deterioration of a material, that results from a reaction with its environment.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Historical boilers and unfired pressure vessel"** shall mean nonstandard boilers and pressure vessels including steam tractors, traction engines, hobby steam boilers, portable steam boilers, and other such boilers or pressure vessels that are preserved, restored, and maintained only for demonstration, viewing, or educational purposes. They do not include miniature hobby boilers as described in RCW 70.79.070.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system.
 - * All vessels must be listed by a nationally recognized testing agency.
 - * Shall be protected with an approved temperature and pressure safety relief valve with the appropriate pressure and relieving capacity ratings.
 - * The hot water heater shall not exceed any of the following limits:
 - * Pressure of 160 psi (1100 kpa);
 - * Temperature of 210 degrees F (99°C).
 - * 120 gallons in capacity.
 - * 200,000 Btu/hr (58.6 kW).
 - Additional requirements:
 - * Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
 - * Hot water heaters exceeding 200,000 Btu/hr (58.6 kW) input must be ASME code stamped.
- **"Indirect water heater"** shall mean a closed vessel appliance used to heat water for use external to itself, which includes a heat exchanger used to transfer heat to water from an external source. The requirements and limits described above shall apply.
- **"Installer"** shall mean any entity or individual who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is defined as a registered contractor, owner, user or designee.
- **"Low pressure boiler"** shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.

- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Pool heaters"** shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.
 - (a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 kW) or less shall be manufactured and certified to ANSI Z21.56, UL1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.
 - (b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.
 - (c) Pool heaters open to the atmosphere are excluded.
 - **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
 - **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
 - **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
 - **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
 - **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
 - **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:
 - * Fired process tubular heaters;
 - * Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
 - * Piping whose primary function is to transport fluids from one location to another;
 - * Those vessels defined as low pressure heating boilers or power boilers.
- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.
 - **"Certificate of competency"** shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.
 - **"Certificate of inspection"** shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.
 - **"Code, API-510"** shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.
 - **"Code, ASME"** shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.
 - **"Code, NBIC"** shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.
 - **"Commission"** shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.
 - **"Department"** as used herein shall mean the department of labor and industries of the state of Washington.
 - **"Director"** shall mean the director of the department of labor and industries.
 - **"Domestic and/or residential purposes"** shall mean serving a private residence or an apartment house of less than six families.
 - **"Existing installations"** shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.
 - **"Inspection certificate"** see "certificate of inspection."
 - **"Inspection, external"** shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.
 - **"Inspection, internal"** shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open

or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Jacketed steam kettle" shall mean a pressure vessel with inner and outer walls that is subject to steam pressure and is used to boil or heat liquids or to cook food. Jacketed steam kettles with a total volume greater than or equal to one and one-half cubic feet (11.25 gallons) shall be ASME code stamped.

(a) **"Unfired jacketed steam kettle"** is one where the steam within the jacket's walls is generated external to itself, such as from a boiler or other steam source.

(b) **"Direct fired jacketed steam kettle"** is a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of ~~(50)~~ fifty or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing homes, and assisted living facilities that provide housing and basic services for seven or more residents.

"Special design" shall mean a design using nationally or internationally recognized engineering standards other than the codes adopted in WAC 296-104-200.

AMENDATORY SECTION (Amending WSR 01-24-061, filed 11/30/01, effective 12/31/01)

WAC 296-104-040 Administration—When should inspectors submit inspection reports and on what forms? In-service reports of inspections of boilers and unfired pressure vessels shall be submitted within thirty days of inspec-

tion. Inspectors shall submit reports of inspections ~~((of boilers and unfired pressure vessels on appropriate forms or media approved by the chief inspector. Routine reports of inspections shall be submitted within thirty days of inspection))~~ directly into the state's electronic inspection report system.

If an authorized in-service inspection agency or inspector does not have direct access to the state's electronic inspection report system, they shall be responsible for applicable processing fees incurred by the department as defined in WAC 296-104-700.

Reports of reinspection after suspension of an inspection certificate shall be submitted by an inspector as soon as notice of corrective action has been received.

AMENDATORY SECTION (Amending WSR 18-23-092, filed 11/20/18, effective 1/1/19)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of \$56.16 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$24.23.

Hot water heaters per RCW 70.79.090, inspection fee: \$7.38.

The department shall assess a \$7.00 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

Heating boilers:	Internal	External
Cast iron—All sizes	\$40.87	\$32.65
All other boilers less than 500 sq. ft.	\$40.87	\$32.65
500 sq. ft. to 2500 sq. ft.	\$81.74	\$40.87
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$32.65	\$16.01
Power boilers:	Internal	External
Less than 100 sq. ft.	\$40.87	\$32.65
100 sq. ft. to less than 500 sq. ft.	\$49.50	\$32.65
500 sq. ft. to 2500 sq. ft.	\$81.74	\$40.87
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$32.65	\$16.01

Pressure vessels:

Square feet shall be determined by multiplying the length of the shell by its diameter.

	Internal	External
Less than 15 sq. ft.	\$32.65	\$24.23
15 sq. ft. to less than 50 sq. ft.	\$48.46	\$24.23
50 sq. ft. to 100 sq. ft.	\$56.57	\$32.65
For each additional 100 sq. ft. or any portion thereof	\$56.47	\$16.01
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours		\$49.50
For each hour or part of an hour in excess of 8 hours		\$73.94
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours		\$73.94
For each hour or part of an hour in excess of 8 hours		\$115.64
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours		\$49.50
For each hour or part of an hour in excess of 8 hours		\$73.94
When insurance company is authorized inspection agency:		
For each hour or part of an hour up to 8 hours		\$73.94
For each hour or part of an hour in excess of 8 hours		\$115.64
Examination fee: A fee of \$91.52 will be charged for each applicant sitting for an inspection examination(s).		
Special inspector commission: A fee of \$49.40 for initial work card. A fee of \$30.68 for annual renewal.		
If a special inspector changes companies: A work card fee of \$49.40.		
Expenses shall include:		
Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.		
Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$460.30 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a num-		

ber of vessels that are essentially the same are to be considered.

**WSR 19-08-080
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed April 2, 2019, 1:20 p.m.]

Supplemental Notice to WSR 19-04-102.

Preproposal statement of inquiry was filed as WSR 18-23-081.

Title of Rule and Other Identifying Information: Chapter 308-61 WAC, Unauthorized and abandoned vehicles.

Date of Intended Adoption: May 2, 2019.

Submit Written Comments to: Robert Norton, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, 360-902-3701, email RNORTON@DOL.WA.GOV, by May 1, 2019.

Assistance for Persons with Disabilities: Contact Robert Norton, phone 360-902-3701, email RNORTON@DOL.WA.GOV, by May 1, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language establishes guidelines and procedures under chapter 308-61 WAC to guide the proper administration and disbursement of funds from the abandoned recreational vehicle program.

The reason for the supplemental filing is that after hearing from the industry partners, we determined that we should adjust the reimbursement amounts and language in the proposed rules to reflect the feedback that we received and to allow for maximum coverage from the available program funds.

Reasons Supporting Proposal: Key stakeholders, including members of the Tow and Recovery Association of Washington and the Automotive Recyclers of Washington, supported legislation to create this new program to ease the financial burdens to towing, wrecking and scrap metal businesses who are experiencing continuing problems and financial impact involving the proper disposal of abandoned recreational vehicles.

Statutory Authority for Adoption: RCW 46.55.190, 46.53.010.

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: Robert Norton, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-3701; Implementation and Enforcement: George Price, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-0120.

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

A cost-benefit analysis is not required under RCW 34.05.328. Changes will add no additional costs to stakeholders.

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

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

April 2, 2019
Damon Monroe
Rules Coordinator

NEW SECTION

WAC 308-61-195 Abandoned recreational vehicle—Criteria and required information. (1) **What costs will be reimbursed?** Vehicles will be reimbursed for qualified towing, transporting, storing, dismantling, and disposal costs commencing May 1, 2019, and after. Activities prior to May 1, 2019, are not reimbursable.

(2) **What are the criteria for an abandoned recreational vehicle to be eligible for reimbursement?** The vehicle must:

- (a) Be impounded from public property;
- (b) Be abandoned pursuant to chapter 46.55 RCW;
- (c) Have the last known registered owner be unknown after a reasonable effort compliant with RCW 46.55.100;
- (d) Have received no bids at auction; or
- (e) Be declared an abandoned junk vehicle by a law enforcement officer.

(3) **What vehicle information must be provided to the department upon request for reimbursement?** All required information, if known, as listed on the department-approved form, to include at a minimum:

- (a) Vehicle identification number (VIN);
- (b) Model year;
- (c) Make;
- (d) Model;
- (e) Body style;
- (f) Length;
- (g) Vehicle type;
- (h) Plate number; and
- (i) Plate state.

NEW SECTION

WAC 308-61-197 Abandoned recreational vehicle—Application and review. (1) **What is the application process?**

(a) All vehicles must first be handled through the abandoned vehicle process with an abandoned vehicle report (AVR) submitted to the department, or through the junk vehicle affidavit process.

(b) The requestor asking for reimbursement must be one of the following businesses and be licensed at time of the activity in which requesting reimbursement:

- (i) A registered tow truck operator (RTTO), as defined by RCW 46.55.010(7);
- (ii) A vehicle wrecker, as defined by RCW 46.80.010(5);
- (iii) A scrap processor, as defined by RCW 46.79.010(2);
- (iv) A scrap metal business, as defined by RCW 19.290.010(10).

(c) Each business must complete their process before making application for reimbursement for that vehicle:

(i) An RTTO's process is considered complete when the vehicle is moved to a licensed vehicle wrecker, scrap processor or scrap metal business for disposal. A written record of delivery to a licensed dismantler or authorized disposal site will also be required with the abandoned recreational vehicle application. A copy of that report shall be maintained in the RTTO's vehicle transaction file.

(ii) A vehicle wrecker, scrap processor, or scrap metal business's process is considered complete when the vehicle has been dismantled and/or destroyed in a way that no major component remains useable as the original vehicle. It shall be included on the wrecker monthly report as a destroyed vehicle and a certificate of fact (available on the department's web site) stating that the vehicle has been properly and completely destroyed in such manner as to not be usable as a vehicle, again.

(d) A request must be submitted on a form prescribed by the department and include a copy of the original AVR, junk title affidavit or title or wrecker/salvage processor monthly report and complete supporting documentation including written record of transport to a licensed dismantler or disposal site and all receipts verifying all costs requested for reimbursement.

(e) The RTTO, vehicle wrecker, scrap processor, or scrap metal business must submit their request for reimbursement by the end of the subsequent month following the activity.

(2) **What is the review process?**

(a) All requests will be reviewed and processed in the order received.

(b) The application and all required supporting documentation will be reviewed for the vehicle's eligibility and completeness.

(c) Once all qualifying criteria are met, a notation will be made on the record for that vehicle or a new record will be created for the vehicle.

(d) All vehicles reviewed will be grouped by each individual business submitting the request and in the order received in order to process one monthly payment.

(e) A vehicle summary and totals will be calculated and a disbursement will be ordered by the fifth business day of the following month.

(f) Incomplete applications will be returned to the business and will be eligible for reconsideration based on the new date of submission.

(3) **Can I appeal an application that has been denied reimbursement?**

(a) Yes. If an abandoned recreational vehicle has been denied for reimbursement by the department, the business shall be notified by the department in writing what information is required to complete the application for reimbursement or the reasons why the vehicle failed to meet the required criteria. The vehicle may be resubmitted with any required information for additional review.

(b) If the appeal has been reviewed and the vehicle is found to meet all requirements for reimbursement, the vehicle will be processed in the current month and order the

appeal was received. Disbursements will be made by the fifth business day of the following month.

NEW SECTION

WAC 308-61-203 Abandoned recreational vehicle—Reimbursements. (1) **When will the reimbursement happen?** The abandoned RV program manager will process all reimbursement by the fifth business day of the month following the month that the reimbursement was received on vehicles that have met all criteria for eligibility.

(2) **How/when will I get notified of the reimbursement?**

(a) No confirmation of receipt for an application for reimbursement will be sent on any vehicle.

(b) If a qualified business is receiving a reimbursement for any vehicles that have been submitted, the business will receive one payment for the total of any qualified disbursements processed during the prior month along with a letter of confirmation for the vehicles included in that reimbursement.

(c) If a vehicle is not eligible for reimbursement, the department shall notify the business of the determination in writing.

(3) **What if funds for reimbursements are unavailable?** The reimbursements are dependent upon sufficient funding within the abandoned recreational vehicle account. If sufficient funds are not currently available when an otherwise eligible request is received, the department will hold the request in the order it was received. The department shall notify the requestor in writing that the request is being held. When funding within the abandoned recreational vehicle account is sufficient for disbursement the department will process requests being held for that business in the order they were received.

NEW SECTION

WAC 308-61-207 Abandoned recreational vehicle—Turning over collections to the department. What if funds are received through collection efforts after receiving reimbursement from the department? Any funds received by the registered tow truck operator, wrecker, vehicle scrap, or scrap metal business as a result of collection activities shall be turned over to the department for any vehicles the business received reimbursements for.

NEW SECTION

WAC 308-61-215 Abandoned recreational vehicle—Rates and caps. At what rate will reimbursements be for?

(1) The costs will be reimbursed at a standardized scheduled rate:

Item	Standard Rate	Cap
Towing and Transport (Increment Per Hour - Maximum Three Hours Total for Identified Class)		
Class A Tow Vehicle (including - D and E)	\$105.00/hr.	\$310.00

Item	Standard Rate	Cap
Class B Tow Vehicle	\$120.00/hr.	\$360.00
Class C Tow Vehicle (including - B2 and S1)	\$175.00/hr.	\$520.00
Storage (Increment Per Day - Maximum 10 Days Total)		
Standard Storage	\$35.00/day	\$350.00
Dismantling and Disposal (Increment Per Foot - Maximum per Identified Vehicle Category)		
Motor Homes (Up to 35')	\$70.00/ft.	\$2,450.00
Travel Trailers (Up to 25')	\$70.00/ft.	\$1,750.00
Campers (Up to 15')	\$70.00/ft.	\$1,050.00

(2) Standard rates apply to:

(a) Hourly increment of towing and transport by tow vehicle class (i.e., a class 'B' tow vehicle used for two hours is two hundred forty dollars; a class 'C' tow vehicle used for four hours is capped at five hundred twenty dollars).

(b) Days of storage incurred (i.e., a vehicle stored for eight days is two hundred eighty dollars; a vehicle stored for twenty-five days is capped at three hundred fifty dollars).

(c) Classification of abandoned recreational vehicle dismantled and disposed up to the cap for that item (i.e., dismantling and disposal of a twenty-seven foot motor home is one thousand eight hundred ninety dollars; dismantling and disposal of a thirty foot travel trailer is capped at one thousand seven hundred fifty dollars).

(d) Total length of the recreational vehicle shall be determined by measuring the vehicle type as follows:

(i) Motor homes: Measured in feet of total length from the front bumper to the rear bumper, excluding attached storage boxes or trailer or tow hitches.

(ii) Travel trailers: Measured in feet of total length from the front of the box to the rear bumper, excluding the front trailer tongue, attached storage boxes or any additional trailer or tow hitches from rear bumper. Fifth-wheel trailers may include the front-cap.

(iii) Campers: Measured in feet of total length from the front of the cab-over box to the rear of the box, excluding any attached storage boxes or other accessories.

WSR 19-08-083

PROPOSED RULES

OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

[Filed April 3, 2019, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-163.

Title of Rule and Other Identifying Information: WAC 326-02-030 Definitions and chapter 326-20 WAC, Certification.

Hearing Location(s): On May 16, 2019, at 9:30 a.m., at Capitol Court, 1110 Capitol Way South, Room #135, Olym-

pia, WA 98501. Live webinar: <https://global.gotomeeting.com/join/785035237>.

TO USE YOUR COMPUTER'S AUDIO: When the webinar begins, you will be connected to audio using your computer's microphone and speakers (VoIP). A headset is recommended.

OR

TO USE YOUR TELEPHONE FOR AUDIO: If you prefer to use your phone, you must select "Use Telephone" after joining the webinar and call in using the numbers below:

United States: +1-515-603-4911, Access Code: #165924, Audio PIN: Shown after joining the webinar.

Date of Intended Adoption: May 31, 2019.

Submit Written Comments to: Mynor Lopez, P.O. Box 41160, Olympia, WA 98504, email rules@omwbe.wa.gov, fax 360-407-0955, by May 9, 2019.

Assistance for Persons with Disabilities: Contact Mynor Lopez, phone 360-664-9754, fax 360-586-7079, email MynorL@omwbe.wa.gov, by May 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing the following new rules: WAC 325-20-035 Presumptive group membership, 326-20-055 Subsidiaries, 326-20-086 Native Americans—Native Hawaiians—Alaska native corporations, and 326-30-099 Small business concern requirement and size standards.

The agency is proposing to amend the following rules: WAC 326-02-030 Definitions, 326-02-045 Factors considered in determining performance of commercially useful function, 326-20-048 Presumption of disadvantage, 326-20-050 Proof of ownership of business, 326-20-060 Community ownership, 326-20-080 Factors considered in determining control, 326-20-081 Intertwinement, and 326-20-094 Assignment of North American Industrial Classification System (NAICS) code.

The agency is proposing to repeal the following rules: WAC 326-20-030 Proof of minority status, 326-20-040 Proof of woman's status, 326-20-092 Small business concern requirement, 326-20-095 Determination of firm size, 326-20-096 Size standard, and 326-20-155 Signatures of applicant business owners.

The agency is proposing to recodify the following amended rule: WAC 326-02-045 Factors considered in determining performance of commercially useful function.

Summary of proposed changes: The office of minority and women's business enterprises (OMWBE) is proposing the following changes regarding state certification in order to provide clarification, eliminate unnecessary barriers and restrictions to certification for small businesses, and clarify language and grammar to reflect modern and respectful wording. These rule changes will bring OMWBE into alignment with state and federal laws, rules and policies such as the Governor's Executive Order 17-01.

- Allow for the additional evidence of ownership over a business, including: Contributions of expertise under certain circumstances, ownership based on a final property settlement or court order in a divorce, legal separation, or inheritance, and gifts or transfers without consideration in certain circumstances.

- Modify the presumption of social disadvantage by replacing language requiring an individual be "visibly identifiable" as a presumptively disadvantaged person with the requirement a person sign a sworn declaration, and that the agency may rebut their presumption of disadvantage for a well-founded reason.
- Eliminate the requirement that applicants for state certification must be citizens or permanent legal residents of the United States. This requirement is not based in state law and is not a requirement for other business-related state licenses.
- Add clarifying language that a firm may be owned by an Indian tribe, Native Hawaiian organization, or Alaska native corporation.
- Add language that OMWBE may certify subsidiaries if there is fifty-one percent cumulative ownership of the subsidiary by a socially and economically disadvantaged individual(s).
- Eliminate references to a former program: Corporate sponsored dealerships.
- Allow for additional evidence of control, including factors considered in determining control; such as local and state laws licensing and credentialing requirements, owner(s) demonstrable ability to make independent and daily operating business decisions, delegations of authority, remunerations, and business affiliation.
- Update the language defining the performance of a commercially useful function for a modern business environment and remove WAC 326-02-045 from chapter 326-02 WAC and add it to chapter 326-20 WAC.
- Eliminate the need for business owner(s) to sign an application under oath as OMWBE uses sworn affidavits.
- Provide more guidance to applicants and the office regarding the acquisition and removal of NAICS codes. The proposed updates will also allow businesses to provide the office a clear, specific, and detailed narrative of the type of work they perform if they believe an existing code does not fully or clearly describe the work in which the business is certified.
- Clarify that a nonapplicant spouse or registered domestic partner may cosign on loans and other documents. Clarify that OMWBE will look carefully at the application when ownership transfers occur between spouses and domestic partners.
- Include new language regarding the examination of past relationships between certified and noncertified firms to ensure independence.
- Eliminate WAC 326-20-092, 326-20-095 and 326-20-096 and combine the contents of these rules under proposed WAC 326-20-099, as these rules all interrelate to firm size and accompanying standards.
- Update rules for grammar and to reflect modern language and terminology.

Reasons Supporting Proposal: The agency is proposing the above described changes regarding state certification to provide clarification, eliminate barriers to certification, including unnecessary restrictions, remove barriers for persons who apply for both state and federal certification, and

update wording throughout grammar and to reflect modern and respectful wording.

Statutory Authority for Adoption: RCW 39.19.030 and 39.19.120.

Statute Being Implemented: RCW 39.19.030 and 39.19.-120.

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

Name of Proponent: OMWBE, governmental.

Name of Agency Personnel Responsible for Drafting: Amal Jory, 1110 Capitol Way South, #150, Olympia, WA 98501, 360-664-9576; Implementation: Mynor Lopez, 1110 Capitol Way South, #150, Olympia, WA 98501, 360-664-9764; and Enforcement: Sarah Erdmann, 1110 Capitol Way South, #150, Olympia, WA 98501, 360-664-9771.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule changes do not impose more stringent performance requirements for businesses and are not significant rules as defined by RCW 34.05.328.

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

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

April 3, 2019
Mynor Lopez
Assistant Director
of Legislative Affairs

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-02-030 Definitions. Words and terms used in this title (~~shall~~) have the same meaning as each has under chapter (~~120, Laws of 1983~~) 43.19 RCW, unless otherwise specifically provided in this title, or the context in which they are used clearly indicates (~~that they should be given some other~~) another meaning.

(1) "Advisory committee" means the advisory committee (~~on minority, women, and socially and economically disadvantaged individual's~~) for the office of minority and women's business enterprises.

(2) "Affiliation" has the same meaning as the Small Business Administration (SBA) regulations, 13 C.F.R. Part 121. Except as otherwise provided in 13 C.F.R. Part 121, concerns are affiliates of each other when, either directly or indirectly:

(a) One concern controls or has the power to control the other;

(b) A third party or parties controls or has the power to control both; or

(c) An identity of interest between or among parties exists such that affiliation may be found.

(3) "Alaska native corporation" means any regional corporation, village corporation, urban corporation, or group corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

(4) "Assets" means all the property of a person available for paying debts or for distribution, including the person's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

(5) "Broker" means a person (~~that~~) who provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

~~((3))~~ (6) "Certified business" (~~or "certified"~~) means a for profit business (~~or the status of a business that has been examined~~) that has been approved for certification by the Washington state office of minority and women's business enterprises (and deemed to be). Businesses certified through the agency's state program include: A minority business enterprise (MBE), a women's business enterprise (WBE), a minority woman's business enterprise (MWBE), a combination business enterprise (CBE), (~~or~~) and a socially and economically disadvantaged business enterprise (SEDBE).

~~((4))~~ (7) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

~~((5))~~ "~~Combination business enterprise" or "CBE"~~ means a small business concern organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by the office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by the office. ~~The owners must be United States citizens or lawful permanent residents.~~

~~((6))~~ (8) "Commercially useful function" means the performance of real and actual services (~~which~~) that are integral and necessary in the discharge of any contractual endeavor, and not solely for the purpose of obtaining certification or obtaining credit for participation goal attainment.

~~((7))~~ (9) "Common industry practices" means those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

~~((8))~~ (10) "Conduit" means a certified business which agrees to be named as a subcontractor on a contract in which such certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other noncertified business.

~~((9))~~ "Contract" means a mutually binding legal relationship (including a purchase order, lease, or any modification

thereof), which obligates the seller to furnish goods or services (including construction), and the buyer to pay for them.

(10) "Contract by contract basis" means a single contract within a specific class of contracts.

(11) "Contractor" means a party who enters into a contract directly with a state agency or educational institution.

(12) "Corporate-sponsored dealership" means a business that does not meet the requirements for certification but is participating in a program specifically developed by a national or regional corporation to address the present-day issue of lack of opportunities for minorities or women in the dealership industry.) (11) "Contingent liability" means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

(12) "Days" means calendar days. In computing any period of time described in this chapter, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or a legal holiday, the period extends to the next day that is not a Saturday, Sunday, or legal holiday. Similarly, in circumstances where the agency is closed for all or part of the last day, the period extends to the next day on which the agency is open.

(13) "Director" means the director of the office of minority and women's business enterprises.

(14) ("Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(15)) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

((16)) (15) "Front" means a business which purports to be eligible for certification but is not in fact legitimately owned and controlled by minorities, women, socially and economically disadvantaged individuals, or a combination thereof.

((17) "Goods and/or services" means all goods and services, including professional services.

(18)) (16) "Graduation" means the business is no longer certified because it is no longer a small business concern.

((19) "Heavy construction" means construction other than building construction; e.g., highway or street, sewer and pipeline, railroad, communication and power line, flood control, irrigation, marine, etc.

(20)) (17) "Immediate family member" means father, mother, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, spouse, and registered domestic partner.

(18) "Joint venture" means (a partnership of two or more persons or businesses created to carry out a single business enterprise for profit, for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(21) "Legitimately owned and controlled" means that minorities, women, socially and economically disadvantaged

individuals, or a combination thereof, own at least fifty-one percent interest in the business (unless the business qualifies as a corporate sponsored dealership under the provisions of subsection (12) of this section and WAC 326-20-050(4)); and the minorities, women, socially and economically disadvantaged individuals, or combination thereof, possess and exercise sufficient expertise specifically in the firm's field of operation to make decisions governing the long-term direction and the day-to-day operations of the firm.

(22) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.

(23) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan native: Having origins in any of the original peoples of North America.

(24) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the office. The minority owners must be United States citizens or lawful permanent residents.

(25) "Minority women's business enterprise" or "MWBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority women and is certified by the office. The owners must be United States citizens or lawful permanent residents.

(26)) an association of a certified firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the certified firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(19) "Liabilities" means financial obligations including, but not limited to, accounts payable, notes payable to a bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

(20) "Native Hawaiian organization" means any community service organization serving native Hawaiians in the state of Hawaii which is a not-for-profit organization chartered by the state of Hawaii, is controlled by native Hawaiians, and whose business activities will principally benefit such native Hawaiians.

(21) "Office" means the Washington state office of minority and women's business enterprises ((of the state of Washington)).

~~((27))~~ (22) "Pass-through" means a certified business ~~(which)~~ that buys goods from a noncertified business and simply resells those goods to the state, state contractors, or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of ~~((WBE or MBE))~~ goals for participation of certified firms.

~~((28))~~ "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

~~(29))~~ (23) "Personal net worth" means the ~~((socially and economically disadvantaged individual's net personal assets and liabilities, excluding an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence. If the statement of personal net worth that an individual submits shows that the individual's personal net worth exceeds seven hundred fifty thousand dollars, the individual's economic disadvantage is rebutted.~~

~~(30)~~ "Procurement" means the purchase, lease, or rental of any goods or services.

~~(31)~~ "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

~~(32)~~ "Regular dealer" means a certified business that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

~~(33)~~ "Services" in the context of "goods and/or services," means all services including, but not limited to, client services, personal services, and purchased services as defined in RCW 39.29.006.

~~(34)~~ "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias, gender, disability, long-term residence in an isolated environment, or other similar causes negatively impacting entry into or advancement in the business world within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control.

~~(35)~~ "Socially and economically disadvantaged business enterprise" or "SEDBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more socially and economically disadvantaged individuals or socially and economically disadvantaged business enterprises certified by the office. The socially and economically disadvantaged owners must be United States citizens or lawful permanent residents.

~~(36)~~ "Socially and economically disadvantaged individual" means a person who is a citizen or lawful permanent resident of the United States and who is:

~~(a)~~ Found to be a socially and economically disadvantaged individual on a case-by-case basis by OMWBE; or

~~(b)~~ A member of one of the following groups that are presumed to be socially and economically disadvantaged:

~~(i)~~ Minority;

~~(ii)~~ Women;

~~(iii)~~ Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.

~~(37))~~ net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse/domestic partner.

~~(24)~~ "Small Business Administration" or "SBA" means the United States Small Business Administration.

~~(25)~~ "Small business concern" means a small business concern as defined under section 3 of the Small Business Act and 13 C.F.R. Part 121 that also does not exceed the cap on average annual gross receipts specified in WAC 326-20-092.

~~(26)~~ "Socially disadvantaged individual" means the following for the purposes of certification, consistent with 49 C.F.R. Sec. 26.5:

~~(a)~~ A person who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

~~(b)~~ Any individual who the agency finds to be a socially disadvantaged individual on a case-by-case basis, per chapter 326-20 WAC.

~~(c)~~ Any individual in the following groups, members of whom are rebuttably presumed to be socially disadvantaged for the purposes of certification, consistent with 49 C.F.R. Sec. 26.5:

~~(i)~~ Persons who are Asian or Pacific islander: Person whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of Marshall Islands, Commonwealth of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

~~(ii)~~ Persons who are black/African American: Persons having origins in any of the black racial groups of Africa;

~~(iii)~~ Persons who are Hispanic/Latino: Persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

~~(iv)~~ Persons who are Native American or Alaska native: Persons who are members or descendants of a federal or state recognized Indian tribe or Alaska native corporation;

~~(v)~~ Persons who are native Hawaiian: Persons whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii;

~~(vi)~~ Women; and

~~(vii)~~ Any additional groups whose members are designated as socially and economically disadvantaged by the U.S.

Small Business Administration (SBA), at such time as the SBA designation becomes effective.

(27) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

((38) "Subcontractor" means a party that indirectly provides goods or services, including but not limited to construction, to a state agency or educational institution through a contractor.

(39) "Supplier" means a manufacturer or regular dealer that:

- (a) Provides or furnishes goods or materials;
- (b) Performs a commercially useful function; and
- (c) Is not considered a conduit, front, pass-through or broker.

(40)) (28) "Switch business" means a business ((which) that was previously owned and controlled by ((a man, men or nonminorities, or individuals who are)) an individual(s) who is not socially and economically disadvantaged, ((which) that has made technical changes to its business structure so that it is now purportedly owned and controlled by a ((woman or women or by a minority person or persons, or by a) person(s) who is socially and economically disadvantaged ((individual or individuals)), but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

((41) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.) (29) "Tribally owned concern" means any small business concern at least fifty-one percent owned by an Indian tribe as defined in this section.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-02-045 Factors considered in determining performance of commercially useful function. (1) ((In determining the performance of a commercially useful function, factors which may be considered include, but are not limited to, the following:)) A business performs a commercially useful function when:

(a) ((Whether)) The work to be performed by the business is within the scope of work included in the ((Standard)) North American Industrial Classification System code(s) ((under which)) that the business is ((listed in the directory of certified businesses published by the office or in the records of the office.

(b) Whether the business could be considered a conduit, front, or pass through;

(c) Whether the minority and/or woman and/or socially and economically disadvantaged individual owner(s) has the skill and expertise to perform the work for which the business is being or has been certified;

(d) Whether)) certified under or applying to be certified under.

(b) The business is or will be responsible for executing a distinct element of work in the performance of a contract((s)) and ((the principals or employees of the business)) is carrying out its responsibilities by actually ((perform, manage, and supervise)) performing, managing, and supervising the work ((for which the business is or will be responsible;

(2) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and execute material changes in the configuration of those goods or materials; or

(b) Prior to submitting an application for certification, secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(3) Factors which may indicate that a supplier is not performing)) involved; and

(c) The business is responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself.

(2) A business does not perform a commercially useful function ((include, but are not limited to, the following:

- (a) A minimum amount of inventory is not maintained.
- (b) Billing and shipping arrangements are performed by nonowners or staff of nonowners.
- (c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user.
- (d) The firm does not take ownership of the product.))

when:

(a) Its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. The agency will consider similar transactions in which certified firms do not participate to evaluate standard industry practice.

(b) It does not exercise responsibility for at least thirty percent of the total cost of its contract with its own workforce, or it subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
326-02-045	326-20-230

NEW SECTION

WAC 326-20-035 Presumptive group membership.

(1) After reviewing an applicant's sworn declaration of membership in a presumptively disadvantaged group, the agency may ask the applicant to present additional evidence that the person is a member of the identified group, if the agency has

a well-founded reason to question the applicant's claim of group membership.

(2) The agency will provide the applicant an explanation of the reason(s) for questioning the applicant's group membership. The agency will consider whether the person has held themselves out as a member of the group for an extended period of time prior to application for certification, and whether the relevant community regards the person as a member of that group. The agency may require the applicant to produce appropriate documentation of group membership.

(3) The agency will not impose a disproportionate burden on members of any particular designated group in violation of Title VI of the Civil Rights Act of 1964.

(4) If the agency determines an individual claiming membership of a presumed disadvantaged group is not a member, the individual must demonstrate social and economic disadvantage on an individual basis under WAC 326-20-045.

(5) The decisions concerning membership in a designated group are subject to the certification appeals process outlined in WAC 326-20-171.

AMENDATORY SECTION (Amending WSR 17-13-020, filed 6/12/17, effective 8/1/17)

WAC 326-20-048 Presumption of disadvantage. (1) ~~((The office presumes that citizens of the United States or lawfully admitted permanent residents who are women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the program, are socially and economically disadvantaged individuals. Applicants are required to))~~ Social disadvantage. The agency rebuttably presumes the following persons are socially disadvantaged individuals for the purposes of certification, consistent with 49 C.F.R. Part 26.67: Women; persons who are black/African American, Hispanic/Latino, Native American, Asian, Pacific Islander, native Hawaiian, and Alaska native; and other minorities found disadvantaged by the small business association.

(2) Each presumptively socially disadvantaged applicant must submit a signed declaration that ((each disadvantaged owner is, in fact,)) she or he is socially and economically disadvantaged.

~~((2))~~ (3)(a) Economic disadvantage. Each owner of a firm applying for state certification must sign a declaration that he or she has a personal net worth that does not exceed 1.32 million dollars, per WAC 326-20-049.

(b) Rebuttal of economic disadvantage. If the statement of personal net worth that an individual submits under this section shows that the individual's personal net worth exceeds 1.32 million dollars or shows that a person has been able to accumulate substantial wealth, the individual's economic disadvantage is rebutted, and the individual is not deemed to be economically disadvantaged. Such an individual is no longer eligible to participate in the program and cannot regain eligibility by making an individual showing of disadvantage. The office is not required to have a proceeding under this section in order to rebut the presumption of economic disadvantage in this case.

~~((3))~~ (4) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for SEDBE certification. The office makes a case-by-case determination of whether each individual whose ownership and control are relied upon for SEDBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the office, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds 1.32 million dollars shall not be deemed to be economically disadvantaged. In making these determinations, the office uses ~~((the guidance found in 49 C.F.R. Part 26, Appendix E))~~ WAC 326-20-046 and 326-20-047. The office requires that applicants provide sufficient information to permit determinations under ~~((the guidance of 49 C.F.R. Part 26, Appendix E))~~ WAC 326-20-046 and 326-20-047.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-20-050 Proof of ownership of business. ~~((1))~~ All minority, women, or socially and economically disadvantaged owners shall submit to the office proof of their ownership of the requisite percentage of the business at the time the application is submitted. Such proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, canceled check used to purchase ownership, or other recognized proof of ownership. The ownership shall be real, substantial, and continuing, shall go beyond the pro forma ownership of the business reflected in the ownership documents, and shall be based on the owner's capital contribution. The minority, and/or women, and/or socially and economically disadvantaged owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements.

(2) In cases of sole proprietorships or other cases where documentary proof of ownership is not available, the minority, women, or socially and economically disadvantaged owners shall so advise the office, which may undertake further investigation. The office may also require documents showing how and when the minority, women, or socially and economically disadvantaged owners' interest in the business was acquired.

(3) The office may, for any reason, require any minority, women, or socially and economically disadvantaged owners to provide additional proof of, or information concerning, ownership. The office may request additional information regarding separate ownership of a business including, but not limited to, a separate property agreement.

(4) Ownership of a corporate-sponsored dealership shall be evaluated by using the following standards:

(a) The minority, women, or socially and economically disadvantaged owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell, or

distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority, women, or socially and economically disadvantaged owner(s) and the sponsoring corporation.

(c) The original investment contributed by the minority, women, or socially and economically disadvantaged owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(d) A specified time limit of not more than ten years must be established, binding between the minority, women, or socially and economically disadvantaged owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest shall be complete.

(e) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program which includes such features as capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority, women, and socially and economically disadvantaged individual's business program.

(f) The minority, women, or socially and economically disadvantaged owner(s) must demonstrate that the relationship between the corporate sponsor and the minority, women, or socially and economically disadvantaged individual's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.) (1) In determining whether a socially and economically disadvantaged participant(s) in a firm owns the business, the agency considers all facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership, or transfer of ownership, must be in the normal course of business.

(2) To be an eligible for certification, a firm must be at least fifty-one percent owned by a socially and economically disadvantaged individual(s).

(a) In the case of a sole proprietorship or other cases where documentary proof of ownership is not available, the agency may undertake further investigation and may require documents showing how and when the socially and economically disadvantaged owner(s) interest in the business was acquired.

(b) In the case of a corporation, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of voting stock outstanding and fifty-one percent of the aggregate of all stock outstanding.

(c) In the case of a partnership, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of partnership interest.

(d) In the case of a limited liability company, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of member interest.

(3) The socially and economically disadvantaged individual(s) ownership, including the individual's contribution of capital or expertise to acquire ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm. It may include ownership interest acquired:

(a) As the result of a final property settlement or court order in a divorce or legal separation, provided no term or condition of the agreement or divorce decree is inconsistent with this section;

(b) Through inheritance or because of the death of the former owner; and

(c) Through debt instruments from financial institutions or other organizations lending funds in the normal course of business, even when the debtor's ownership interest is security for the loan.

(4) The disadvantaged owner(s) must enjoy the customary incidents of ownership, share in the risks, and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form of arrangements.

(5) When expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership, the applicant must have a significant financial investment in the firm, and the applicant's expertise must be:

(a) In a specialized field;

(b) In areas critical to the firm's operations;

(c) Indispensable to the firm's potential success;

(d) Specific to the type of work the firm performs; and

(e) Documented in the records of the firm, which must show the contribution of expertise and value to the firm.

(6) The following are insufficient to be considered ownership in a firm by a socially and economically disadvantaged individual for the purposes of certification:

(a) A promise to contribute capital; an unsecured note payable to the firm or an owner who is not a disadvantaged individual; mere participation in a firm's activities as an employee; capitalization not commensurate with the value for the firm; and any terms or practices giving a nondisadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s).

(b) Except as allowed by this section, interests or assets obtained by an applicant in the form of a gift or transfer without adequate consideration from any nondisadvantaged individual or firm who is: Involved in the same firm or affiliate where the individual is seeking certification; involved in the same or a similar line of business; or engaged in an ongoing business relationship with the firm or an affiliate where the individual is seeking certification. To overcome this presumption and permit the interests or assets, the disadvantaged individual must demonstrate by clear and convincing evidence that: The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification; and the disadvantaged individual controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who provided the gift or transfer.

NEW SECTION

WAC 326-20-055 Subsidiaries. An eligible firm must be owned by an individual(s) who is socially and economically disadvantaged, rather than owned by another firm, except as provided below:

(1) If a socially and economically disadvantaged individual(s) owns and controls a firm through a parent or holding company that is established for tax, capitalization, or other purposes consistent with industry practice; and the parent or holding company owns and controls the subsidiary.

(2) The agency may certify such a subsidiary if there is cumulatively fifty-one percent ownership of the subsidiary by a socially and economically disadvantaged individual(s). Examples of such subsidiaries include, but are not limited to:

(a) A socially and economically disadvantaged individual(s) owns one hundred percent of a holding company and has a wholly owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

(b) A socially and economically disadvantaged individual(s) owns one hundred percent of the holding company and owns fifty-one percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

(c) A socially and economically disadvantaged individual(s) owns eighty percent of the holding company and the holding company in turn owns seventy percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is fifty-six percent (eighty percent of the seventy percent). This is more than fifty-one percent, so the agency may certify the subsidiary, if all other requirements are met.

(d) Same as the examples in (b) and (c) of this subsection, but someone other than the socially and economically disadvantaged owner(s) of the parent or holding company control the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, the agency cannot certify it because it fails to meet control requirements.

(e) A socially and economically disadvantaged individual(s) owns sixty percent of the holding company and fifty-one percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is approximately thirty-one percent. This is less than fifty-one percent, so the agency cannot certify the subsidiary.

(f) The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification or the gross receipts cap of WAC 326-20-096. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-060 Community ownership. (1) When an ownership interest ((arising)) arises in a nonapplicant spouse or registered domestic partner solely because ((of the operation)) of community property laws, the agency will not disqualify the applicant ((spouse from certification. Both spouses shall)) if both parties certify that:

(a) Only ~~((one))~~ the applicant spouse or registered domestic partner participates in the management of the business~~((:)); and~~

(b) The nonparticipating spouse or registered domestic partner relinquishes control over his/her community interest in the ~~((subject))~~ business.

(2) When an ownership interest arising in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant because of a provision for the nonapplicant spouse or domestic partner to cosign a financing agreement, contract for the purchase or sale of real or personal property, bank signature card, or other document.

(3) The agency must give particular scrutiny to the ownership and control of a firm to ensure it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual, when the ownership of the firm or its assets is transferred from a spouse or registered domestic partner who is not a socially and economically disadvantaged individual.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-20-080 Factors considered in determining control. ~~((1) The minority, woman, or socially and economically disadvantaged owner(s) must possess and exercise managerial and operational control over the day to day affairs of the business.~~

~~(a) Managerial control. The minority, woman, or socially and economically disadvantaged owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and direction of the firm.~~

~~(b) Operational control. The minority, woman, or socially and economically disadvantaged owner(s) has the demonstrable ability to independently make basic decisions pertaining to the daily operations of the business.~~

~~(2) Whether a minority, woman, or socially and economically disadvantaged owner meets the control requirement is determined on an application by application basis. Office management, clerical, or other experience unrelated to the firm's field of operations, is insufficient to establish that the business is legitimately owned and controlled.~~

~~(3) Factors which may be considered in determining whether the minority, woman, or socially and economically disadvantaged owner meets the control requirement include, but are not limited to, the following:~~

~~(a) Authority and restrictions as indicated in the articles of incorporation, bylaws, partnership agreements and/or other business agreements and documents;~~

~~(b) The financial interest and/or participation in any other business by any owner or key personnel;~~

~~(c) Past and current employment history of minority and women owners involved in the business;~~

~~(d) Members of the board of directors and corporate officers;~~

~~(e) Experience, training, and expertise of any owners and key personnel;~~

~~(f) Recent changes in ownership and/or control of the business;~~

~~(g) Financial obligation to and capital contributions from owners and nonowners of the business; and~~

~~(h) Documentation indicating who has ultimate authority to make policy and management decisions and to legally obligate the business.~~

~~(4) If persons who are not minorities, women, or socially and economically disadvantaged are disproportionately responsible for the operation of the business, then the business is not eligible for certification.~~

~~(5) The requirements of this section shall not apply, if the business qualifies as a corporate-sponsored dealership under the provisions of WAC 326-20-050(4). Control of a corporate-sponsored dealership will be evaluated using the following standards:~~

~~(a) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority, women, or socially and economically disadvantaged owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.~~

~~(b) The minority, women, or socially and economically disadvantaged owner(s) must show active participation in the decision-making process on the board of directors of the dealership.~~

~~(c) The minority, women, or socially and economically disadvantaged owner(s) must have and exercise managerial and operational control over the day-to-day management of the dealership, with responsibility for sales, service volume, and profits.~~

~~(d) The minority, women, or socially and economically disadvantaged owner(s) must have prior business or management experience relating to the business being entered into as an owner.~~

~~(e) The minority, women, or socially and economically disadvantaged owner(s) must be president of any corporation formed by the business.)) (1) In determining whether disadvantaged owner(s) control a business, the office must consider all of the facts in the record, viewed as a whole.~~

~~(2) The disadvantaged owner(s) must demonstrate the ability to make independent and unilateral business decisions needed to guide the future and direction of the business.~~

~~(3) The certifiable business must not be subject to any formal or informal restrictions limiting the customary discretion of the disadvantaged owner(s). Restrictions through corporate charter provisions, bylaw requirements, contracts or any other formal or informal devices, such as cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by nondisadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, limitations on or assignments of voting rights, preventing the disadvantaged owner(s), without the cooperation or vote of any nondisadvantaged individual, from making any business decision are prohibited. This subsection does not preclude a spouse or registered domestic partner cosignature on the office's spouse or domestic partner nonparticipation statement.~~

~~(4) Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies~~

of the business and make daily and long-term decisions on matters of management, policy, and operations.

(a) Disadvantaged owner(s) must hold the highest officer position in the company, such as chief executive officer or president.

(b) In a corporation, disadvantaged owners must control the board of directors.

(c) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions. In order for a partnership to be controlled by disadvantaged individuals, any nondisadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(d) Nondisadvantaged or immediate family members may be involved in a certified business as owners, managers, employees, stockholders, officers, or directors. They must not possess or exercise the power to control the business or be disproportionately responsible for the operation of the business.

(e) Disadvantaged owner(s) of the business may delegate various areas of the management, policymaking, or daily operations of the business to other participants in the business, regardless of whether these participants are disadvantaged individuals. Such delegations of authority must be revocable, and the disadvantaged owner(s) must retain the power to hire and fire any person to whom such authority is delegated. The disadvantaged owner(s) managerial role in the business's overall affairs must be such that the recipient can reasonably conclude the disadvantaged owners actually exercise control over the business's operations, management, and policy.

(f) Disadvantaged owner(s) must demonstrate the ability to make basic decisions pertaining to the daily operations of the business independently and have an overall understanding of, managerial and technical competence and experience directly related to, the type of business in which the business is engaged and operating. The owner(s) are not required to have experience or expertise in every critical area of operations or given field than managers or key employees. They must have the ability to intelligently and critically evaluate information presented by other participants in the business's activities and to use this information to make independent decisions concerning the business's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principle business activities of the business is insufficient to demonstrate control.

(g) If state or local law requires the persons to have a particular license or other credential in order to own or control a certain type of business, then the disadvantaged person(s) who own and control a potential certifiable business of that type must possess the required license or credential. If state or local law does not require the applicant to possess such a license or credential to own or control a business, the office must not deny certification solely on the ground the person lacks the license or credential. However, the office may take into account the absence of the license or credential as one

factor in determining whether the disadvantaged owner(s) actually control the business.

(h) The office may consider differences in remuneration between the disadvantaged owner(s) and other business participants in determining whether to certify a business. Such consideration must be in the context of the duties of the persons involved, normal industry practices, the business's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business. The office may determine a disadvantaged owner controls a business although that owner's remuneration is lower than that of some other participants in the business. In a case where a nondisadvantaged individual formerly controlled the business, and a disadvantaged individual now controls it, the office may consider a difference between the remuneration of the former and current controller of the business as a factor in determining who controls the business, particularly when the nondisadvantaged individual remains involved with the business and continues to receive greater compensation than the disadvantaged individual.

(i) In order to be viewed as controlling a business, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings or weekends, if the individual controls it all the time it is operating.

(j) A disadvantaged individual may control a business even though one or more of the individual's nondisadvantaged immediate family members, participate in the business as a manager, employee, owner, or in another capacity. Except as otherwise provided in this subsection, the office must make a judgment about the control the disadvantaged owner exercises vis-a-vis other persons involved in the business as the office does in other situations, without regard to whether or not the other persons are immediate family members. If the office cannot determine the disadvantaged owners, as distinct from the family as a whole, control the business, then the disadvantaged owners failed to carry their burden of proof concerning control, even though they may participate significantly in the business's activities.

(k) When a business was formerly owned or controlled by a nondisadvantaged individual, whether or not an immediate family member, and ownership or control was transferred to a disadvantaged individual, and the nondisadvantaged individual remains involved with the business in any capacity, there is a rebuttable presumption of control by the nondisadvantaged individual unless the disadvantaged individual now owning the business demonstrates to the office, by clear and convincing evidence, that:

(i) The transfer of ownership or control to the disadvantaged individual was made for reasons other than obtaining certification; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the business, notwith-

standing the continuing participation of a nondisadvantaged individual who formerly owned or controlled the business.

(l) In determining whether its disadvantaged owner controls a business, the office may consider whether the business owns equipment necessary to perform its work. However, the office must not determine a business is not controlled by disadvantaged individuals solely because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the business.

(m) A business operating under a franchise or license agreement may be certified if it meets the standards in this paragraph and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the office should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(n) The disadvantaged individual(s) controlling a business may use an employee leasing company. The use of such a company does not preclude the individual(s) from controlling their business if they continue to maintain an employer-employee relationship with the leased employees. This includes responsibility for hiring, firing, training, assigning, and otherwise controlling on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-081 ((~~Intertwinement~~)) Independence. ((To be eligible for certification, a business must be independent. Intertwinement with a noncertified business may be grounds for denial or decertification of a business. The office will determine whether a business is intertwined with a noncertified business by looking for factors which include, but are not limited to, the following:

- (1) Shared ownership;
 - (2) Common directors or partners;
 - (3) Shared equipment, facilities, resources, or employees;
 - (4) Beneficial financial arrangements which indicate less than arms length transactions with a noncertified business;
 - (5) Overdependency on a noncertified business to obtain and perform work;
 - (6) Such an identity of interest exists between the business seeking certification and a noncertified business that an affiliation may be presumed; and
 - (7) The degree to which financial, equipment, leasing, business and other relationships with noncertified businesses vary from normal industry practice.)
- Only an independent

business may be certified. An independent business is one the viability of which does not depend on its relationship with another business or businesses.

(1) In determining whether a potential certified business is an independent business, the office must scrutinize relationships with noncertified businesses in areas such as personnel, facilities, equipment, financial or bonding support, and other resources.

(2) The office must consider whether present or recent employer and employee relationships between the disadvantaged owner(s) of the potential certifiable business and noncertified business or persons associated with noncertified businesses compromise the independence of the potential certifiable business.

(3) The office must examine the business's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings compromises the independence of the potential certifiable business.

(4) In considering factors relating to the independence of a potential certifiable business, the office must consider the consistency of relationships between the potential certifiable business and noncertifiable businesses with normal industry practice.

NEW SECTION

WAC 326-20-086 Native Americans—Native Hawaiians—Alaska native corporations. (1) A firm owned by a Native American tribe, native Hawaiian organization, or Alaska native corporation, rather than by individuals, may be eligible for certification. Such a firm must meet the size standards of WAC 326-20-096 and be controlled by a socially and economically disadvantaged individual(s) per WAC 326-20-080.

(2) A firm owned by a Native American tribe, native Hawaiian organization, or Alaska native corporation will not be considered affiliated with other businesses owned by the tribe, organization, or corporation if there is a firewall, such as a legally binding mechanism, in place to prevent firms from accessing the resources of the tribe's, organization's, or corporation's other businesses.

AMENDATORY SECTION (Amending WSR 04-08-075, filed 4/5/04, effective 5/6/04)

WAC 326-20-094 Assignment of North American Industrial Classification System (NAICS) code. ~~((+)) The office will determine which NAICS code an applicant falls under based on information submitted by the business. The office will prepare conversion tables showing the department of general administration's commodity code designations, the codes developed by the Construction Specifications Institute, and the corresponding NAICS codes listed in the directory of certified businesses as described in WAC 326-20-190.~~

(2) In the event the business plans to expand the areas in which it operates, it must notify the office in writing at least thirty calendar days before the effective date of such expansion.) The office must grant certification to a business only for specific types of work the disadvantaged owner(s) have the ability to control. To become certified in an additional type of work, the business needs to demonstrate its owner(s)

are able to control the business with respect to that type of work. The office must not require the business to recertify or submit a new certification application but verify the disadvantaged owner(s) control of the business in the additional type of work.

(1) The types of work a business can perform, whether at initial certification or when a new type is added, must be described in terms of the most specific available North American Industry Classification System (NAICS) code for that type of work. In addition to applying the appropriate NAICS code, the office may apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one describing, as specifically as possible, the principle goods or services the business would provide to the state. Multiple NAICS codes may be assigned when appropriate. The office must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a business's certification.

(2) Businesses and recipients must check carefully to make sure the NAICS codes cited in a certification are current and accurately reflect work the office has determined the business owners can control. The business bears the burden of providing detailed company information the office needs to make an appropriate NAICS code designation.

(3) If a business believes there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified, the business may request the office, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the business is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients must not rely on such a description in determining whether a business's participation can be counted toward goals.

(4) The office is not precluded from changing a certification classification or description if there is a factual basis in the record. However, the office must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

NEW SECTION

WAC 326-20-099 Small business concern requirement and size standards. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW, a business must qualify as a small business concern for certification eligibility or recertification.

(a) A small business concern is a business that is independently owned and operated, is not dominant in its field of operations, and does not exceed the size limitations as set forth in the current table of North American Industrial Classification System (NAICS) codes or corresponding industry size standards as set forth in 49 C.F.R. Part 26 and amendments or inflationary adjustments thereof.

(b) The number of employees or amount of annual receipts listed as the size standard for each NAICS code indicates the maximum allowed for a business, including its affiliates, to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern must be, whenever pos-

sible, based on criteria consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations, taking into consideration statewide markets.

(2) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(3) At the time of application for certification and recertification, a business must demonstrate to the office that it is a small business concern. The office may verify the business is still a small business concern at any time after certification. In verifying the business's size, the office will review such financial documentation made available to the office, such as annual financial statements, federal income tax returns, state and local excise tax reports, and other relevant information.

(4) Except as otherwise provided in this chapter, affiliation occurs when either directly or indirectly:

(a) One business controls or has power to control the other;

(b) A third party or parties controls or has power to control both; or

(c) An "identity of interest" exists among them so the presumption of affiliation exists.

(5) When reference sets the maximum size standard to "annual receipts," a business exceeding the monetary figure in the standard is not eligible for certification. Annual receipts includes all revenue received or accrued from sources, such as sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. The term "receipts" excludes proceeds from any of the following:

(a) Sales of capital assets and investments;

(b) Proceeds from transactions between a concern and its domestic and foreign affiliates;

(c) Proceeds from payments of notes receivable, accounts receivable, and amounts collected as an agent for another, such as gross bookings when a commission is earned, in which case only the commission earned constitutes revenue, and taxes collected for remittance to a taxing authority.

(6) The measurement period must comply with the following:

(a) The size of a business with three or more completed fiscal years will be determined by averaging the annual receipts of the business for the most recent three years;

(b) The size of a business with less than three fiscal years will be determined by computing the average of the annual receipts from the time the business formed, calculating total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by fifty-two;

(c) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the business has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the federal income tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(7) Where the size standard is "number of employees," size eligibility requires the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including domestic and foreign affiliate employees, based upon employment during each of the pay periods for the preceding completed twelve calendar months.

(b) In computing average employment, part-time and temporary employees count as full-time employees for each applicable pay period.

(c) If a concern has not been in business for twelve months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(8) No business, regardless of its primary NAICS code, is eligible for certification if it exceeds the largest annual revenue limit contained in 49 C.F.R. Part 26 and any amendments or inflationary adjustments thereof.

(9) In determining the business's primary industry, including its affiliates, the office must consider the distribution of receipts, employees, and costs in the differing industry areas the business operated during its most recently completed fiscal year. Other factors, such as patents, contract awards, and assets, may be considered.

(10) If the activities of the business encompass two or more NAICS codes, the first NAICS code listed in the directory is the primary industry classification of the business.

(11) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(12) For purposes of utilization on projects funded by any operating modal of the U.S. Department of Transportation the maximum dollar size standard in 49 C.F.R. Part 26 as may be amended or adjusted for inflation, must apply, even if the size standard would otherwise be set by reference to number of employees. This standard is a maximum. Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 326-20-030 Proof of minority status.

WAC 326-20-040 Proof of woman's status.

WAC 326-20-092 Small business concern requirement.

WAC 326-20-095 Determination of firm size.

WAC 326-20-096 Size standard.

WAC 326-20-115 Signatures of applicant business owners.

WSR 19-08-085
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed April 3, 2019, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-020.

Title of Rule and Other Identifying Information: Chapter 246-480 WAC, Drug take-back program, the department is proposing to create a new chapter of rules to clarify implementation of certain aspects of administrative and regulatory standards for the safe and secure collection and disposal of unwanted medicines through a uniform drug take-back program as established in chapter 69.48 RCW. Specific aspects addressed in this proposal include information required in drug take-back program proposals and other reports, department audits, proprietary information, and establishes a department fee.

Hearing Location(s): On May 8, 2019, at 2:00 p.m., at the Washington State Department of Health, Town Center Building 2, Room #158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: May 22, 2019.

Submit Written Comments to: Carly Bartz-Overman, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by May 8, 2019.

Assistance for Persons with Disabilities: Contact Carly Bartz-Overman, phone 360-236-4698, TTY 360-833-6388 or 711, email carly.bartz-overman@doh.wa.gov, by May 1, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is statutorily responsible for the oversight and enforcement of the statewide drug take-back program and is required to adopt rules for that purpose. The proposed rules primarily address administrative details about how to submit reports and petitions to the department for approval, and explain the level of information and formatting required, when applicable. It also provides details and direction about public disclosure, and determining a drug take-back's underserved areas to create predictability and transparency for stakeholders.

Reasons Supporting Proposal: The proposed rules give the department and the drug take-back program operator needed detail to ensure proper departmental review and oversight of the drug take-back program. Areas of clarity include details needed in a drug take-back proposal and annual reports for department review (e.g., cost projections and expenses), enforcement procedures, and the department's fee.

Abuse, fatal overdoses, and poisonings from prescription and over-the-counter medicines used in the home have emerged as an epidemic in recent years. Poisoning is the leading cause of unintentional injury-related death in Washington state, and more than ninety percent of poisoning deaths are due to drug overdoses. Poisoning by prescription and over-the-counter medicines is also one of the most common means of suicide and suicide attempts, with poisonings involved in more than twenty-eight thousand suicide attempts between 2004 and 2013.

Statutory Authority for Adoption: RCW 69.48.180.

Statute Being Implemented: Chapter 69.48 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carly Bartz-Overman, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3044.

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 Carly Bartz-Overman, P.O. Box 47850, Olympia, WA 98504-7850, phone 360-236-4698, fax 360-236-2901, TTY 360-833-6388 or 711, email carly.bartz-overman@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 3, 2019

John Wiesman, DrPH, MPH
 Secretary

Chapter 246-480 WAC

DRUG TAKE-BACK PROGRAM

NEW SECTION

WAC 246-480-010 Purpose and scope. The purpose of this chapter is to:

(1) Establish a single uniform, statewide system of regulation for safe and secure collection and disposal of medicines through a uniform drug take-back program, operated and funded by drug manufacturers, and regulated by the department of health consistent with chapter 69.48 RCW.

(2) Establish criteria and an approval process for program operators to operate a drug take-back program under chapter 69.48 RCW.

(3) Ensure every covered manufacturer whose drugs are sold in or into Washington complies with chapter 69.48 RCW and this chapter.

NEW SECTION

WAC 246-480-020 Definitions. The definitions in RCW 69.48.020 apply to this chapter unless the context clearly indicates otherwise.

NEW SECTION

WAC 246-480-030 Identification of covered manufacturers. (1) Upon review of an inquiry response letter described in RCW 69.48.040(3), the department shall notify the person or entity in writing whether or not the person or entity is considered a covered manufacturer. If the department determines that the person or entity is a covered manufacturer, the written notice will include a warning regarding the penalties for violation of this chapter, as authorized in RCW 69.48.110(2).

(2)(a) Within thirty days after the first full year of a drug take-back program's implementation, and annually thereafter, the department may provide a list of covered manufacturers potentially not participating in a drug take-back program to each approved program operator.

(b) Within thirty days of receiving such a list, approved program operators may provide any comments on the list to the department.

(c) Within thirty days of receiving and considering any approved program operator comments, the department may publish on its web site a list of all covered manufacturers not participating in a drug take-back program.

(3) The department shall remove any covered manufacturer identified in the published list if the covered manufacturer participates in an approved drug take-back program.

NEW SECTION

WAC 246-480-040 Drug take-back program proposal components. In addition to this section, the drug take-back proposal must comply with chapter 69.48 RCW. Each proposal must be on a form provided by the department and must:

(1) Contain a table of contents clearly denoting, at a minimum, where each component specified in RCW 69.48.050 is located within the program proposal;

(2) Provide a description of a drug collection system that includes:

(a) A list of participating authorized collectors;

(b) A list of drop-off (kiosk) locations; and

(c) A detailed description of how mail-back distribution locations or periodic collection events will be used.

(3) Demonstrate that the policies and procedures to be followed by persons handling unwanted covered drugs collected under the drug take-back program as required in RCW 69.48.050 (2)(f) includes:

(a) How all entities participating in the drug take-back program will operate under all applicable federal and state laws and rules including, but not limited to, United States Drug Enforcement Administration rules; and

(b) How any pharmacy collection sites will operate under applicable rules from the Washington state pharmacy quality assurance commission.

(4) Include a detailed description of the geographical distribution of collection sites that will provide equitable and reasonably convenient access to all residents consistent with RCW 69.48.060;

(5) Include a budget estimate for providing the statewide program. Estimates must show total costs for each of the categories described in this subsection and a sum total of all program costs representing the totals for each category:

(a) Category 1: Administrative costs. A total for all administrative costs must take into account:

(i) Contracted and employed personnel overhead costs;

(ii) Legal fees;

(iii) Local and state business licensing fees;

(iv) Local, state, and federal taxes;

(v) Property costs, including rentals;

(vi) Utilities, phone, and internet; and

(vii) General equipment and supplies.

(b) Category 2: Collection and disposal costs. A total for all collection and disposal costs must take into account:

(i) Collection, transportation, and disposal of drugs;

(ii) Purchase, maintenance, and replacement of collection receptacles;

(iii) Compensation of authorized collectors, if separate from personnel costs in (a)(i)(A) of this subsection; and

(iv) Production, distribution, and postage of mailers.

(c) Category 3: Communication costs. A total for all communication costs must take into account:

(i) Advertising;

(ii) Marketing;

(iii) Web site creation and maintenance; and

(iv) Operation of a toll-free phone number.

(6) Describe how the program operator will work with Washington state counties and the department to incorporate local programs into their proposed statewide plan consistent with RCW 69.48.160 (1)(b); and

(7) Include an implementation plan and schedule for initiating operation of the approved drug take-back program.

NEW SECTION

WAC 246-480-050 Program application. (1) A drug take-back program operator must submit its program proposal and substantial changes to an approved program on forms provided by the department.

(2) If the department takes enforcement action as provided in RCW 69.48.050 (3)(c)(iv), the applicant through its authorized representative may request an adjudicative proceeding under chapter 246-10 WAC. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the program operator's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within twenty-eight days of the date of the program operator's receipt of the adverse notice, the secretary's decision is final.

NEW SECTION

WAC 246-480-060 Collection of covered drugs—Underserved areas. (1) To assist the program operators in

complying with RCW 69.48.060 (3)(c) and (d), the department will determine and locate each population center consistent with RCW 69.48.060 and this chapter using geographical information systems (GIS) mapping technology, and will publish updated population data to the department's web site annually.

(2) The department, in consultation with the local health jurisdiction, will determine underserved areas described in RCW 69.48.060(3) using the following criteria:

- (a) Population density of counties;
- (b) Estimated number of participating collection sites;
- (c) Driving distances and times;
- (d) Accessible public facilities such as libraries, town halls, and police and fire departments; and
- (e) Geographic features that may inhibit access to collection locations such as mountains and islands.

NEW SECTION

WAC 246-480-070 Promotion. Approved program operators must update their list of authorized collectors, sites, locations to receive mailers, and locations for drug take-back events at least quarterly on their web site.

NEW SECTION

WAC 246-480-080 Disposal of covered drugs. (1) A program operator's use of disposal or combustor facilities described in RCW 69.48.080 which reside outside of Washington state do not require department approval. Prior to using any out-of-state disposal or combustor facility, a program operator shall:

- (a) Notify the department in writing. The notice shall include the facility's:
 - (i) Name;
 - (ii) Type;
 - (iii) Address; and
 - (iv) Federal or state waste permit type and number.
- (b) Abide by the waste disposal laws of that state or jurisdiction.

(2) Prior to using a permitted large municipal waste combustor facility within Washington state, a program operator shall submit a request in writing to the department for approval.

(3) Petitions for use of final disposal technologies as described in RCW 69.48.080(3) within Washington state must be made on forms provided by the department.

NEW SECTION

WAC 246-480-090 Program operator annual report.

(1) To comply with RCW 69.48.100(1), each program operator shall submit an annual report to the department by July 1st on a form developed by the department.

(2) In addition to the elements identified and described in RCW 69.48.100, the report must include a summary of the program's annual expenditures organized using the same criteria as described in WAC 246-480-040(5).

NEW SECTION

WAC 246-480-100 Proprietary information. (1) Consistent with RCW 69.48.170, chapter 42.56 RCW, and other applicable laws, proprietary information submitted to the department under chapter 69.48 RCW is exempt from public disclosure. The manufacturer or drug take-back organization must identify in writing the information it considers proprietary when submitting information to the department. Information automatically disclosable under law may not be marked proprietary. Information not deemed automatically disclosable cannot be marked as proprietary in their entirety.

(2) If the department receives a request for disclosure under chapter 42.56 RCW which includes information identified by the manufacturer or drug take-back organization as proprietary, the department will notify the manufacturer or drug take-back organization of the status of such documents prior to their release. The manufacturer or drug take-back organization may seek to enjoin the release of the information as provided under RCW 42.56.540

NEW SECTION

WAC 246-480-990 Fees. This section establishes the initial and annual fees for a program operator implementing a drug take-back program under chapter 69.48 RCW and this chapter.

(1) Initial fee. By no later than October 1, 2019, a program operator shall submit to the department an initial fee of seven hundred thousand dollars.

(2) Renewal fee.

(a) By August 1, 2020, and each August 1st thereafter, the department shall notify a program operator the amount of its annual renewal fee as determined according to RCW 69.48.120. Renewal fees will reflect the department's actual administrative, oversight, enforcement, and contractual costs for that fiscal year, or not more than ten percent of the program operator's annual expenses as reported on July 1st of each year, whichever amount is smaller.

(b) By October 1, 2020, and each October 1st thereafter, a program operator shall submit to the department the renewal fee.

WSR 19-08-087

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 3, 2019, 10:05 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-808-990 Chiropractic fees and renewal cycle, 246-830-990 Massage fees and renewal cycle, 246-841-990 Nursing assistant—Fees and renewal cycle, and 246-940-990 Certified animal massage therapist—Fees and renewal cycle. Proposing to increase application fees and active renewal fees, and update late renewal penalties for all chiropractors, chiro-

practic X-ray technicians, massage therapists, nursing assistants, and animal massage therapists.

Hearing Location(s): On May 7, 2019, at 1:00 p.m., at the Department of Health, Town Center 2, Room #158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: May 17, 2019.

Submit Written Comments to: Nancy Elliott, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, by May 7, 2019.

Assistance for Persons with Disabilities: Contact Nancy Elliott, phone 360-236-4878, TTY 360-833-6388 or 711, email nancy.elliott@doh.wa.gov, by April 24, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current fees are not generating sufficient revenue to keep the chiropractic, massage, nursing assistant, and animal massage programs self-supporting. The fund balances for these programs have fallen below the desired levels and are projected to descend into a deficit of -\$2.0 million for chiropractic, -\$4.8 million for massage, -\$4.4 million for nursing assistants, and -\$129,500 for animal massage by 2025. The department of health (department), in coordination with the chiropractic quality assurance commission and board of massage as appropriate, has set a fund balance for these programs, while allowing for a reserve for unanticipated expenditures like costly disciplinary cases. Professions need to maintain a reserve that is based on level of risk including revenue stability, disciplinary trends, and size of the profession, in order to cover unanticipated costs. In addition to funding adequate reserves, the proposed fee increases are projected to bring licensing revenues in alignment with the actual costs of regulating these professions and maintain a positive program fund balance within six years. The department is also proposing adjustments to bring the late renewal penalty in line with agency standards for health professions.

Department policy and office of financial management guidelines that require professions to have a sufficient reserve to cover unexpected costs, were also used.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. To date, animal massage licensee growth rate is slower than predicted; there has been a large increase in chiropractic program staffing and discipline; the massage program has seen a high increase in disciplinary cost; and the nursing assistants program is experiencing high credentialing and disciplinary costs. Without the proposed fee increases, these programs cannot remain self-supporting. These program budgets are not currently maintaining the necessary fund balances, which are projected to fall into a large deficit starting June 2019 through 2025.

In addition, the state auditor's office published their performance audit report, "Aligning Healthcare Professional Fees with Licensing Costs," in November 2018, to examine if the department aligns the fees it charges to health care professions with the costs of licensing. In response, the department is developing processes to review fees more consistently and enhance transparency of fund balances and fee setting.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.-280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Elliott, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4878.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 3, 2019
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 17-08-061, filed 3/31/17, effective 8/1/17)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for chiropractic licensure:

Title of Fee	Fee
Original application	
Application	\$(330.00) <u>625.00</u>
Jurisprudence examination and reexamination	100.00
UW online access fee (HEAL-WA)	16.00
Temporary practice permit	
90-day permit	105.00
Preceptorship - Initial and renewal	
Active license renewal	
Renewal	((380.00)) <u>550.00</u>
Late renewal penalty	((190.00)) <u>225.00</u>

Title of Fee	Fee
Expired license reissuance	302.00
UW online access fee (HEAL-WA)	16.00

Inactive license renewal

Renewal	257.00
Expired license reissuance	157.00

Duplicate license 30.00

Verification of license 30.00

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

Title of Fee	Fee
Application	((47.00)) <u>135.00</u>
Original registration	47.00
Renewal	((62.00)) <u>90.00</u>
Late renewal penalty	((62.00)) <u>50.00</u>
Expired registration reissuance	62.00
Duplicate registration	30.00
Verification of registration	30.00

AMENDATORY SECTION (Amending WSR 16-15-013, filed 7/8/16, effective 10/1/16)

WAC 246-830-990 Massage fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	
Application and initial license	((125.00)) <u>\$210.00</u>
UW online access fee (HEAL-WA)	16.00

Active license renewal

Renewal	((90.00)) <u>150.00</u>
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Late renewal penalty	((50.00)) <u>75.00</u>
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Expired license reissuance	50.00
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UW online access fee (HEAL-WA)	16.00
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Inactive license renewal

Inactive license renewal	50.00
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Expired inactive license reissuance	50.00
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UW online access fee (HEAL-WA)	16.00
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Verification of license 10.00

Title of Fee	Fee
Duplicate license	10.00
Intraoral massage endorsement	25.00

AMENDATORY SECTION (Amending WSR 16-15-013, filed 7/8/16, effective 10/1/16)

WAC 246-841-990 Nursing assistant—Fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for registration credentials:

Title of Fee	Fee
Application - Registration	\$((65.00)) <u>85.00</u>
Renewal of registration	((70.00)) <u>95.00</u>
Duplicate registration	10.00
Registration late penalty	50.00
Expired registration reissuance	52.00

(3) The following nonrefundable fees will be charged for certification credentials:

Title of Fee	Fee
Application for certification	\$((65.00)) <u>85.00</u>
Certification renewal	((70.00)) <u>95.00</u>
Duplicate certification	10.00
Certification late penalty	50.00
Expired certification reissuance	52.00

(4) The following nonrefundable fees will be charged for medication assistant endorsement credentials:

Title of Fee	Fee
Application for endorsement	\$25.00
Endorsement renewal	10.00

AMENDATORY SECTION (Amending WSR 17-11-058, filed 5/16/17, effective 7/1/17)

WAC 246-940-990 Certified animal massage therapist—Fees and renewal cycle. (1) Certification must be renewed every year on or before the animal massage therapist's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for certification:

Title of Fee	Fee
Application for large animal certification	\$((250.00)) <u>440.00</u>

Title of Fee	Fee
Application for small animal certification	((250.00)) 440.00
Renewal of certification for large animal certification	((190.00)) 335.00
Renewal of certification for small animal certification	((190.00)) 335.00
Late renewal penalty fee per certification	((95.00)) 170.00
Expired credential reissuance fee per certification	95.00
Duplicate credential per certification	30.00
Verification of credential per certification	30.00

WSR 19-08-088
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed April 3, 2019, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-094.

Title of Rule and Other Identifying Information: WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources.

Hearing Location(s): On May 7, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Apple Conference Room 127, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at: <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 8, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 7, 2109 [2019].

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by May 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being amended to clarify what an "ownership interest" is in the home exclusion rule. Clarification is also needed to explain that property essential to self-support does not include intangible personal property other than cash or cash equivalents used in a trade or business.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1348; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Amendments to WAC 182-512-0350 do not impose additional compliance costs or requirements on providers.

April 3, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources. (1) The agency ~~((does not count))~~ excludes the following resources when determining eligibility for SSI-related medical assistance:

(a) A ~~((person's))~~ client's household goods and personal effects;

(b) One home (which can be any shelter), including the land on which the dwelling is located, and all contiguous property and related out-buildings in which the ~~((person has ownership interest (for WAH long-term care programs, see WAC 182-513-1350 for home equity limits)))~~ client has a fee simple interest, life estate interest, or equitable interest (subject to state law), when:

(i) The ~~((person))~~ client uses the home as ~~((his or her))~~ a primary residence; ~~((or))~~

(ii) The ~~((person's))~~ client's spouse lives in the home; ~~((or))~~

(iii) The ~~((person))~~ client does not currently live in the home, but the ~~((person or his/her))~~ client or the client's representative has stated ~~((he or she))~~ the client intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the ~~((person))~~ client, lives in the home and either the dependency is documented or a written statement of dependency is provided by the ~~((person, or his or her))~~ client, the client's authorized representative, or by the client's dependent relative.

~~((The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:~~

~~((i) Uses the property as his or her principal place of residence;~~

~~((ii) Would have to move if the property were sold; and~~

~~((iii) Has no other readily available housing.))~~ The client's interest in jointly owned real property when the sale of the

jointly owned interest would cause undue hardship to a joint owner.

(i) For the purposes of this section, jointly owned interest means:

(A) The client and one or more people own a fee simple interest;

(B) The client and one or more people own a life estate interest;

(C) The client and one or more people own an equitable interest (subject to state law); or

(D) One or more people have a fee simple or life estate interest, and the client has an equitable interest (subject to state law) in that interest.

(ii) For the purposes of this section, undue hardship means:

(A) One or more joint owners use the real property as his or her principal place of residence;

(B) A joint owner would have to move if the jointly owned interest were sold; and

(C) A joint owner has no other readily available housing.

(2) ~~((Cash))~~ Proceeds from the sale of ~~((the home))~~ an interest described in subsection (1)(b) of this section, are ~~((not considered))~~ excluded as a resource if the ~~((person))~~ client uses ~~((them))~~ the proceeds to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the ~~((person))~~ client plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home, and does so within three ~~((full calendar))~~ months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

(a) Current market value of the contract is zero~~((7))~~;

(b) Contract cannot be sold; or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are ~~((exempt))~~ excluded resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the ~~((person's))~~ client's principal place of residence executed between December 1, 1993 and May 31, 2004 is ~~((considered an exempt))~~ an excluded resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004 on a home that was the principal place of residence for the ~~((person))~~ client at the time of institutionalization is ~~((considered exempt))~~ an excluded resource as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the ~~((person))~~ client; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) of this section are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is ~~((considered))~~ a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) of this section are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsections (5), (6), or (7) of this section but do not meet the criteria in subsections (3) or (4) of this section, both the principal and interest portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support ~~((PES))~~ is ~~((not considered))~~ excluded as a resource within certain limits. ~~((The agency places property essential to self-support in several categories))~~ There are three categories of PES:

(a) Real and personal property used in a trade or business ~~((income-producing property)), such as:~~

(i) Land;

(ii) Buildings;

(iii) Equipment;

(iv) Supplies;

(v) Motor vehicles; and

(vi) Tools);

(i) That is a resource defined under WAC 182-512-0200;

(ii) That is in current use as described under the Social Security Administration's Program Operations Manual System (POMS) SI 01130.504; and

(iii) Where the trade or business is a sole proprietorship or simple partnership.

(b) Nonbusiness income-producing property (i.e., property not used in a trade or business), such as:

(i) Houses or apartments for rent; and

(ii) Land, other than home property.

(c) Property used to produce goods or services essential to a ~~((person's))~~ client's daily activities, such as land used to produce vegetables or livestock, which is ~~((only))~~ used only for personal consumption in the ~~((person's))~~ client's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (e.g., cars, trucks).

(12) The agency excludes a ~~((person's equity in))~~ client's real and personal property used in a trade or business ~~((income producing property listed in))~~, described under subsection (11)(a) of this section, regardless of value as long as it is ~~((currently in use))~~ in current use (as described under POMS SI 01130.504) in the trade or business and remains used in the trade or business.

(13) The agency excludes up to ~~((six thousand dollars))~~ \$6,000 of a ~~((person's))~~ client's equity in nonbusiness income-producing property ~~((listed in))~~, described under subsection (11)(b) of this section, if it produces a net annual income to the ~~((person))~~ client of at least six percent of the excluded equity.

(a) If a ~~((person's))~~ client's equity in the property is over ~~((six thousand dollars))~~ \$6,000, only the amount over ~~((six thousand dollars))~~ \$6,000 is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the ~~((person's))~~ client's control (e.g., illness), and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) of this section apply.

(c) If a ~~((person))~~ client has more than one piece of real property in this category, each is ~~((looked at))~~ independently evaluated to see if it meets the six percent return, and the total equities of all those properties are added to see if the total is over ~~((six thousand dollars))~~ \$6,000. If the total is over the ~~((six thousand dollars))~~ \$6,000 limit, the amount exceeding the limit is counted toward the resource limit.

(d) The equity in each property that does not meet the six percent annual net income limit is counted toward the resource limit, with the exception of property that represents the authority granted by a governmental agency to engage in an income-producing activity if it is:

(i) Used in a trade or business or nonbusiness income-producing activity; or

(ii) Not used due to circumstances beyond the ~~((person's))~~ client's control ~~((;))~~ (e.g., illness), and there is a reasonable expectation that the use will resume.

(14) Property used to produce goods or services essential to a ~~((person's))~~ client's daily activities is excluded if the ~~((person's))~~ client's equity in the property does not exceed ~~((six thousand dollars))~~ \$6,000.

(15) Personal property used by a ~~((person))~~ client for work is not counted toward the resource limit, regardless of value, while in current use (as described under POMS SI 01130.504), or if the required use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by a ~~((person))~~ client who is of Indian descent from a federally recognized Indian tribe or held by the spouse or widow/er of that ~~((person))~~ client, is not counted toward the resource limit if permission of the other ~~((persons))~~ people, the tribe, or an agency of the federal government must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of ~~((exempt))~~ excluded resources, such as fishing, shell-fishing, or selling timber from protected land, is consid-

ered conversion of an ~~((exempt))~~ excluded resource during the month of receipt. Any amount remaining from the conversion of this ~~((exempt))~~ excluded resource on the first of the month after the month of receipt will remain ~~((exempt))~~ excluded if it is used to purchase another ~~((exempt))~~ excluded resource. Any amount remaining in the form of a countable resource (such as in a checking or savings account) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

WSR 19-08-090
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed April 3, 2019, 10:17 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-919-990 Physician and surgeon fees and renewal cycle and 246-918-990 Physician assistant fees and renewal cycle, proposing to increase renewal fees and late renewal penalties for allopathic physicians and allopathic physician assistants.

Hearing Location(s): On May 7, 2019, at 2:00 p.m., at the Department of Health, Town Center 2, Room #158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: May 17, 2019.

Submit Written Comments to: Nancy Elliott, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, by May 7, 2019.

Assistance for Persons with Disabilities: Contact Nancy Elliott, phone 360-236-4878, TTY 360-833-6388 or 711, email nancy.elliott@doh.wa.gov, by April 24, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current fees are not generating sufficient revenue to keep the program self-supporting, with the fund balance projected to fall into a deficit of nearly -\$9 million next biennium. The department of health (department), in coordination with the Washington Medical Commission (WMC), is proposing fee increases to bring licensing revenues in alignment with the actual costs of regulating allopathic physicians and physician assistants, maintain a positive program fund balance, and bring the reserve to an amount equal to five months of operating costs over a six year period. Professions need to maintain a reserve that is based on level of risk including revenue stability, disciplinary trends, and size of the profession, in order to cover unanticipated costs.

Department policy and office of financial management guidelines that require professions to have a sufficient reserve to cover unexpected costs were also used.

The department is also proposing adjustments to bring the late renewal penalty in line with agency standards for health professions.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members, and licensing fees to be based on the licensing program's costs. Without the proposed fee

increases, the program cannot remain self-supporting. In addition, the state auditor's office published their performance audit report, "Aligning Healthcare Professional Fees with Licensing Costs," in November 2018, to examine if the department aligns the fees it charges to health care professions with the costs of licensing. In response, the department is developing processes to review fees more consistently and enhance transparency of fund balances and fee-setting.

The program's budget is not currently maintaining a positive fund balance, which is projected to fall into a large deficit next biennium, nor a reserve equal to five months of operating costs to cover extraordinary expenditures. The financial risks, due to unexpected costs associated with ongoing multiple legal challenges in state and federal courts that could settle against WMC, necessitate a larger reserve.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Nancy Elliott, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4878; Implementation and Enforcement: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2727.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 3, 2019
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-20-050, filed 9/30/15, effective 1/1/16)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants:	
Original application ((annual)*)	\$116.00))

Title of Fee	Fee
<u>Application</u>	<u>\$50.00</u>
<u>UW HEAL-WA surcharge*</u>	<u>16.00</u>
<u>Washington physician health program surcharge</u>	<u>50.00</u>
Active license renewal	
Two-year renewal((*))	202.00)) <u>265.00</u>
<u>UW HEAL-WA surcharge*</u>	<u>32.00</u>
<u>Washington physician health program surcharge*</u>	<u>100.00</u>
Late renewal fee	((50.00)) <u>130.00</u>
Expired license reissuance	50.00
Retired active license renewal	
Two-year renewal((**))	135.00)) <u>35.00</u>
<u>Washington physician health program surcharge*</u>	<u>100.00</u>
Late renewal fee	35.00
Duplicate license	15.00

* ((~~includes~~)) The Washington physician health program surcharge (RCW 18.71A.020(3)) is assessed at \$50.00 per year, and the University of Washington (UW) HEAL-WA web portal access fee (RCW 43.70.110) assessed at \$16.00 per year.

** ((~~includes~~)) The Washington physician health program surcharge is assessed at \$50.00 per year.

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-919-990 Physician and surgeon fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to the program's date.

(3) A retired active physician who resides and practices in Washington and obtains or renews a retired active license is exempt from all licensing fees except for the impaired physician program surcharge authorized by RCW 18.71.310.

(4) The applicants and licensees must pay the following nonrefundable fees:

(Title of Fee)	Fee
Physicians and surgeons: Chapter 18.71 RCW	
Application (annual)*	\$491.00
Two-year renewal*	657.00
Late renewal penalty	262.50
Expired license reissuance	262.50
Certification of license	50.00
Duplicate license	15.00

<u>(Title of Fee</u>	<u>Fee</u>	<u>Title of Fee</u>	<u>Fee</u>
Temporary permit	50.00	Duplicate license	15.00
Application fee for transitioning from a postgraduate training limited license (annual)*	166.00	Temporary permit	50.00
Retired active physicians and surgeons: (Two-year cycle)		<u>Transitioning from postgraduate training limited license</u>	
Retired active physician who resides and practices in-state per RCW 18.71.080 and 18.130.250 (Washington physician health program surcharge)	100.00	Application fee	100.00
Retired active physician license renewal *(does not meet in-state exemption)	332.00	UW HEAL-WA surcharge*	16.00
Retired active late renewal penalty	50.00	Washington physician health program surcharge*	50.00
Postgraduate limited license fees: RCW 18.71.095 (One-year cycle)		<u>Postgraduate limited license: RCW 18.71.095</u>	
Limited license application*	391.00	(One-year cycle)	
Limited license renewal*	391.00	<u>Original application</u>	
Limited duplicate license	15.00))	Application	325.00
<u>Title of Fee</u>	<u>Fee</u>	UW HEAL-WA surcharge*	16.00
<u>Original application</u>		Washington physician health program surcharge*	50.00
Application	\$425.00	<u>Limited license renewal</u>	
UW HEAL-WA surcharge*	16.00	(One-year cycle)	
Washington physician health program surcharge*	50.00	Renewal	325.00
<u>Active license renewal</u>		UW HEAL-WA surcharge*	16.00
Two-year renewal	880.00	Washington physician health program surcharge*	50.00
UW HEAL-WA surcharge*	32.00	Limited duplicate license	15.00
Washington physician health program surcharge*	100.00		
Late renewal penalty	300.00		
Expired license reissuance	262.50		
<u>Retired active license renewal</u>			
(resides and practices in-state per RCW 18.71.080 and 18.130.250)			
Two-year renewal	100.00		
(only includes Washington physician health program surcharge)**			
<u>Retired active license renewal</u>			
(does not meet in-state exemption)			
Two-year renewal	200.00		
UW HEAL-WA surcharge*	32.00		
Washington physician health program surcharge*	100.00		
Late renewal penalty	100.00		
Verification of license	50.00		

* ((The application or renewal fee includes:)) The Washington physician health program surcharge (RCW 18.71.310(2)) is assessed at \$50.00 per year, and the University of Washington (UW) HEAL-WA web portal access fee (RCW 43.70.110) is assessed at \$16.00 per year.

**WSR 19-08-099
PROPOSED RULES
BATES TECHNICAL COLLEGE**

[Filed April 3, 2019, 11:40 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 19-06-021.
Title of Rule and Other Identifying Information: Amending chapter 495A-121 WAC to align with model student code of conduct.
Hearing Location(s): On June 11, 2019, at 10:30 a.m.-12:30 p.m., in the Clyde Hupp Room, Building A, Room A329, Downtown Campus Location, 1101 South Yakima Avenue, Tacoma, WA 98405-4895.
Date of Intended Adoption: June 30, 2019.
Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by May 31, 2019.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, phone 253-680-7163, fax 253-680-7101, email jehernandez@batestech.edu, by May 31, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to align with model student code of conduct.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapter 34.05 RCW, RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.250, 28B.50-140(13).

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

Name of Proponent: Bates Technical College, governmental.

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

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

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

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

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

April 3, 2019
Dr. Jean Hernandez
Special Assistant
to the President

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-010 Preamble. Bates Technical College is a two-year public institution of higher education. The college is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Broadly stated, the purpose of the college is to provide opportunities for all who desire to pursue educational goals. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. To

implement this objective, it is necessary to ensure that an environment is created wherein all students may progress in accordance with their capability and intensity of interest. The responsibility to create and maintain such an environment is shared by all members of the college community (~~(= Students, faculty, staff, and administration)~~).

AMENDATORY SECTION (Amending WSR 04-11-043, filed 5/13/04, effective 6/13/04)

WAC 495A-121-011 Definitions. The definitions set forth in this section shall apply throughout this chapter. The following words and phrases shall mean:

(1) "Assembly" (~~((shall))~~) means any activity engaged in by two or more persons, and the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any persons or group of persons.

(2) "Board of trustees" shall mean the five-member governance board appointed by the governor of the state of Washington for Bates Technical College, District No. 28.

(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the timeline runs until the next date on which the college is open for business.

(4) "College" shall mean Bates Technical College, ~~((which includes the main campus, extension centers, and off-campus classes and activities, including alternative learning methods distributed by web, tape, television or other alternative means))~~ District No. 28.

~~((4))~~ (5) "College community" (~~((shall mean all college employees designated as members of the administration by the board of trustees and students))~~) means students, employees, trustees, and volunteers.

~~((5))~~ (6) "College facilities" (~~((shall mean and include any or all computer systems/networks or extension/alternative sites or real property controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.~~

~~((6))~~ and "college facility" mean and include any real and personal property owned, rented, leased, or operated by the college, all buildings and appurtenances attached thereto, and all parking lots and other grounds. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all campuses of the college where located and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "College president" shall mean the chief executive officer of the college appointed by the board of trustees.

~~((7))~~ (10) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(11) "Conduct review officer" is the college administrator designated by the president to be responsible for receiving

and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(12) "Consent" means a person gives knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the sexual activity. For consent to be valid there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat, intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening, are disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity. An individual has engaged in nonconsensual sexual activity when the individual knows, or should know, that the other person is physically, emotionally, or mentally incapacitated.

(13) "Controlled substance(s)" ((shall mean the definition of controlled substances as defined within RCW 69.50.101)) means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

((8) "Disciplinary action" shall mean and include oral warning, reprimand, probation, suspension, dismissal or any lesser sanction of any student by college officials.

(9) "Disciplinary official" shall mean the student/faculty disciplinary committee, the vice president of student services or designee, and the president.

(10) "Drugs" shall mean a narcotic drug as defined in RCW 69.50.101 or a legend drug as defined in RCW 69.41.010.

((11)) (14) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(15) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

(16) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student/faculty disciplinary committee. Appeals of all other disciplinary action that can be appealed is reviewed through brief adjudicative proceedings.

(17) "Employee" ((shall)) means any classified, faculty, administrator, exempt, student worker or volunteer person.

((12) "Harassment" shall mean any malicious act, which causes harm to any person's physical or mental well-being.

(13) "Hate crimes" shall mean criminal acts in which victims are selected based on characteristics such as race, national origin, ethnicity, sex/gender, religion, sexual orien-

tation or disability. Examples of behaviors that may constitute a hate crime include but are not limited to:

- (a) Threatening phone calls.
- (b) Hate mail.
- (c) Physical assault.
- (d) Threats of harm or violence.
- (e) Arson.
- (f) Vandalism.
- (g) Cross burnings.
- (h) Bombings and bomb threats.

(14) "Hazing" shall mean any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause bodily danger or physical harm, or serious mental or emotional harm to any student or person attending a public or private institution of higher education or other postsecondary educational institution in this state.

((15)) (18) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(19) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

- (a) Hand delivery of the document to the specified college official or college official's assistant; or
- (b) By sending the document by email to the specified college official's email address.

Paper required to be filed is deemed filed upon actual receipt during office hours at the office of the specified college official.

(20) "Instructor((/))" and "faculty" ((shall mean professional staff members who are employed by the college in a temporary, full-time, tenured or probationary position as instructor, counselor, and/or librarian for the purpose of providing support services for students.

(16) "Liquor" shall mean the definition of liquor as defined in RCW 66.04.010.

(17) "Racial harassment" shall be defined as written, oral, graphic or physical conduct relating to an individual's race, color, or national origin that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of the individual to participate in or benefit from college's programs or activities. Examples of behaviors that constitute harassment based on race or national origin may include but are not limited to:

- (a) Harassment of students because they are immigrants, speak another language, or have a foreign accent.
- (b) Intimidation and implied or overt threats of physical violence motivated by race, color, or national origin.
- (c) Physical acts of aggression or assault upon another, or damage to another's property that is motivated by the individual's race, color, or national origin.
- (d) Depending on the circumstances and context, demeaning racial jokes, taunting, racial slurs, and derogatory racial "nicknames," innuendoes, or other negative or derogatory remarks of a racial nature or relating to national origin.

(e) Depending on the circumstances and context, graffiti and/or slogans or visual displays such as cartoons or posters

depicting racial/ethnic slurs or other racially/ethnically derogatory sentiments:

(f) Criminal offenses directed at persons because of their race or national origin.

(18) "Sexual harassment" shall mean unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct directed at person because of his/her sex where:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic standing or employment; or

(b) Submission to or rejection of such conduct by an individual is used as the basis for academic decisions or employment affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or learning environment. Examples of behaviors that may constitute harassment include but are not limited to:

(i) Unwelcome verbal harassment of a sexual nature or abuse;

(ii) Unwelcome pressure for sexual activity;

(iii) Unwelcome sexually motivated or inappropriate patting, pinching, or physical contact;

(iv) Unwelcome sexual behavior or words, including demands for sexual favors accompanied by implied or overt threats concerning an individual's educational status;

(v) Unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;

(vi) The use of authority to emphasize the sexuality of a student in a manner that prevents or impairs the student's full enjoyment of educational benefits, climate or opportunities.

(19)) mean any employee of Bates Technical College, District No. 28 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(21) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.

(22) "Respondent" is the student against whom disciplinary action is initiated.

(23) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party is accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed.

(24) "Sexual misconduct" is the definition ascribed to this term in WAC 495A-121-041(14).

(25) "Student" ((shall mean and include any person who is enrolled at the college or is in the process of enrolling at the college)) includes all persons taking courses at or through the college whether on a full-time or part-time basis and whether such courses are credit courses, noncredit courses, online courses, continuing education, or contract courses. Persons meeting the following criteria are considered students:

(a) Who withdraw after allegedly violating the code;

(b) Who are not officially enrolled for a particular term but have a continuing relationship with the college; or

(c) Who have been notified of their acceptance for admission.

(26) "Student conduct officer" is a college administrator designated by the president to be responsible for investigating allegations of student misconduct and taking disciplinary action based on the prohibited conduct listed in WAC 495A-121-041. The president may reassign any of the student conduct officer's responsibilities under this chapter as deemed appropriate.

(27) "Student organization" means any number of students who meet the college's formal requirements to form a club or organization.

(28) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(29) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-012 Jurisdiction. ((All rules in this chapter concerning student conduct and discipline apply to every student enrolled at the college whenever the student is engaged in or present at a college-related activity whether occurring on or off college facilities.)) (1) The student conduct code shall apply to student conduct that occurs:

(a) In or on college facilities;

(b) At or in connection with college-sponsored activities;

or

(c) Off campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including:

(a) Foreign or domestic travel;

(b) Activities funded or sponsored by the associated students;

(c) Athletic or recreational events;

(d) Training internships or cooperative education;

(e) Distance education or online education;

(f) Practicums or supervised work experiences;

(g) Apprenticeship sites; or

(h) Any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree or certificate, including conduct that may occur before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending.

(4) The college has sole discretion on a case-by-case basis to determine whether this student conduct code applies to conduct that occurs off campus.

(5) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may continue

with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-020 Student rights. ~~((The college endorses the following rights for each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college.))~~ As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are assured to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are assured the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services that are subject to the limitations of RCW 28B.50.-090 (3)(b).

(c) The college protects students from academic evaluation that is arbitrary, prejudiced, or capricious. Students are responsible for meeting the standards of academic performance established by each instructor.

(d) Students have the right to a learning environment that is free of discrimination, inappropriate and disrespectful conduct, and all harassment including sexual harassment.

(2) Due process.

(a) The college assures the rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 04-11-043, filed 5/13/04, effective 6/13/04)

WAC 495A-121-041 Prohibited conduct. ~~((Disciplinary action may be taken for a violation of any provision of this student code or for a violation of other college rules and regulations, which may from time to time be properly enacted or for specific prohibited conduct including, but not limited to, the following:~~

~~(1) Smoking and use of tobacco products is prohibited in all classrooms, shop areas, the library and other areas designated by college officials.~~

~~(2) Using, possessing, consuming, or being under the influence of, or selling any liquor as defined in RCW 66.04.010, in violation of law or in a manner which disrupts a college activity.~~

~~(3) Using, possessing, selling or being under the influence of any narcotic drug or controlled substance as defined in RCW 69.50.101 in a college facility or while participating in a college-related program or activity.~~

~~(4) Engaging in lewd, indecent, or obscene behavior.~~

~~(5) Where the student presents an imminent danger to college property or to himself/herself or to other students or persons in college facilities on or off campus, or to the educational process of the college.~~

~~(6) Interference by force or violence with, or intimidation by threat of force or violence, of another student, employee or visitor who is in the peaceful discharge or conduct of his/her duties or studies (RCW 28B.10.570 through 28B.10.572).~~

~~(7) Conducting or participating in an assembly, which violates the guidelines of assembly as defined and set forth in these provisions.~~

~~(8) Any forms of academic dishonesty, including cheating, falsification, plagiarism or facilitating, aiding, and abetting academic dishonesty.~~

~~(9) Forgery of or unauthorized alteration of or access to any college document, record, funds, or instrument of identification, including electronic hardware, software and records.~~

~~(10) The intentional making of false statements and/or filing of false charges against the college and/or a member of the college community.~~

~~(11) Theft from college premises and/or property; theft of property of a member of the college community on college premises; or possession of property stolen from college premises and/or a member of the college community while on college premises.~~

~~(12) Causing, or attempting to cause, physical damage to property owned, controlled or operated by the college or to property owned, controlled or operated by another person while said property is located on college facilities.~~

~~(13) Failure to comply with the direction of college employees acting in the legitimate performance of their duties.~~

~~(14) Refusal to provide positive identification and evidence of student enrollment to any college employee in the lawful discharge of said employee's duties.~~

~~(15) Unlawful possession, transportation or storage of any firearm(s), explosives, dangerous chemicals or other weapons, devices or substances which can be used to inflict bodily harm or to damage real or personal property.~~

~~(16) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.~~

~~(17) Sexual harassment as defined and set forth in these provisions, of another student or employee.~~

~~(18) Racial harassment as defined and set forth in these provisions of another student or employee.~~

~~(19) Any repeated intentional conduct directed at another student or employee that has the purpose or effect of creating a hostile, intimidating or disruptive learning or working environment.~~

(20) Hazing in any form as described in RCW 28B.10-900.

(21) Illegal or attempted illegal entry of college owned or college controlled property.

(22) Violation of any computer use policies in effect on campus as well as conduct that violates the college's property rights with respect to computing resources including, but not limited to:

(a) Unauthorized copying, including:

(i) Copying college owned or licensed software or data for personal or external use without prior approval;

(ii) Copying another computer user's software or data without permission of its owner, even if it is readily accessible by electronic means;

(iii) Knowingly accepting or using software or data which has been obtained by unauthorized means.

(b) Modifying or damaging, attempting to modify or damage computer equipment, software, databases, or communication lines without permission;

(c) Disrupting or attempting to disrupt computer operations;

(d) Invading the privacy of an individual by using electronic means to ascertain confidential information, even if an individual or department inadvertently allows access to such information;

(e) Abusing or harassing another computer user through electronic means;

(f) Using the college's computing facilities in the commission of a crime;

(g) Allowing another individual to use one's computer identity/account or using another individual's computer identity/account. This includes, but is not limited to: Logging on to the account, accessing programs, and reading or altering computer records. Computer time belongs to the college; the college is the only entity, through computing services, authorized to allocate time on the mainframe computers.

(h) Using computer services without authorization.

(i) Using the internet for purposes other than college approved activities.

(23) Disruption. While students have the right to freedom of expression, including the right to dissent or protest, this expression cannot interfere with the rights of others or disrupt the processes of the college. The following conduct will not be permitted:

(a) Disruption of classes, laboratories, offices, services, meetings, or ceremonies;

(b) Obstruction of free movement of people or vehicles;

(c) Conduct which threatens harm, incites violence, or endangers the health and safety of any person;

(d) Threats of disruption, including bomb threats;

(e) Damaging, defacing or abusing college facilities, equipment, or property;

(f) Inciting others to engage in prohibited conduct.

(24) Violation of parking regulations.

(25) Other conduct. Any other conduct or action in which the college can demonstrate a clear and distinct interest, and, which substantially threatens the educational process or other legitimate function of the college or the health or safety of any member of the college is prohibited.)) The college may impose disciplinary sanctions against a student

who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct that includes, but is not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give, or obtain unauthorized assistance related to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own without proper attribution the ideas, writings, or work of another person in completing an academic assignment. Plagiarism also may include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty that include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property.

(4) Assault, intimidation, and harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(5) Bullying is severe or pervasive physical or verbal (written or oral) abuse.

(6) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) Property violation. Damage to, theft, or misuse of real or personal property or money of:

(a) The college or state;

(b) Any student, college officer, or employee;

(c) Any other member of the college community or visitors; or

(d) Possession of such property or money after it has been stolen.

(8) Failure to comply with a directive from a college officer or employee who is acting in the legitimate performance of their duties or failure to properly identify oneself to said person when requested to do so.

(9) Weapons. The possession, transportation, and use of firearms or other dangerous weapons on campus apparently capable of producing bodily harm is prohibited on the college campus subject to the following exceptions:

(a) Certified law enforcement officers acting within the scope of their employment;

(b) Private contracted security with expressed prior written permission from the college to possess firearms or dangerous weapons while employed by the college or for a permitted or contracted event;

(c) Knives, tools, and other objects that are being used for a legitimate educational purpose as part of a college instructional program;

(d) A student with a valid concealed weapons permit may store a firearm in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(e) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written document.

(10) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or involvement in any pastime or amusement with said organization that causes or is likely to cause a student bodily danger, physical harm, and serious mental or emotional harm.

(11) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana regardless of form including edibles. While state law permits the recreational use of marijuana, federal law prohibits the use on all college premises and in connection with all college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW or any other controlled substance under chapter 69.50 RCW except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. Use of tobacco, electronic cigarettes, smoking devices, and related products on or in any college facility is prohibited. Exceptions include in a designated smoking area or in a closed private vehicle when in compliance with applicable

Washington state laws and college policies. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(12) Disorderly conduct. Conduct that:

(a) Disrupts campus operations or the educational, social, or housing programs; or

(b) Assisting or encouraging another person to engage in said disruptive behavior.

(13) Discriminatory conduct. Discriminatory conduct that harms or adversely affects any member of the college community or visitor. The misconduct includes, but is not limited to, race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification as defined by the college's nondiscrimination statement.

(14) Sexual misconduct. The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. The term sexual harassment means unwelcome conduct of a sexual nature that is sufficiently serious as to deny or limit, or that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature or that creates an intimidating, hostile, or offensive environment for other college community members or visitors.

(b) Sexual intimidation. The term sexual intimidation means threatening or emotionally distressing conduct based on sex and including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

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

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

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

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

(15) Harassment. Unwelcome and offensive verbal, non-verbal, or physical conduct that is directed at a person because of said person's protected status and that is sufficiently serious:

(a) As to deny or limit or that does deny or limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(b) That creates an intimidating, hostile, or offensive environment for other community college members or visitors.

Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See subsection (14)(a) of this section for the definition of sexual harassment.

(16) Retaliation. Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(17) Theft or misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of said computer time or resources to interfere with someone else's work;

(e) Use of said computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of said computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of said computer time and resources in violation of applicable copyright or other laws;

(h) Adding to or altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy.

(18) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property or unauthorized entry onto or into college property.

(19) Safety violations. Safety violations include any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation, or college policies or rules, including college traffic and parking rules.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing an educational goal or program.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-042 Performance dishonesty. (1) Honest assessment of student performance is of crucial importance to all members of the college community. It is the responsibility of the college administration and teaching faculty to provide reasonable and prudent security measures designed to minimize opportunities for acts of performance dishonesty which occur at the college.

(2) ~~((This section))~~ The student code of conduct shall not be construed as preventing an instructor from taking immediate disciplinary action when the instructor is required to act upon such breach of performance dishonesty in order to preserve order and prevent disruptive conduct in the classroom. This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for performance dishonesty. Acts of performance dishonesty shall be cause for disciplinary action. Acts of dishonesty shall consist of, but not be limited to, the following:

(a) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as ~~((the student's))~~ their own work, shall be deemed to have committed an act of performance dishonesty.

(b) Any student who aids or abets the accomplishment of an act of performance dishonesty as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-043 Classroom conduct. ~~((Instructors have the authority to take whatever summary actions may be~~

necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(1) Any student who, by any act of misconduct, substantially disrupts any college class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty member's class shall be subject to disciplinary action.

(2) The instructor of each course offered by the college shall be authorized to take such steps as may be necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the objectives of the course; provided that a student shall have the right to appeal such disciplinary action to the vice president for student services.) (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to one day discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

AMENDATORY SECTION (Amending WSR 04-11-043, filed 5/13/04, effective 6/13/04)

WAC 495A-121-044 Disciplinary sanctions. ((Sanctions for violations of college regulations or conduct may be imposed independent of any action taken by civil authorities. In the case of minors, misconduct may be referred to parents or legal guardians. More than one sanction may be recommended. Sanctions may include, but are not limited to:

(1) "Disciplinary warning" shall mean oral notice of violation of college rules and regulations.

(2) "Reprimand" shall mean formal action after censuring a student for violation of college rules or regulations for failure to satisfy the college's expectations regarding conduct. The disciplinary official makes reprimands in writing to the student. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other

misconduct will result in one or more serious disciplinary actions described below.

(3) "Disciplinary probation" shall mean formal action placing conditions upon the student's continued attendance. Notice will be made in writing, specifying the period of probation and the conditions of the probation. Disciplinary probation warns the student that any further misconduct will automatically raise the question of dismissal from the college.

(4) "Restitution" shall mean compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement.

(5) "Discretionary sanctions" may include, but are not limited to, restricted computer systems/network access, work assignments, service to college or community, mandatory class/workshop attendance or other discretionary assignments such as educational interventions intended as learning experiences.

(6) "Loss of privileges" shall mean loss of specific college privileges for a specified period of time. These may include, but are not limited to, computer/internet access, student activities or club participation.

(7) "Summary suspension" shall mean temporary dismissal from the college for a period of time during which an investigation and/or formal disciplinary procedures are pending. Summary suspension is predicated upon a reasonable belief that the student presents an imminent danger to college property, to other students, to employees of the college or is of significant disruption to the educational process.

(8) "Suspension" shall mean temporary dismissal from the college and termination of student status.

(9) "Expulsion" shall mean dismissal from the college and termination of student status.

(10) "No contact" shall mean restriction from entering specific college areas and/or all forms of contact with certain individual(s).) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree or certificate, disciplinary sanctions are not made a part of the student's academic record but are part of the student's disciplinary record. Violation of any term or condition of a disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction may include, but is not limited to, a suspension or a dismissal from the college

that shall take effect immediately. If the deferred sanction is a suspension in excess of ten days or a dismissal, the student shall have a right to appeal to the student/faulty disciplinary committee. Other deferred sanctions shall be subject to brief administrative proceedings as described in this chapter.

Any sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action was taken.

(5) Dismissal. The revocation of all rights and privileges of being a student at Bates Technical College and exclusion from all college campuses and college owned or controlled facilities without any possibility of returning. There is no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) Educational sanction. The college may require the student to complete an educational activity or experience directly related to the violation committed at the student's expense.

(7) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to the evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student remains suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(8) Not in good standing. If a student is deemed not in good standing with the college, the student is subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college;

(b) Ineligible to hold an elected or appointed office of the college; and

(c) Ineligible to represent the college to anyone outside the college community in any capacity including representing the college at any official function or any forms of intercollegiate competition or representation.

(9) Restitution or monetary fine. Reimbursement for damage to or misappropriation of property, for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

(10) Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or

access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(11) Revocation of admission, degree, or certificate. Admission to or the award of a degree or certificate from the college may be revoked for fraud, misrepresentation, violation of standards of conduct for students in obtaining the degree or certificate, or other serious violations committed by a student prior to graduation.

(12) Withholding degree or certificate. The college may withhold awarding a degree or certificate otherwise earned until the completion of the process set forth in this chapter and including the completion of all sanctions imposed.

(13) No trespass order. A student may be restricted from college property based on misconduct.

(14) No contact order. An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-061 (~~Disciplinary process—Except summary suspension~~) Initiation of disciplinary action.
~~((1) The vice president for student services or his/her designated representative will initiate disciplinary proceedings.~~

~~(2) Any student accused of violating any provision of the rules of conduct shall be called for an initial meeting and advised as to the seriousness of the matter under consideration. The student will be informed of what provision(s) of the rules of conduct he/she is charged with violating, and what appears to be the range of penalties, if any, which might result from disciplinary proceedings.~~

~~(3) After considering the evidence in a case and interviewing the student or students involved, the vice president for student services, or in his/her absence, the designee, may take any of the following actions:~~

~~(a) Terminate the proceeding, exonerating the student or students.~~

~~(b) Dismiss the case after providing whatever counseling and advice may be appropriate.~~

~~(c) Impose disciplinary sanctions directly, subject to the student's right of appeal as described in this procedure. The student shall be notified in writing of the action taken except that disciplinary warnings may be given verbally.~~

~~(d) Refer the matter to the student/faculty disciplinary committee for appropriate action. The student shall be notified in writing that the matter has been referred to the committee. If a referral or an appeal is made to the student/faculty disciplinary committee, the committee shall hold a hearing, reach conclusions, and may impose sanctions.)~~ **(1) All disciplinary actions are initiated by the student conduct officer. If the respondent has submitted an active complaint against the student conduct officer, the president shall, upon request, designate another person to fulfill any disciplinary responsibilities relative to the complaint.**

(2) The student conduct officer initiates disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice briefly describes the factual allegations, the provision(s) of the student conduct code that the respondent is alleged to

have violated, the range of possible sanctions for the alleged violation(s), and specifies the time and location of the meeting. At the meeting the student conduct officer presents the allegations to the respondent, and the respondent is afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) Prior to taking disciplinary action in a case involving sexual misconduct, the student conduct officer will make a reasonable effort to contact the complainant(s):

(a) To discuss the results of the investigation; and

(b) If the allegations of sexual misconduct are found to have merit, to discuss the possible disciplinary sanctions or conditions that may be imposed upon the respondent and are for the complainant's protection.

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case including any facts or argument presented by the respondent, the student conduct officer will serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495A-121-044; or

(c) Refer the matter directly to the student/faculty disciplinary committee for disciplinary action as the committee deems appropriate. This referral is in writing, to the attention of the chair of the student/faculty disciplinary committee, and with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, both the respondent and the complainant will be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal the disciplinary decision. On the same date that a disciplinary decision is served on the respondent, the student conduct officer will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describe any disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice also informs the complainant of their appeal rights. If protective sanctions or conditions are imposed, the student conduct officer will make a reasonable effort to contact the complainant and ensure prompt notice of the protective disciplinary sanctions or conditions.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-062 Summary suspension procedures. ~~(((1) If the vice president for student services deems summary suspension appropriate, he/she shall give the stu-~~

~~dent oral or written notice of the reasons for the summary suspension, duration of the summary suspension, and of any possible additional disciplinary or corrective action that may be taken. If oral notice is given, written notice shall follow within two working days. In addition, the vice president for student services shall set a date for informal hearing of the summary suspension as soon as practicable.~~

~~(2) The presiding officer for the informal hearing shall be an administrator designated by the president other than the administrator who initially imposed the summary suspension (normally, the vice president for student services) and will be accompanied by the president of the associated student government of Bates Technical College or designee. The student shall be given the opportunity to present written and/or oral evidence. The issue before the presiding officer shall be whether reasonable cause exists to support and to continue the summary suspension.~~

~~(3) The presiding officer shall issue a written decision within two days of the informal hearing.~~

~~(4) The student may request a de novo review of the informal hearing decision before the student/faculty disciplinary committee. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.~~

~~(5) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed three working days per episode. Any such summary action may be appealed to the vice president for student services for an informal hearing.)) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation or formal disciplinary procedure is pending.~~

~~(1) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:~~

~~(a) Has violated any provision of the student conduct code and presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; or~~

~~(b) Poses an ongoing threat of substantial disruption of or interference with the operations of the college.~~

~~(2) Notice. Any respondent who has been summarily suspended will be served with oral or written notice of the summary suspension. If oral notice is given, a written notification will be served on the respondent within two days of the oral notice.~~

~~(3) The written notification is entitled "notice of summary suspension" and includes:~~

~~(a) The reasons for imposing the summary suspension including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;~~

~~(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and~~

(c) The conditions, if any, under which the respondent may physically access the college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass will be included that warns the respondent that the privilege to enter into or remain on college premises has been withdrawn and that the respondent is considered trespassing and subject to arrest for criminal trespass. The respondent may only enter the college premises for a scheduled meeting with the student conduct officer or conduct review officer or to attend a disciplinary hearing.

(4) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that summary suspension should be continued pending the conclusion of disciplinary proceedings and whether the summary suspension should be less restrictive in scope.

(b) The respondent is afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision that includes a brief explanation for any decision continuing or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(5) In cases involving allegations of sexual misconduct, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college also will provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-063 Appeals of disciplinary action.

~~((Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice president for student services within ten working days of the college's giving notice of the disciplinary action.~~

~~(1) Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice president for student services, or in his/her absence, the designee.~~

~~(2) Disciplinary action by the appropriate disciplinary official may be appealed to, and shall be reviewed by, the student/faculty disciplinary committee.~~

~~(3) Disciplinary action by the student/faculty disciplinary committee may be appealed to, and shall be reviewed by, the college president or his/her designee.~~

~~(4) Disciplinary action by the president shall either indicate approval of the conclusions by sustaining the decision or shall give directions as to what other disciplinary action shall be taken by modifying the decision, or shall nullify previous sanctions imposed by reversing its decision. All appeals to the president shall be final.)) (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision is deemed final.~~

~~(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.~~

~~(3) The parties to an appeal are the respondent and the conduct review officer.~~

~~(4) A respondent who appeals a disciplinary action within the ten days of service or whose case is referred to the student/faculty disciplinary committee has a right to a prompt, fair, and impartial hearing as provided for in these procedures.~~

~~(5) On appeal the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.~~

~~(6) Imposition of disciplinary action for violation of the student conduct code will be delayed pending appeal, unless the respondent has been summarily suspended.~~

~~(7) The student/faculty disciplinary committee shall hear appeals from:~~

~~(a) The imposition of disciplinary suspensions in excess of ten days;~~

~~(b) Dismissals; and~~

~~(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.~~

~~(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~

~~(a) Suspensions of ten days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.~~

~~(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.~~

~~(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college will notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who~~

intervenes as a party to a respondent's appeal of a disciplinary decision will be afforded the same procedural rights as are afforded the respondent.

(13) Brief adjudicative proceedings and the initial hearing shall be conducted by a conduct review officer. The conduct review officer will not participate in any case in which:

(a) The individual is involved as a complainant or witness;

(b) There is direct or personal interest, prejudice, or bias;
or

(c) The conduct review officer has taken previous actions in an advisory capacity.

(14) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(15) The conduct review officer will service an initial decision upon both the respondent and the student conduct officer within ten days of the completion of the informal hearing. The initial decision contains a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision is deemed the final decision.

(16) In cases involving allegations of sexual misconduct, the conduct review officer on the same date as the initial decision is served on the respondent will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection. The notice also will inform the complainant of their appeal rights.

(17) If upon review the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

(18) An initial decision from the brief adjudicative proceeding is subject to review by the president provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(19) The president will not participate in any case in which:

(a) They were involved as a complainant or witness;

(b) There is direct or personal interest, prejudice or bias;
or

(c) Previous actions have been taken in an advisory capacity.

(20) During the review, the president will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the

proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(21) The decision on review must be in writing, must include a brief statement of the reason for the decision, and must be served on the parties within twenty calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. If the president does not make a disposition of the matter within twenty calendar days after the request is submitted, a request for review is deemed denied.

(22) If upon review the president determines that the imposed sanctions are insufficient and that the respondent's conduct may warrant imposition of a heightened disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

(23) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent will serve written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice also will inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-064 Student/faculty disciplinary committee. ~~((The student/faculty disciplinary committee, convened for that purpose, will hear, de novo, and make recommendations on all disciplinary cases referred to it by the appropriate authority or appeal to it by student(s). The committee will be composed of the following persons:~~

~~(1) A member appointed by the president of the college or his/her designee who shall serve as chair;~~

~~(2) Two members of the faculty, appointed by the president of the faculty association;~~

~~(3) Two representatives from the associated student government appointed by the student body president.~~

~~None of the above named persons shall sit on any case in which he/she has been a complainant or witness, in which he/she has a direct or personal interest, or in which he/she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the disciplinary committee as a whole.))~~ (1) Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by chapter 10-08 WAC, Model rules of procedure. To the extent there is a conflict between this chapter and chapter 10-08 WAC, this chapter shall control. The student/faculty disciplinary committee will consist of five members:

(a) Two full-time students appointed by the student government.

(b) Two faculty members appointed by the president.

(c) One faculty member or administrator who is other than an administrator serving as a student conduct officer or

conduct review officer and appointed as chair by the president for a term of up to two academic years.

(d) Members may be reappointed for subsequent terms. Any member may be replaced by the appointing authority for the remainder of the term for good cause shown.

(2) The faculty member or administrator appointed as the chair of the committee may take action on preliminary hearing matters prior to convening the committee. The chair will receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a hearing panel consisting of a quorum of three members of the committee provided one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student/faculty disciplinary committee will not participate in any case in which:

(a) They are a party, complainant, or witness;

(b) They have direct or personal interest, prejudice, or bias; or

(c) They have acted previously in an advisory capacity.

(5) A party may petition for disqualification of a committee member.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-065 Procedural guidelines of the student/faculty disciplinary committee. ((The student has a right to a fair and impartial hearing before the committee on any charge of misconduct resulting in disciplinary action other than warning or reprimand:

(1) The committee chair shall establish general rules of procedures for conducting hearings. A majority of the committee shall set the time, place and available seating capacity for a hearing. All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as possible in fairness to all parties involved.

(2) The committee shall issue written notice to the student of the date, time, and place of the hearing, and the charges against the student consistent with RCW 34.05.434. This notice of hearing shall be provided no later than seven days prior to the date of the hearing. The notice may be amended at any time prior to the hearing, but if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date if so requested in writing by the student.

(3) The student may be represented by counsel and/or accompanied by an advisor of his/her choice. If the student elects to choose a duly licensed attorney admitted to practice in the state of Washington as counsel, notice thereof must be tendered by the student to the vice president for student services at least five working days prior to the hearing.

(4) The student or his/her representative shall be entitled to hear and examine the evidence against him/her and be informed of the identity of its sources; the student shall be entitled to present evidence in his/her own behalf and to question witnesses testifying against him/her as to factual matters. The committee shall request the administration to provide the

student with a list of witnesses who will appear, and a description of any documentary or other physical evidence that will be presented at the hearing. The student shall have all authority which is possessed by the college to obtain information or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing.

(5) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining whether the student is guilty of the misconduct charged but the student's past record of conduct may be taken into account in formulating the committee's recommendation for disciplinary action.

(6) Hearings conducted by the committee may be held in closed session at the discretion of the committee, the only exception being when the student involved invites particular persons or requests an open hearing. If at any time during the conduct of the hearing, invited guests are disruptive of the proceedings, the chair of the committee may exclude such persons from the hearing room.

(7) Failure on the part of the student(s) to appear or cooperate in the proceedings may result in default in accordance with RCW 34.05.440. However, it may not preclude the committee from making its findings of fact, reaching conclusions and imposing sanctions. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties. The committee may decide: To uphold or modify sanctions in accordance with the process set forth in these provisions.

An adequate summary of the proceedings will be kept. At a minimum, such summary would include a tape recording of testimony. Such record will be available for inspection and copying in the office of student services during regular business hours. The student will be provided with a copy of the findings of fact and conclusions of the committee.) (1) Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student/faculty disciplinary committee chair will serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences or to make prehearing decisions concerning the extent and form of the discovery, issuance of protective decisions, and similar procedural matters.

(4) A request filed at least five days before the hearing by a party or at the direction of the committee chair will result in the parties exchanging no later than the third day prior to the hearing the lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in the requested exchange may be cause for exclusion from the hearing of the witness or exhibit not disclosed, absent a showing of good cause for the failure.

(5) In advance of the hearing the committee chair may provide to the committee copies of:

(a) The conduct officer's notification of the imposition of discipline or referral to the committee; and

(b) The notice of appeal or response to the referral by the respondent. If doing so, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) Before the hearing the parties may agree to designate specific exhibits as admissible without objection and whether the committee chair may provide copies of these admissible exhibits to the committee members in advance of the hearing.

(7) Upon request the student conduct officer will provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) With the exception of procedural communications that are necessary to maintain an orderly process, communications between committee members and other hearing participants regarding issues in the proceeding are generally prohibited without notice and opportunity for all parties to participate, and improper "ex parte" communication will be placed on the record as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent or complainant may elect to be represented by an attorney at their own cost and will be deemed to have waived that right unless at least four days before the hearing written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee is ordinarily advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer also may be represented by a second assistant attorney general.

(10) Upon the failure of any party to attend or participate in a hearing the student/faculty disciplinary committee may:

(a) Proceed with the hearing and issuance of its decision;
or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(11) The hearing ordinarily is closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair will determine the extent to which the hearing is open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(12) The chair shall cause the hearing to be recorded by a method the chair selects in accordance with RCW 34.05.-449. The recording or a copy will be made available to the party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476 that also shall be available upon request for inspection and copying by the party. Other recording also shall be permitted in accordance with WAC 10-08-190.

(13) The chair shall preside at the hearing and decide procedural questions that arise during the hearing except as overridden by majority vote of the committee.

(14) The student conduct officer will present the case for imposing disciplinary sanctions unless represented by an assistant attorney general.

(15) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(16) In cases involving allegations of sexual misconduct no party can directly question or cross-examine one another.

Attorneys for the parties also are prohibited from questioning the opposing party absent expressed permission from the committee chair. Subject to this exception, all cross-examination questions will be directed to the committee chair who in their discretion will pose the questions on the party's behalf.

(17) At the conclusion of the hearing the student/faculty disciplinary committee shall permit the parties to make closing argument, and the committee will determine the form to be used. The committee also may permit each party to propose findings, conclusions, or a proposed decision for its consideration.

(18) Within thirty calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision will include findings on all material issues of fact, conclusions on all material issues of law, and provisions of the student conduct code that were violated. Those findings based substantially on the credibility of evidence or the demeanor of witnesses will be identified.

(19) The committee's initial decision will include a determination on appropriate discipline, if deemed appropriate. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or condition(s), as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) or condition(s) imposed by the student conduct officer or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(20) The committee's initial decision also will include a statement of the available procedures and time frames for seeking reconsideration or appeal.

(21) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair also will promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(22) In cases involving allegations of sexual misconduct, on the same date as the initial decision is served on the respondent the chair of the student/faculty disciplinary committee will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student/faculty disciplinary committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice also will inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-066 Appeal of the student/faculty disciplinary committee's decision. ~~((1) The student will be advised of his/her right to present within seven working days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the~~

ease of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.

(2) If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the official who initiated the proceedings, the student and the committee chair. The decision of the president is final.) (1) A respondent who is aggrieved by the findings or conclusions issued by the student/faculty disciplinary committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision is deemed final.

(2) The written notice of appeal must identify the specific findings of fact and conclusions of law in the initial decision that are challenged and must contain arguments why the appeal should be granted. The president's review is restricted to the hearing record made before the student/faculty disciplinary committee and normally limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefings from the parties on issues raised on appeal.

(3) The president will provide a written decision to the respondent and the student conduct officer within thirty calendar days after receipt of the notice of appeal. The president's decision is final and includes a notice of the rights to request reconsideration or judicial review.

(4) In cases involving allegations of sexual misconduct, on the same date that the final decision is served on the respondent the president will serve a written notice informing the complainant of the final decision. This notice informs the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president has discretion to suspend the disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) Per RCW 34.05.455 the president shall not engage in improper "ex parte" communication with the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-070 Reporting, recording, and maintaining records. ((The office of the vice president for student services shall keep records of all disciplinary cases. Except in proceedings where the student is exonerated, all

documentary or other physical evidence produced or considered in disciplinary proceedings, and all recorded testimony shall be preserved, insofar as possible, for not more than six years. No other records of proceedings wherein the student is exonerated, other than the fact of exonerated, shall be maintained in the student's file or other college repository after the date of the student's graduation or not more than six years.))

(1) The record in a brief adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.

(2) The office of the senior administrator of student services will maintain records of student grievances and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the senior administrator of student services. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99, by making a written request to the senior administrator of student services.

(6) The college may inform the complainant of the outcome of the disciplinary proceeding involving a crime of violence or nonforcible sex offense as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) Only with prior written consent of the student may the college communicate a student's disciplinary record to a person or agency outside the college, except as required or permitted by law. Exceptions include, but are not limited to, the student's parent(s) or legal guardian(s) who may review these records if the student is:

(a) A minor or a dependent;

(b) Is a minor and disciplinary action involves the use or possession of alcohol or controlled substance; or

(c) In connection with a health or safety emergency regardless if the student is a dependent or a minor as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-091 Student complaints. Complaints should be filed as soon as possible and no more than thirty days after the incident occurs.

(1) Step one. The student shall first ((determine if a formal written process is required by securing the student petition form. If not,)) schedule an ((information)) informal meeting with the instructor((/)) or staff member ((should be scheduled by the student)) to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time ((the event occurred or that the student knew, or reasonably should have known)) of the ((grievance)) informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the ((vice president for)) area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area ~~((director/associate director))~~ administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area ~~((director/associate director))~~ administrator.

(a) The ~~((director/associate director))~~ area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student ~~((shall))~~ will be afforded an adequate and fair opportunity to fully present ~~((his/her))~~ their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the ~~((vice president for))~~ senior administrator of student services.

(a) The ~~((vice president for))~~ senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student ~~((shall))~~ will be afforded an adequate and fair opportunity to fully present ~~((his/her))~~ their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the ~~((vice president for))~~ senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-092 Records. The ~~((vice president for))~~ senior administrator of student services ~~((shall))~~ will keep all written statements or transcripts associated with the complaint as part of the files. The files will be destroyed after six years from the initiation of the complaint.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-093 Time limits on filing a complaint. The student must file a complaint within one quarter of the event, which caused the grievance to be filed. The ~~((vice president for))~~ senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness, or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the ~~((vice president))~~ senior administrator of student services will give the absent party reasonable opportunity to reply to the complaint before making a decision.

AMENDATORY SECTION (Amending WSR 00-11-147, filed 5/24/00, effective 6/24/00)

WAC 495A-121-094 Grievances excluded. (1) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual ~~((harassment))~~ discrimination. The college has separate, specific procedures for such complaints. See the ~~((vice president for))~~ senior administrator of human resources for information on those specific procedures.

(2) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(3) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board of trustees of Bates Technical College, District No. 28 ~~((shall not be grievable matters))~~ are excluded from being grieved.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-121-021	Academic freedom.
WAC 495A-121-022	Nondiscrimination.
WAC 495A-121-023	Due process.
WAC 495A-121-025	Right to assembly.
WAC 495A-121-026	Distribution of materials.
WAC 495A-121-027	Grievances.
WAC 495A-121-028	Commercial activities.
WAC 495A-121-029	Student responsibilities.
WAC 495A-121-045	Hazing sanctions.
WAC 495A-121-060	Discipline.

WSR 19-08-100
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 3, 2019, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-114.

Title of Rule and Other Identifying Information: Procedures for initial approval of an educator preparation program.

Hearing Location(s): On May 17, 2019, at 8:00 a.m., at the Hampton Inn, 486 [Bradley Boulevard], Richland, WA 99352.

Date of Intended Adoption: May 17, 2019.

Submit Written Comments to: Justin Montermini, 600 Washington Street, Olympia, WA 98504, email Justin.montermini@k12.wa.us.

Assistance for Persons with Disabilities: Contact professional educator standards board, phone 360-725-6275, by May 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Over the last five years, staff have been working under board direction to develop and propose comprehensive revisions to the program standards and the process of program review. These revisions were approved in May 2018. The section focused on procedures for initial approval of educator preparation programs stated that newly approved preparation programs would be reviewed prior to the expiration of limited approval, twenty-seven months after beginning instruction. The revised [revision] would continue from language approved in May.

Reasons Supporting Proposal: This proposal reflects initial feedback from preparation program stakeholders. Key stakeholders in this twenty-seven month review process include leaders of newly approved preparation programs. These program leaders have received the proposed WAC language and have been invited to provide feedback and ask questions. Staff held four one hour webinars during the month of March to invite additional questions and comments on the WAC language proposed.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Montermini, 600 Washington Street, Olympia, WA 98504, 360-725-6275; and Implementation: Nicholas Gillon, 600 Washington Street, Olympia, WA 98504, 360-725-6275.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

April 3, 2019
Justin Montermini
Government Relations

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. A prospective provider desiring to establish a preparation program shall comply with the following:

(1) Notification of intent. Prospective providers must submit the appropriate form, published by the professional educator standards board, declaring an intent to apply for

approval to offer an educator preparation program or a new educator certification program.

(a) The notification of intent will be posted on the board web site as public notice.

(b) The board will contact the prospective provider to begin the preproposal process.

(2) Preproposal. The prospective provider will develop and submit a preproposal that addresses all requirements approved and published by the board including evidence of necessary capacity, resources, and projected sustainability of the program. After board staff verify the preproposal is complete, the preproposal will be brought to the board.

(3) Final proposal. The prospective provider may be approved to develop a final proposal or the preproposal may be denied.

(a) If denied, the provider may resubmit its preproposal informed by suggestions of the board.

(b) If the preproposal is approved by the board, the prospective provider must develop and submit a written plan which addresses all final proposal elements including domains, components, and other program approval requirements contained in WAC 181-78A-220 and 181-78A-300 as established in this chapter and published by the board, including letters of support from partner districts and/or community agencies as evidence of how the program will meet Washington educator workforce needs.

(c) Final proposals submitted by prospective providers of school counselor preparation programs shall include verification of program approval by the council for the accreditation for counseling and related education programs.

(d) Final proposals submitted by prospective providers of school psychologist programs shall include verification of program approval by the National Association for School Psychology.

(4) After reviewing a prospective provider's final program proposal, the board may approve or deny the program approval:

(a) The program may be approved in a specific location(s) for an initial approval period of up to twenty-seven months following the beginning of instruction. The prospective provider must notify the board when instruction has begun. If initial approval is denied, the prospective provider may resubmit a revised plan informed by suggestions given by the board and its staff.

(b) School counselor and school psychologist programs: Approve the program for a time period to align with their respective national association approvals.

(5) Prior to the expiration of initial approval, staff of the board shall conduct a site visit to determine if the program is in full compliance and performance aligned with the state approval requirements. This includes a review of all applicable indicators and domain components for the type of program.

(a) The twenty-seven-month review is a formal review to evaluate recently approved educator preparation programs and consider them for continued approval.

(i) The formal review will incorporate the following elements:

(A) The board shall determine the schedule for formal reviews and the forms of documentation and validation that will be used for evaluation.

(B) Preparation program providers will submit requested evidence to the staff of the board.

(C) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the programs professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses.

(ii) The twenty-seven-month review team will use multiple data sources to address the specific goals listed in this section.

(A) The twenty-seven-month review team and the preparation program provider will use annual performance indicator data available at the time of review. Performance of programs on board approved indicators will be used by the review team to write the review report and by the board in consideration of the program's continued approval status.

(B) The twenty-seven-month review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(C) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has implemented the program in alignment with the goals and design for which it was approved. Fidelity to approved program designs and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(D) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has demonstrated continuous improvement in its implementation and outcomes. Providers' ability to demonstrate continuous improvement in processes and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(iii) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(A) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(B) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal twenty-seven-month review.

(C) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(D) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) The board's staff may provide technical assistance to providers to help them improve their performance as described in WAC 181-78A-110 (1)(b)(iv).

(b) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision. This request must be made within twenty days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035.