

WSR 13-22-027
PROPOSED RULES
MILITARY DEPARTMENT
 (Emergency Management Division)
 [Filed October 30, 2013, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-095 on February 17, 2012.

Title of Rule and Other Identifying Information: Chapter 118-09 WAC, Criteria for eligibility and allocation of emergency management assistance funds.

Hearing Location(s): National Guard Readiness Center, 1626 North Rebecca Street, Spokane, WA 99217, on December 12, 2013, at 9:00 a.m.-1:00 p.m.; and at the Legislative Building, Columbia Room #111, 416 Sid Snyder Avenue S.W., Olympia, WA 98504, on December 13, 2013, at 9:00 a.m.-1:00 p.m.

Date of Intended Adoption: On or after January 7, 2014.

Submit Written Comments to: Charma Anderson, 20 Aviation Drive, Building 20, Camp Murray, WA 98430, e-mail charma.anderson@mil.wa.gov, fax (253) 512-7212, by December 13, 2013.

Assistance for Persons with Disabilities: Contact Charma Anderson by December 6, 2013, TTY (253) 512-7298 or charma.anderson@mil.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current WAC is outdated. The changes to the chapter update the eligibility requirements for emergency management assistance funds, to include the emergency management performance grant funds from the Department of Homeland Security/Federal Emergency Management Agency; the allocation methodology will now be based on per capita rates instead of based on a jurisdiction's emergency management budget; and an advisory board is included to advise the director of the emergency management division (EMD) on funding decisions to include reallocation of funds.

Reasons Supporting Proposal: Multiple meetings were held across the state incorporating stakeholder feedback into the changes to the WAC. The current WAC language was developed by a stakeholder group, with participants from across the state, in partnership with EMD. The proposed changes have been shared with the emergency management stakeholders within Washington state. The proposal will ensure an improved funding distribution over the current methodology that was last updated in December 1983.

Statutory Authority for Adoption: RCW 38.52.005.

Statute Being Implemented: RCW 38.52.005.

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

Name of Proponent: EMD, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Charma Anderson, 20 Aviation Drive, Building #20, Camp Murray, (253) 512-7064; and Implementation: Sierra Wardell, 20 Aviation Drive, Building #20, Camp Murray, (253) 512-7121.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule imposes no costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not a requirement for this rule change per RCW 34.05.328 (5)(a) "this section applies to: (i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW."

October 29, 2013

Sigfred Dahl

Enhanced 911

Homeland Security Unit Manager

Chapter 118-09 WAC

**CRITERIA FOR ELIGIBILITY AND ALLOCATION
 OF EMERGENCY MANAGEMENT ASSISTANCE
 FUNDS**

AMENDATORY SECTION (Amending WSR 84-01-022, filed 12/9/83)

WAC 118-09-010 Purpose. The purpose of this (~~regulation~~) chapter is to establish eligibility and allocation criteria to be applied by the director (~~of the Washington state department of emergency services~~) in allocating emergency management assistance (EMA) funds to (~~local~~) emergency (~~services~~) management organizations (~~of this state for the purpose of carrying out emergency services programs~~) (EMOs). The EMA funds (will be allocated in accordance with the federal Civil Defense Act of 1950 and other applicable parts of the Code of Federal Regulations) are to supplement and enhance, not supplant, existing EMO dedicated emergency management budgeted funding. EMA funds will be used to both sustain and enhance emergency management capabilities of an EMO.

AMENDATORY SECTION (Amending WSR 84-01-022, filed 12/9/83)

WAC 118-09-020 Definitions. (~~(1) Administrative expenses mean necessary emergency management expenses required for the proper and efficient administration of the emergency management program of a local government emergency services organization.~~

~~(2) Personnel expenses mean necessary emergency management expenses for personnel on the staffing pattern of a local emergency services organization including but not limited to salaries, wages, and supplementary compensation and fringe benefits for such personnel. Such expenses must be supported by job descriptions, payroll records, and time distribution records to be kept on file by the local emergency services organization.~~

~~(3) Program paper means the same as "program paper" as defined by WAC 118-08-030.~~

~~(4) Comprehensive emergency operations plan means the same as "comprehensive emergency operation plan" as defined by WAC 118-02-030.~~

(5) State director means the director of the Washington state department of emergency services.

(6) Emergency services organization means the same as emergency services organization as defined by WAC 118-06-030.

(7) Review board shall mean a committee of four persons appointed by the director; three persons from the state department of emergency services and the president of the Washington state association of emergency services directors. (1) "Advisory group" means a group comprised of local, tribal, and state emergency management professionals that shall advise the director.

(2) "Comprehensive emergency management plan (CEMP)" means a current, verified emergency plan as required by chapter 118-30 WAC.

(3) "Director" means the director of the emergency management division (EMD) of the Washington state military department.

(4) "Emergency management functions" means the governmental function that coordinates and integrates activities necessary to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, or mitigate against threatened or actual emergencies or disasters whether natural, technological, acts of terrorism, or other human caused.

(5) "Emergency management organization (EMO)" means the local organization for emergency management established pursuant to RCW 38.52.070(1). EMO also means organizations established by a federally recognized Indian tribe located within the boundaries of the state of Washington that perform emergency management functions as part of that tribe.

(6) "Emergency operations center (EOC)" means the central location or facility responsible for coordinating multi-jurisdictional or multidisciplinary response activities related to an emergency or disaster, and may also be referred to by other names such as an emergency coordination center (ECC).

(7) "Emergency" means an event or set of circumstances which:

(a) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or

(b) Reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

(8) "Emergency management assistance funds" or "EMA funds" means:

(a) Emergency Management Performance Grant (EMPG) funds administered by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.;

(b) Any successor/supplemental federal emergency management assistance funds available for allocation to EMOs to both sustain and enhance emergency management capabilities statewide; and

(c) State funds provided by the legislature solely for the purposes of allocation to EMOs for both sustaining and enhancing emergency management capabilities statewide.

AMENDATORY SECTION (Amending WSR 84-01-022, filed 12/9/83)

WAC 118-09-030 ((EMA funds)) Eligibility criteria.
 ((Local emergency services organizations in the state of Washington will be)) An EMO is eligible ((for)) to receive EMA funds if the following criteria ((are)) is met by the EMO prior to the beginning of the ((one-year)) application period for which the EMA funds are sought:

(1) ((The local emergency services organization for which EMA funds are sought shall)) Have a current ((comprehensive emergency operations plan)) CEMP, or schedule for plan development or maintenance ((approved)), verified by the ((state)) director.

(2) ((The director/coordinator of the emergency services organization for which EMA funds are sought shall be a full-time or part-time)) Have at least a half-time employee ((of the organization)) whose job duties are specifically dedicated to performing emergency management functions.

(3) ((The emergency services organization shall have an approved program paper in accordance with WAC 118-08-060.

(4) Local emergency services organization personnel must be hired and appointed in accordance with local merit system rules and regulations that are commensurate with federal guidelines.

(5)) Have a designated emergency management agency, department, division, or office established with a dedicated budget to perform emergency management functions.

(4) Have adopted an ordinance, code, or resolution establishing the EMO. Additionally, an EMO that consists of two or more political subdivisions (cities/towns) shall have an executed interlocal agreement establishing the multijurisdictional EMO.

(5) Hire and appoint personnel in accordance with applicable employment laws, rules, regulations, and policies.

(6) Comply with all federal and state emergency management program requirements.

(7) Demonstrate that EMA funds will only be used to both sustain and enhance the EMO's existing emergency management program and capabilities.

(8) Demonstrate that EMA funds will not be used to supplant or replace EMO existing dedicated emergency management budgeted funding.

(9) Meet all applicable matching fund requirements for receipt of EMA funding.

(10) If ((a local emergency services organization receiving EMA funds)) an EMO fails to meet each of the ((requirements of)) criteria in subsections (1) through ((4)) (9) of this section, the ((state)) director ((shall)) may withhold from the ((recipient)) EMO any EMA funds for the balance of the ((federal fiscal year. The funds thus withheld shall be reallocated on a percentage basis to those emergency services organizations that have met the requirements of subsections (1) through (4) of this section)) funding period and future funding cycles to the extent the director determines will encourage sustained and enhanced statewide emergency management functions consistent with federal and state emergency management program requirements.

AMENDATORY SECTION (Amending WSR 84-01-022, filed 12/9/83)

WAC 118-09-040 ((Distribution)) Allocation of ((EMA)) funds. ~~((1) From the total amount of EMA funds allocated for distribution to local emergency services organizations, the director may withhold up to five percent of the funds for discretionary distribution to emergency services organizations that meet EMA funds eligibility criteria after the beginning of the one year period for which EMA funds are available. These discretionary moneys will be distributed on a percentage basis to local emergency services organizations that became eligible during the one year period for which EMA funds are available. If such discretionary funds are exhausted, local emergency services organizations that become eligible for such funds will not receive funds.~~

~~(2) Any portion of the withheld percentage of the total EMA fund allocation to local emergency services organizations that has not been distributed by the end of a nine-month period, measured from the beginning of the one year period for which EMA funds are available, shall be distributed on a percentage basis to those emergency services organizations that have achieved and maintained eligibility in accordance with WAC 118-09-030.~~

~~(3) The director shall decide upon and publish by September 1 each year, the beginning and ending dates of the next one-year period for which EMA funds will be available to local emergency services organizations.~~

~~(4) The total amount of EMA funds allocated for distribution to local emergency services organizations, less the percentage withheld by the director (net funds), shall be distributed to eligible local emergency services organizations on a percentage basis up to and including fifty percent of eligible costs. The percentage amount will be determined by the amount of federal funds available each federal fiscal year. The percentage shall be derived by dividing the amount of net funds available by the total of all EMA funds requested by eligible local emergency services organizations. An eligible local emergency services organization shall receive an amount of EMA funds equal to the percentage multiplied by the amount of EMA funds requested.)~~ EMA funds shall be allocated to eligible EMOs as prescribed in this section.

(1) **EMPG funds and successor/supplemental federal emergency management assistance funds:** EMPG and successor/supplemental federal emergency management assistance funds shall be allocated to eligible EMOs on a per capita basis modified by the allocation methodology set forth in this subsection. Per capita determinations for county and city EMOs shall be based on the official population estimates annually established by the Washington state office of financial management (OFM) under RCW 43.62.020. Per capita determinations for tribal EMOs shall be based on the population estimates established by the OFM Small Area Estimates Program for tribal areas.

(a) EMD is to retain the federally authorized percentage of these funds for Management and Administration (M&A). From the remaining amount, the director shall determine the amount of funding available for EMD operational costs and allocation to EMOs in consultation with the advisory group.

(b) The process for determining allocations to EMOs is a two-step process. First, the amount of funding allocated to

least populated counties is to be determined in accordance with (d)(i) of this subsection. Second, the amount of funding allocated for the least populated counties is to be subtracted from the total amount of funding available for allocation to EMOs. The remainder is the amount of funding available for allocation to nonleast populated counties and cities in those counties and to tribes, which will be allocated on a per capita basis in accordance with (d)(i) and (ii) of this subsection.

(c) Minimum amount that will be awarded: Under the allocation methodology set forth in this subsection:

(i) No county or city EMO will receive an award of these funds unless it qualifies for an award of at least ten thousand dollars:

(ii) No county or city EMO will receive an award of these funds unless it can provide a fifty percent match of at least ten thousand dollars; and

(iii) No city located in a least populated county will receive an award of these funds.

These limitations do not apply to tribal EMOs.

(d)(i) Allocation methodology: The amount of funding available to EMOs will be allocated as follows:

(ii) Least populated counties: Special consideration is to be given to least populated counties due to the diverse population range of counties in the state. These counties would not benefit from a per capita allocation. Except as provided in (d)(ii)(C) of this subsection, least populated counties are those counties that will not receive at least eighteen thousand dollars in funding using a per capita allocation.

(A) Least populated counties shall receive an allocation of EMPG and successor/supplemental federal funding in an amount to be determined by the director consistent with this subsection. These counties meeting eligibility requirements need assurance of a reliable level of such funding, with the target amount of funding being at least eighteen thousand. The intent is for the award amount combined with the fifty percent match requirement to allow for employment of a half-time dedicated emergency management professional.

(B) The amount selected for allocation to least populated counties beyond the target amount is to be commensurate with the amount of these funds available for statewide county and city EMO funding, except as limited by (d)(ii)(D) of this subsection. For example, if the amount of these funds available for allocation to county and city EMOs increases, allocations to the least populated counties will be proportionately increased, except as limited by (d)(ii)(D) of this subsection.

(C) If the amount selected for allocation to least populated counties is greater than eighteen thousand dollars, that amount shall be used for determining what counties are designated as a least populated county for purposes of this subsection.

(D) These counties shall not receive awards greater than counties that do not fall into this category.

(E) To preserve the minimal amount of funding available to these counties, cities located within these counties shall not be allocated EMPG or successor/supplemental federal funds. These cities shall collaborate with their county to sustain and improve emergency management programs and capabilities.

(e) Match requirements:

(i) The EMO shall meet all matching fund requirements associated with receipt of the funds only through a hard, dol-

lar-for-dollar, match from a dedicated EMO emergency management budgeted fund;

(ii) The match shall not include any funds otherwise prohibited for such use by federal funding requirements; and

(iii) If an EMO is unable to meet the matching fund requirements, its award will be reduced to the amount it is able to meet, but no award shall be made to a county or city EMO unless it can provide a fifty percent match of at least ten thousand dollars.

(iv) Examples:

(A) If an EMO allocation is eighteen thousand dollars but only a match of eleven thousand dollars can be met, the award will be reduced to eleven thousand dollars.

(B) If a county or city EMO allocation is eighteen thousand dollars but a match of only nine thousand five hundred dollars can be met, the award will be zero.

(f) Phase-in of funding methodology: During each of the first three years following the effective date of this rule, application of this allocation methodology shall create no more than a thirty-three percent incremental change each year from the federal fiscal year 2012 EMPG allocation until fully implemented in the third year, at which time this subsection shall cease to apply. The 2012 allocation is to be used as the base year for purposes of the phase-in calculations. EMOs that received one-time funding increases in 2012 will have their implementation base reduced by that amount for purposes of calculating the thirty-three percent incremental change each year.

(2) **Other EMA funding:** To the extent consistent with state law establishing, authorizing, and appropriating state funds available for allocation to EMOs for both sustaining and enhancing emergency management capabilities statewide, such funds shall be allocated by applying the methodology in subsection (1)(a) through (c) of this section, as applicable.

(3) **Unspent funding:** Any allocated EMA funds not expended by, or accepted by, an EMO shall be reallocated among remaining eligible EMOs as the director determines will best sustain and enhance statewide emergency management capabilities.

(4) **Review:** The EMPG allocation methodology shall be reviewed at least every five years.

AMENDATORY SECTION (Amending WSR 84-01-022, filed 12/9/83)

WAC 118-09-050 Appeal and review (of EMA funds distribution). (1) ~~((A local emergency services organization))~~ **Appeal:** An EMO may appeal to the director to reconsider eligibility determinations and the amount of EMA funds ~~((distributed to it))~~ allocated if ~~((the emergency services organization))~~ it believes ~~((that the amount of EMA funds distributed to it))~~ the determination is inconsistent with the ~~((eligibility))~~ criteria. Such appeal ~~((shall))~~ must be made in writing ~~((to))~~ setting forth the specific reasons for the appeal and be received by the director **within fifteen calendar days** following receipt by the EMO of notification of the EMA fund allocation ~~((by the local emergency services organization)).~~

~~((2))~~ ~~The appeal shall set forth the local emergency services organization's reasons for the appeal.~~

~~((3))~~ (2) **Review and response:** The director shall respond to the ~~((local emergency services organization))~~ EMO in writing **within fifteen calendar days** of receipt of the written appeal. The director's response shall uphold or modify the ~~((distribution of))~~ eligibility determination or allocation for EMA funds and ~~((set forth in writing))~~ describe the reasons for ~~((his))~~ the decision. The decision of the director shall be final.

~~((4))~~ ~~The director may appoint a review board of four persons to review and recommend a response to an appeal.~~

NEW SECTION

WAC 118-09-060 Advisory group. The director shall consult with the advisory group on the following:

(1) Activities that will both sustain and enhance statewide emergency management capabilities for purposes of reallocating EMA funds;

(2) Potential changes to the percentage of EMA funds EMD retains for M&A costs and operational costs;

(3) Potential changes to the percentage of EMA funds available to pass through to EMOs;

(4) The amount of EMA funding available for allocation for least populated counties and additional funding for tribal EMOs;

(5) Review of the allocation methodology at least every five years; and

(6) Other related issues at the request of the director.

WSR 13-22-031

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed October 30, 2013, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-087.

Title of Rule and Other Identifying Information: WAC 314-11-015 What are my responsibilities as a liquor licensee?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 11, 2013, at 10:00 a.m.

Date of Intended Adoption: December 18, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail kjm@liq.wa.gov, fax (360) 664-9689, by December 11, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by December 18, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There are public safety concerns related to mixing alcohol and marijuana. I-502 prohibited consumption of marijuana in public view. This needs to be clarified for liquor licensees so they do not allow their patrons to consume marijuana at their liquor licensed establishments.

Reasons Supporting Proposal: Rules are needed to clarify laws created by I-502.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 69.50.445.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

October 30, 2013
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 11-22-035, filed 10/26/11, effective 11/26/11)

WAC 314-11-015 What are my responsibilities as a liquor licensee? (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC 314-29-015 through 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

- (a) Be disorderly or apparently intoxicated on the licensed premises;
- (b) Permit any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Entertainers per WAC 314-02-010 may drink while performing under the following conditions:

(A) Alcohol service must be monitored by MAST servers;

(B) Drinks must be served in unlabeled containers;

(C) Entertainers may not advertise any alcohol brands or products;

(D) Entertainers may not promote drink specials; and

(E) If any member of the entertainment group is under twenty-one years of age, alcohol may not be consumed by any member of the group while performing.

(ii) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(iii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(e) Engage in, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW; ((~~or~~))

(f) Engage in or permit any employee or other person to engage in the consumption of any type of marijuana, usable marijuana, or marijuana-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;

(g) Permit any person consuming, or who has consumed within the licensed premises, any type of marijuana, usable marijuana, or marijuana-infused products to remain on any part of the licensed premises; or

(h) Sell or serve liquor by means of "drive-in" or by "curb service."

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

(c) See WAC 314-11-050 for further guidelines on prohibited conduct.

WSR 13-22-038
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed October 31, 2013, 9:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-022.

Title of Rule and Other Identifying Information: WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on December 10, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 11, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 10, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 12, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 388-105-0005 contains the rate table used to calculate the daily medicaid rate for AFH and AL facilities contracted to provide AL, ARC, and EARC. To comply with the budgetary directives put forth by the legislature in ESSB 5034 (2013-2015 biennial budget), changes need to be made to WAC 388-105-0005 including an increase to funding for AFH in relation to an increased license fee.

AFH will be affected by this rule change.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Statute Being Implemented: RCW 74.39A.030 (3)(a).

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

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

Name of Agency Personnel Responsible for Drafting: Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2447; Implementation and Enforcement: Ken Callaghan, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule change is adjusting rates pursuant to legislative standards. Exemption RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. The rule change is adjusting rates pursuant to legislative standards, RCW 34.05.328 (5)(b)(vi).

October 28, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-03-093, filed 1/15/13, effective 2/15/13)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

Table with 6 columns: CARE CLASSIFICATION, AL Without Capital Add-on, AL With Capital Add-on, ARC, EARC, AFH. Rows include A Low, A Med, A High, B Low, B Med, B Med-High, B High, C Low, C Med.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
C Med-High	\$98.96	\$104.38	\$87.89	\$87.89	\$((89.12)) <u>89.26</u>
C High	\$99.94	\$105.36	\$88.73	\$88.73	\$((90.35)) <u>90.49</u>
D Low	\$73.13	\$78.55	\$71.09	\$71.09	\$((69.58)) <u>69.72</u>
D Med	\$81.20	\$86.62	\$82.29	\$82.29	\$((84.93)) <u>85.07</u>
D Med-High	\$104.87	\$110.29	\$104.52	\$104.52	\$((101.98)) <u>102.12</u>
D High	\$112.97	\$118.39	\$112.97	\$112.97	\$((115.96)) <u>116.10</u>
E Med	\$136.43	\$141.85	\$136.43	\$136.43	\$((139.90)) <u>140.04</u>
E High	\$159.89	\$165.31	\$159.89	\$159.89	\$((163.85)) <u>163.99</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$60.19	\$65.11	\$46.51	\$46.51	\$((47.45)) <u>47.59</u>
A Med	\$63.43	\$68.35	\$50.64	\$50.64	\$((51.61)) <u>51.75</u>
A High	\$77.43	\$82.35	\$55.18	\$55.18	\$((56.82)) <u>56.96</u>
B Low	\$60.19	\$65.11	\$46.51	\$46.51	\$((47.68)) <u>47.82</u>
B Med	\$68.80	\$73.72	\$55.82	\$55.82	\$((57.10)) <u>57.24</u>
B Med-High	\$77.88	\$82.80	\$59.33	\$59.33	\$((61.16)) <u>61.30</u>
B High	\$84.95	\$89.87	\$69.51	\$69.51	\$((71.52)) <u>71.66</u>
C Low	\$63.43	\$68.35	\$50.85	\$50.85	\$((51.99)) <u>52.13</u>
C Med	\$77.43	\$82.35	\$65.21	\$65.21	\$((66.64)) <u>66.78</u>
C Med-High	\$95.71	\$100.63	\$81.69	\$81.69	\$((82.88)) <u>83.02</u>
C High	\$96.67	\$101.59	\$86.87	\$86.87	\$((87.87)) <u>88.01</u>
D Low	\$68.80	\$73.72	\$70.12	\$70.12	\$((68.07)) <u>68.21</u>
D Med	\$79.00	\$83.92	\$80.65	\$80.65	\$((82.67)) <u>82.81</u>
D Med-High	\$101.44	\$106.36	\$101.95	\$101.95	\$((98.90)) <u>99.04</u>
D High	\$109.88	\$114.80	\$109.88	\$109.88	\$((112.22)) <u>112.36</u>
E Med	\$132.21	\$137.13	\$132.21	\$132.21	\$((135.01)) <u>135.15</u>
E High	\$154.54	\$159.46	\$154.54	\$154.54	\$((157.80)) <u>157.94</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$59.13	\$64.37	\$46.51	\$46.51	\$((47.45)) <u>47.59</u>
A Med	\$63.43	\$68.67	\$49.62	\$49.62	\$((50.58)) <u>50.72</u>
A High	\$77.43	\$82.67	\$54.30	\$54.30	\$((55.79)) <u>55.93</u>
B Low	\$59.13	\$64.37	\$46.51	\$46.51	\$((47.68)) <u>47.82</u>
B Med	\$68.80	\$74.04	\$54.79	\$54.79	\$((56.06)) <u>56.20</u>
B Med-High	\$77.88	\$83.12	\$58.22	\$58.22	\$((59.98)) <u>60.12</u>
B High	\$84.95	\$90.19	\$65.77	\$65.77	\$((67.70)) <u>67.84</u>
C Low	\$63.43	\$68.67	\$49.62	\$49.62	\$((50.58)) <u>50.72</u>
C Med	\$77.43	\$82.67	\$61.66	\$61.66	\$((64.13)) <u>64.27</u>
C Med-High	\$95.71	\$100.95	\$78.58	\$78.58	\$((79.76)) <u>79.90</u>
C High	\$96.67	\$101.91	\$82.13	\$82.13	\$((83.16)) <u>83.30</u>
D Low	\$68.80	\$74.04	\$66.30	\$66.30	\$((64.43)) <u>64.57</u>
D Med	\$79.00	\$84.24	\$76.26	\$76.26	\$((78.23)) <u>78.37</u>
D Med-High	\$101.44	\$106.68	\$96.38	\$96.38	\$((93.58)) <u>93.72</u>
D High	\$103.88	\$109.12	\$103.88	\$103.88	\$((106.16)) <u>106.30</u>
E Med	\$124.99	\$130.23	\$124.99	\$124.99	\$((127.70)) <u>127.84</u>
E High	\$146.10	\$151.34	\$146.10	\$146.10	\$((149.25)) <u>149.39</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-22-055
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
 [Filed November 4, 2013, 7:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-053.

Title of Rule and Other Identifying Information: New chapter 139-33 WAC, Firearms certification—Bail bond recovery agents, is being proposed to provide guidelines for individuals and companies seeking application to carry a firearm as a bail bond recovery agent, or seeking renewal of an existing firearms certification pursuant to chapter 18.185 RCW. The bail bond recovery agent firearms certification is an element of a bail bond recovery agent armed license.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on December 11, 2013, at 10 a.m.

Date of Intended Adoption: December 11, 2013.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by December 2, 2013.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by December 9, 2013, TTY (206) 835-7300 or (206) 835-7372.

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

- This chapter specifically addresses the firearms certification process as it pertains to bail bond recovery agents

that was not currently addressed in WACs that the WSC-JTC currently administers.

- This chapter addresses required definitions as defined in chapter 18.185 RCW.
- This chapter addresses the licensing requirement for bail bond recovery agents in RCW 18.185.250.
- This chapter addresses the application, requirements, expiration, and renewal of bail bond recovery agent firearms certifications.
- This chapter provides guidelines for those individuals with peace officer certification that has been revoked or suspended pursuant to RCW 18.185.250(6) and chapter 43.101 RCW.
- This chapter provides guidelines for those individuals with reinstated peace officer certification pursuant to RCW 18.185.250(6) and 43.101.115.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rachelle Parslow, Burien, Washington, (206) 835-7346.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

November 4, 2013
Sonja Hirsch
Rules Coordinator

Chapter 139-33 WAC

FIREARMS CERTIFICATION—BAIL BOND RECOVERY AGENTS

NEW SECTION

WAC 139-33-005 Firearms certification—Definitions. Words and terms used in WAC 139-33-005 through 139-33-025 shall have the same meaning as under chapter 18.185 RCW, unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

"Commission" means Washington state criminal justice training commission.

"Corporate officer" means a designee who exercises operational and administrative control over a bail bond recovery agency.

"Department" means Washington state department of licensing.

"Principal owner" means the sole owner of a bail bond recovery agency.

"Principal partner" means a partner who exercises operational control over a bail bond recovery agency.

NEW SECTION

WAC 139-33-010 Firearms certification—Licensing requirement. (1) Any licensed bail bond recovery agent desiring to be licensed as an armed bail bond recovery agent by the department shall, as a precondition of being licensed as an armed bail bond recovery agent, obtain a firearms certification from the commission.

(2) An application for armed license must be submitted to the department within ninety days following issuance of a firearms certification by the commission. If application is not submitted within that time period, the firearms certification will be deemed lapsed by the commission and shall not serve as the basis for an armed license.

NEW SECTION

WAC 139-33-015 Firearms certification—Application. (1) Any application for firearms certification shall:

(a) Be filed with the commission on a form provided by the commission;

(b) Be signed by the principal owner, principal partner, or corporate officer of the licensed bail bond recovery agency employing the applicant;

(c) Establish through required documentation or otherwise that applicant:

(i) Is at least twenty-one years of age; and

(ii) Possesses a valid and current bail bond recovery agent license, if applicable.

(d) Be accompanied by payment of a processing fee as set by the commission.

(2) After receipt and review of an application, the commission will provide written notification within ten business days to the requesting agency regarding applicant's ability to obtain and possess a firearms certification.

(3) An armed bail bond recovery agent must be qualified by a firearms instructor certified by the commission and provide the commission with proof of the initial qualification for each firearm that he/she is authorized to use in the performance of his/her duties.

(4) It shall be the responsibility of the employer to ensure that the armed bail bond recovery agent demonstrates proficiency standards on an annual basis with each firearm that he/she is certified to use. Proficiency standards shall be set by the commission.

(5) Per RCW 18.185.250(6), a bail bond recovery agent shall not have had certification as a peace officer revoked or denied under chapter 43.101 RCW, unless certification has subsequently been reinstated under RCW 43.101.115.

(a) If peace officer certification is revoked or denied, the bail bond recovery agent is ineligible for firearms certification.

(b) If peace officer certification status has been reinstated, the commission will review each request for bail bond recovery agent firearms certification to ensure the individual is eligible for firearms certification and meets all firearms certification requirements as stated in this chapter.

NEW SECTION

WAC 139-33-020 Firearms certification—Requirements. (1) A firearms certification will be issued to any eligible applicant who has satisfactorily completed an approved program of at least eight hours of instruction and testing prescribed by the commission for this purpose and conducted by a certified firearms instructor. Such program shall include:

(a) Classroom instruction which, through established learning objectives, addresses:

- (i) Legal issues regarding the use of deadly force;
- (ii) Decision making regarding the use of deadly force;
- (iii) Safe firearms handling; and
- (iv) Basic tactics in the use of deadly force.

(b) A written examination based upon the aforementioned learning objectives;

(c) A skills test wherein the applicant is required to demonstrate satisfactory proficiency in safe firearms handling; and

(d) A range qualification course wherein an applicant is required to demonstrate requisite proficiency with the specific firearm provided by the applicant or by the applicant's employing agency.

(2) A firearms certification shall be issued in the name of each successful applicant and forwarded to the respective employing agency, principal owner, principal partner, or corporate officer.

NEW SECTION

WAC 139-33-025 Firearms certification—Expiration and renewal. (1) Any firearms certification issued by the commission shall expire on the expiration date of any armed bail bond recovery agent license issued by the department.

(2) By renewing the armed bail bond recovery agent license with the department, the corporate officer, principal partner, or principal owner for the bail bond recovery agency is making declaration that the bail bond recovery agent has met the requirements for annual proficiency with the firearms for which he/she is certified.

(3) Proof of annual proficiency must be kept in the employee's file within the bail bond recovery agency.

WSR 13-22-061**PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed November 4, 2013, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-078.

Title of Rule and Other Identifying Information: WAC 246-10-701 Administrative review of initial orders, amending to specify that if no request for an administrative review of a health law judge's initial order is received within twenty-one days, the order becomes final.

Hearing Location(s): Washington State Department of Health, Point Plaza East, Room 152 and 153, 310 Israel Road

S.E., Tumwater, WA 98501, on December 13, 2013, at 9:00 a.m.

Date of Intended Adoption: December 16, 2013.

Submit Written Comments to: Tami Thompson, P.O. Box 47890, Olympia, WA 98504, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-7424, by December 13, 2013.

Assistance for Persons with Disabilities: Contact Tami Thompson by December 6, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule implements ESHB 1381 (chapter 109, Laws of 2013), which modified the department of health's administrative adjudicative process. The proposed rule specifies that if no request for an administrative review of an initial order is received within twenty-one days, the initial order becomes final in adjudicative proceedings. In addition to other parties to the proceedings, the proposed rule allows the secretary, upon his or her own motion, to petition for administrative review of an initial order, as stated in ESHB 1381.

Reasons Supporting Proposal: ESHB 1381 allows an additional administrative review of an initial order in an adjudicative proceeding. These initial decisions will be subject to a new review process conducted by the secretary of health or his/her designee. ESHB 1381 allows the secretary to adopt rules to provide that cases may become final without further agency action if no review is requested. To promote efficiency in the adjudicative process the department is proposing that if it does not receive a request to review an initial order within twenty-one days the initial order will become final.

Statutory Authority for Adoption: RCW 18.130.050, ESHB 1381 (chapter 109, Laws of 2013).

Statute Being Implemented: RCW 18.130.095, ESHB 1381 (chapter 109, Laws of 2013).

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: Kristi Weeks, P.O. Box 47850, Olympia, WA 98504, (360) 236-4621; Implementation: Shellie Carpenter, P.O. Box 47879, Olympia, WA 98504, (360) 236-4674; and Enforcement: Kristin Petersen, P.O. Box 47890, Olympia, WA 98504, (360) 236-4046.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

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)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

November 4, 2013
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-701 Appeal from initial order and initial order becoming a final order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-10-503 or 246-10-608 stating the specific grounds upon which exception is taken and the relief requested.

(2) The secretary, upon his or her own motion, may petition for administrative review of an initial order.

(3) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative clerk office within twenty-one days of service of the initial order.

~~((3))~~ (4) The opposing party may file a response to a petition for administrative review filed as provided in this section. The response shall be filed at the adjudicative clerk office. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-10-503, the response shall be filed within ten days of service of the petition. In all other matters, the response shall be filed within twenty days of service of the petition.

(5) If a party or the secretary does not request administrative review of an initial order as described above, an initial order becomes a final order at 5:00 p.m. on the twenty-first calendar day after the adjudicative clerk office serves the initial order.

WSR 13-22-063
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 4, 2013, 3:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-109.

Title of Rule and Other Identifying Information: WAC 296-901-140 Hazard communication; chapter 296-24 WAC, General safety and health standards; chapter 296-62 WAC, General Occupational health standards; chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals; chapter 296-155 WAC, Safety standards for construction work; chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and ship-breaking; chapter 296-828 WAC, Hazardous chemicals in laboratories; chapter 296-835 WAC, Dipping and coating operations (dip tanks); chapter 296-843 WAC, Hazardous waste operations; chapter 296-848 WAC, Arsenic; chapter 296-849 WAC, Benzene; chapter 296-855 WAC, Ethylene oxide; and chapter 296-856 WAC, Formaldehyde. In addition, several internal references will need to be updated throughout all applicable chapters.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on January 7, 2014, at 9:00 a.m.

Date of Intended Adoption: February 18, 2014.

Submit Written Comments to: Beverly Clark, P.O. Box 44620, Olympia, WA 98504-4620, e-mail Beverly.Clark@lni.wa.gov, fax (360) 902-5619, by 5:00 p.m. on January 10, 2014.

Assistance for Persons with Disabilities: Contact Beverly Clark by December 31, 2013, at Beverly.Clark@lni.wa.gov or (360) 902-5516.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2012, the Occupational Safety and Health Administration (OSHA) adopted the final rules updating its hazard communication standard into alignment with the globally harmonized system of classification and labeling of chemicals (GHS). OSHA's rule also modified other existing OSHA standards that contain hazard classification and communication provisions to be internally consistent and aligned with the GHS modifications to the hazard communication standard. The department's rules are required to be at-least-as-effective-as OSHA. Under Phase I hazard communication rule making in 2013, the department created a new rule, WAC 296-901-140, incorporating all the elements of the existing department hazard communication rules into one rule to be consistent with OSHA's hazard communication standard employers, chemical manufacturers, importers, and distributors. This rule making, Phase II, modifies other existing department rules to align with the GHS changes as required by OSHA's rule. In addition, this rule making makes changes to WAC 296-901-140 to reflect minor corrections made to OSHA's rule in February 2013 and other necessary technical corrections.

See Reviser's note below.

Reasons Supporting Proposal: OSHA adopted the final rules updating its hazard communication standard into alignment with GHS. The department is required to update our rules to be at-least-as-effective-as OSHA.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. 1910 Subpart Z.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Killip, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Anne F. Soiza, Tumwater, Washington, (360) 902-5090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes are exempt under RCW 19.85.061 because they are solely for the purpose of conformity or compliance with federal statute, 29 C.F.R. 1910 Subpart Z and DOSH is required to be as [at]-least-as-effective-as OSHA. Additionally, no new costs are imposed by this proposed rule.

A cost-benefit analysis is not required under RCW 34.05.328. Changes are exempt when: Explicitly and specifically dictated by federal statute; correct typographical errors or clarifies language without changing its effect; or are adopted from national consensus codes, RCW 34.05.328 (5)(b)(iii) - (v). No new costs are imposed by this proposed rule.

November 4, 2013

Joel Sacks
Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-23 issue of the Register.

WSR 13-22-066
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed November 5, 2013, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-18-072.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 10, 2013, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. Call-in option can be provided upon request.

Date of Intended Adoption: December 17, 2013.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by December 16, 2013.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply to the first half of 2014.

Further, RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The department anticipates amending the forest land values rule (WAC 458-40-540) to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2014.

Reasons Supporting Proposal: Required by statutes and values needed to calculate timber excise and property taxes.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia,

WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark E. Bohe, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, fax (360) 534-1606, e-mail markbohe@dor.wa.gov. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

November 5, 2013
Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 13-02-034, filed 12/21/12, effective 1/1/13)

WAC 458-40-540 Forest land values—((2013)) 2014. The forest land values, per acre, for each grade of forest land for the ((2013)) 2014 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2013)) 2014 VALUES PER ACRE
((1))	1	\$191
	2	189
	3	177
	4	128
2	1	161
	2	156
	3	149
	4	107
3	1	125
	2	121
	3	120
	4	93
4	1	97
	2	94
	3	93
	4	70
5	1	70
	2	63
	3	62
	4	43
6	1	35
	2	33
	3	33
	4	31
7	1	16
	2	16
	3	15
	4	15

LAND GRADE	OPERABILITY CLASS	((2013)) 2014 VALUES PER ACRE
<u>8</u>	<u>1</u>	<u>189</u>
	<u>2</u>	<u>187</u>
	<u>3</u>	<u>175</u>
	<u>4</u>	<u>127</u>
<u>1</u>	<u>1</u>	<u>159</u>
	<u>2</u>	<u>155</u>
	<u>3</u>	<u>148</u>
	<u>4</u>	<u>106</u>
<u>2</u>	<u>1</u>	<u>124</u>
	<u>2</u>	<u>120</u>
	<u>3</u>	<u>119</u>
	<u>4</u>	<u>92</u>
<u>3</u>	<u>1</u>	<u>96</u>
	<u>2</u>	<u>93</u>
	<u>3</u>	<u>92</u>
	<u>4</u>	<u>69</u>
<u>4</u>	<u>1</u>	<u>69</u>
	<u>2</u>	<u>62</u>
	<u>3</u>	<u>61</u>
	<u>4</u>	<u>43</u>
<u>5</u>	<u>1</u>	<u>35</u>
	<u>2</u>	<u>33</u>
	<u>3</u>	<u>33</u>
	<u>4</u>	<u>31</u>
<u>6</u>	<u>1</u>	<u>16</u>
	<u>2</u>	<u>16</u>
	<u>3</u>	<u>15</u>
	<u>4</u>	<u>15</u>
<u>7</u>	<u>1</u>	<u>1</u>

Washington State Department of Revenue

STUMPAGE VALUE TABLE

((July)) January 1 through ((December 31, 2013)) June 30, 2014

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting July 1, 2012, there are no separate

Quality Codes per Species Code.

((Species Name	Species-Code	SVA (Stump-age Value Area)	Haul Zone						
			1	2	3	4	5		
Douglas-fir ⁽²⁾	DF	1	\$392	\$385	\$378	\$371	\$364		
		2	388	381	374	367	360		
		3	308	301	294	287	280		
		4	442	435	428	421	414		
		5	424	417	410	403	396		
		6	224	217	210	203	196		
Western Hemlock and Other Conifer ⁽³⁾	WH	1	361	354	347	340	333		
		2	353	346	339	332	325		
		3	260	253	246	239	232		
		4	340	333	326	319	312		
Western Redcedar ⁽⁴⁾	RC	1-5	808	801	794	787	780		
		6	483	476	469	462	455		
		Ponderosa Pine ⁽⁵⁾	PP	1-6	190	183	176	169	162
				Red Alder	RA	1-5	479	472	465
		Black Cottonwood	BC			1-5	90	83	76
				Other Hardwood	OH	1-5	229	222	215
6	23	16	9			2	1		
Douglas-fir Poles & Piles	DFL	1-5	789	782	775	768	761		
Western Redcedar Poles	RCL	1-5	1379	1372	1365	1358	1351		
		6	854	847	840	833	826		
Chipwood ⁽⁶⁾	CHW	1-5	10	9	8	7	6		
		6	1	1	1	1	1		
Small Logs ⁽⁶⁾	SML	6	27	26	25	24	23		
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136		
		Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25		
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50		

AMENDATORY SECTION (Amending WSR 13-14-056, filed 6/28/13, effective 7/1/13)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2013)) June 30, 2014:

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.

- (4) ~~Includes Alaska-Cedar.~~
- (5) ~~Includes Western White Pine.~~
- (6) ~~Stumpage value per ton.~~
- (7) ~~Stumpage value per cord.~~
- (8) ~~Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.~~
- (9) ~~Stumpage Value per lineal foot.)~~

- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir ⁽²⁾	DF	1	\$440	\$433	\$426	\$419	\$412
		2	462	455	448	441	434
		3	379	372	365	358	351
		4	476	469	462	455	448
		5	437	430	423	416	409
		6	250	243	236	229	222
Western Hemlock and Other Conifer ⁽²⁾	WH	1	380	373	366	359	352
		2	392	385	378	371	364
		3	344	337	330	323	316
		4	357	350	343	336	329
		5	337	330	323	316	309
		6	253	246	239	232	225
Western Redcedar ⁽⁴⁾	RC	1-5	972	965	958	951	944
		6	654	647	640	633	626
Ponderosa Pine ⁽⁵⁾	PP	1-6	209	202	195	188	181
		Red Alder	RA	1-5	464	457	450
Black Cottonwood	BC	1-5	52	45	38	31	24
Other Hardwood	OH	1-5	262	255	248	241	234
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	802	795	788	781	774
Western Redcedar Poles	RCL	1-5	1401	1394	1387	1380	1373
		6	913	906	899	892	885
Chipwood ⁽⁶⁾	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	30	29	28	27	26
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	178	171	164	157	150
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~(July)~~ January 1 through ~~(December 31, 2013)~~ June 30, 2014:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5**
(July) January 1 through (December 31, 2013) June 30, 2014

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6**
(July) January 1 through (December 31, 2013) June 30, 2014

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	

III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$((9-00)) 8.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

WSR 13-22-077
PROPOSED RULES
HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed November 5, 2013, 4:56 p.m.]

Supplemental Notice to WSR 13-16-096.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-509-0340 MAGI income—Native American benefits and payments, based on public comments received during the public proposal period, the health care authority (HCA) made substantive changes to the proposed draft.

Hearing Location(s): HCA, Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on December 10, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 11, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on December 10, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by December 2, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health (WAH)).

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Jessie Minier, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee (JARRC) has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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 JARRC or applied voluntarily.

November 5, 2013

Kevin M. Sullivan

Rules Coordinator

NEW SECTION

WAC 182-509-0340 MAGI income—American Indian/Alaska Native excluded income. For the purposes of determining eligibility of American Indians/Alaska Natives for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300), the agency excludes from MAGI the following:

(1) Distributions from Alaska Native corporations and settlement trusts;

(2) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior;

(3) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:

(a) Rights of ownership or possession in any lands described in (b) of this subsection; or

(b) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.

(4) Distributions resulting from real property ownership interests related to natural resources and improvements that are:

(a) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(b) Resulting from the exercise of federally protected rights relating to such real property ownership interests.

(5) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom;

(6) Student financial assistance provided under the Bureau of Indian Affairs education programs; and

(7) Any other applicable income exclusion as provided by federal law, regulation, or rule, including the Internal Revenue Code, treasury regulations, and Internal Revenue Service revenue rulings, revenue procedures, notices, and other official tax guidance.

WSR 13-22-079
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 6, 2013, 6:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-078.

Title of Rule and Other Identifying Information: WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose?

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

Date of Intended Adoption: Not earlier than December 11, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 10, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 18, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments provide penalty information to comply with C.F.R. 273.16 for second convictions of food assistance benefits.

Reasons Supporting Proposal: Amendments proposed under this filing are needed to incorporate federal regulations regarding the allowable use of supplemental nutrition assistance program (SNAP) benefits. The proposed amendment includes second conviction penalties for Washington food assistance programs consistent with federal penalties for intentional program violations for SNAP.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16.

Rule is necessary because of federal law, 7 C.F.R. 273.16.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 29, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-012, filed 6/21/12, effective 7/22/12)

WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose? (1) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:

- (a) Washington Basic Food program or Basic Food;
- (b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;
- (c) Transitional food assistance (TFA) under chapter 388-489 WAC; and
- (d) The state-funded food assistance program (FAP) for legal immigrants.

(2) You will have a disqualification period if we have shown that you have committed an IPV in any of the following three ways:

(a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;

(b) You signed a disqualification consent agreement that waives your right to an administrative disqualification hearing and states you accept the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

(3) **Special penalties for certain crimes** - If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs** - If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

(i) For a period of twenty-four months for a first offense; and

(ii) Permanently for a second offense.

(b) **Weapons** - If you are convicted in a federal, state or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking** - If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification** - If you are found to have provided false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance:

(i) For ten years on the first offense.

(ii) For ten years on the second offense.

(iii) Permanently for the third offense.

(e) **Receiving benefits in more than one state** - If you are found to have provided false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance:

(i) For ten years on the first offense.

(ii) For ten years on the second offense.

(iii) Permanently for the third offense.

(4) In addition to penalties for crimes described in subsection (3), if you commit an IPV you will not be eligible for food assistance:

(a) For a period of twelve months for any first intentional program violation;

(b) For a period of twenty-four months for any second intentional program violation; and

(c) Permanently for any third intentional program violation.

(5) We only apply a disqualification penalty to the person or persons who have committed an intentional program violation.

(6) Start date of a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start:

(a) **ADH or consent agreement** - If you were found to have committed an IPV in an administrative disqualification hearing or you signed a consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court** - If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or criminal penalties. We disqualify you from food assistance within forty-five days of the court order unless this timing conflicts with the court order.

(7) **Disqualifications apply in all states** - If you have an IPV disqualification this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

(8) Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

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

Date of Intended Adoption: Not earlier than December 11, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 10, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 20, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is adding new WAC 388-106-0033, to chapter 388-106 WAC on applying for long-term care services, in order to describe when a client may receive enhanced adult residential care-specialized dementia care (SDC). The new WAC clarifies who is eligible to receive SDC services in language that is consistent with the CARE assessment instrument.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.09.520, 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judi Plesha, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2370.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

November 4, 2013
Katherine I. Vasquez
Rules Coordinator

WSR 13-22-080

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 6, 2013, 6:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-132.

Title of Rule and Other Identifying Information: WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?

NEW SECTION

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) "Enhanced adult residential care-specialized dementia care ("EARC-SDC")", which is defined in WAC 388-110-020. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in COPES, as defined in WAC 388-106-0015;

(b) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(c) The Department has authorized you to receive EARC-SDC services in the assisted living facility;

(d) The Department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's Disease, multi-infarct or vascular dementia, Lewy Body Dementia, Pick's Disease, Alcohol-related Dementia); and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a Cognitive Performance Score of 3 or above; and any one or more of the following:

- (i) An unmet need for assistance with Supervision, Limited, Extensive or Total Dependence with eating/drinking
- (ii) Inappropriate toileting/menses activities
- (iii) Rummages/takes others belongings
- (iv) Up at night when others are sleeping and requires intervention(s)
- (v) Wanders/exit seeking
- (vi) Wanders/not exit seeking
- (vii) Has left home and gotten lost
- (viii) Spitting
- (ix) Disrobes in public
- (x) Eats non-edible substances
- (xi) Sexual acting out
- (xii) Delusions
- (xiii) Hallucinations
- (xiv) Assaultive
- (xv) Breaks, throws items
- (xvi) Combative during personal care
- (xvii) Easily irritable/agitated
- (xviii) Obsessive re health/body functions
- (xix) Repetitive movement/pacing
- (xx) Unrealistic fears or suspicions
- (xxi) Repetitive complaints/questions
- (xxii) Resistive to care
- (xxiii) Verbally abusive
- (xxiv) Yelling/screaming
- (xxv) Inappropriate verbal noises
- (xxvi) Accuses others of stealing

WSR 13-22-085

PROPOSED RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed November 6, 2013, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-061.

Title of Rule and Other Identifying Information: Chapter 246-847 WAC, Occupational therapists, amending WAC 246-847-010 Definitions and 246-847-065 Continued competency; and adding new WAC 246-847-066 Suicide assessment training program standards. Revising the rules to imple-

ment 2012 and 2013 legislation regarding training and continuing education in suicide assessment.

Hearing Location(s): Department of Health, Town Center Three, 243 Israel Road S.E., Room 265, Tumwater, WA 98501, on December 16, 2013, at 10:00 a.m.

Date of Intended Adoption: December 16, 2013.

Submit Written Comments to: Janette Benham, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by December 5, 2013.

Assistance for Persons with Disabilities: Contact Janette Benham by December 2, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement RCW 43.70.442, adopted in 2012 by ESHB 2366. RCW 43.70.442 was subsequently amended by SHB 1376 (chapter 78, Laws of 2013). The proposed rules create new continuing education (CE) requirements for occupational therapists and occupational therapy assistants. The proposed rules establish CE requirements in suicide assessment, including screening and referral, provide clarification related to the standards a program must meet to qualify as a suicide prevention training, and define the use of the term "board." The proposed rules incorporate provisions of SHB 1376 to establish a three-hour training requirement for occupational therapists and occupational therapy assistants and establish a date for initially complying with the CE requirement.

Reasons Supporting Proposal: It is the legislative intent that educating occupational therapists and occupational therapy assistants in suicide assessment, screening, and referral may help lower the suicide rate in Washington.

Statutory Authority for Adoption: RCW 43.70.442, 18.59.130.

Statute Being Implemented: RCW 43.70.442, as amended by SHB 1376 (chapter 78, Laws of 2013).

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

Name of Proponent: Department of health, occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Janette Benham, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4857.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Janette Benham, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4857, fax (360) 236-2901, e-mail janette.benham@doh.wa.gov.

November 6, 2013

Karin Schulze, OT, Chair
Occupational Therapy Practice Board

AMENDATORY SECTION (Amending WSR 07-20-076, filed 10/1/07, effective 11/1/07)

WAC 246-847-010 Definitions. The (~~following terms~~) definitions in this section apply throughout this chap-

ter ~~((and have the following meanings:))~~ unless the context clearly requires otherwise.

(1) "Adapting environments for individuals with disabilities" includes assessing needs, identifying strategies, implementing and training in the use of strategies, and evaluating outcomes. Occupational therapy focuses on the interaction of an individual's skills and abilities, the features of the environment, and the demands and purposes of activities.

(2) "Board" means the board of occupational therapy practice.

(3) "Clients" include patients, students, and those to whom occupational therapy services are delivered.

~~((3))~~ (4) "Client-related tasks" are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable;

(b) The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide;

(c) The client has demonstrated some previous performance ability in executing the task; and

(d) The task routine and process have been clearly established.

~~((4))~~ (5) "Commonly accepted standards for the profession" in RCW 18.59.040 (5)(b) and 18.59.070 shall mean having passed the National Board for Certification in Occupational Therapy or its successor/predecessor organization, not having engaged in unprofessional conduct or gross incompetency as established by the board in WAC 246-847-160 for conduct occurring prior to June 11, 1986, and as established in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

~~((5))~~ (6) "Consultation" means that practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence.

~~((6))~~ (7) "Developing prevocational skills and play and avocational capabilities" also involves the scientifically based use of purposeful activity.

~~((7))~~ (8) "Direct supervision" as described in RCW 18.59.040(7) means daily, in-person contact at the site where services are provided by an occupational therapist licensed in the state of Washington.

~~((8))~~ (9) "Evaluation" is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.

~~((9))~~ (10) "In association" as described in RCW 18.59.040(7) means practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assis-

stance as needed to provide protection for the client's health, safety and welfare.

~~((10))~~ (11) "Occupational therapy aide" means a person who is trained by an occupational therapist or occupational therapy assistant to perform client and nonclient related tasks. Occupational therapy aides are not primary service providers of occupational therapy in any practice setting. Occupational therapy aides do not provide skilled occupational therapy services.

~~((11))~~ (12) "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the treatment site by an occupational therapist or occupational therapy assistant licensed in the state of Washington. When client related tasks are provided by an occupational therapy aide more than once a week, professional supervision must occur at least weekly. When client related tasks are provided by an occupational therapy aide once a week or less, professional supervision must occur at least once every two weeks.

~~((12))~~ (13) "Regular consultation" as described in RCW 18.59.020(4) means in-person contact at least monthly by an occupational therapist licensed in the state of Washington with supervision available as needed by other methods which include but are not limited to phone and e-mail.

~~((13))~~ (14) "Scientifically based use of purposeful activity" is the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. "Occupations" are activities having unique meaning and purpose in an individual's life.

~~((14))~~ (15) "Teaching daily living skills" is the instruction in daily living skills based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation.

~~((15))~~ (16) "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.

~~((16))~~ (17) "Work site" in RCW 18.59.080 means the primary work location.

AMENDATORY SECTION (Amending WSR 05-24-105, filed 12/7/05, effective 1/7/06)

WAC 246-847-065 Continued competency. ~~((As required in chapter 246-12 WAC, Part 7,))~~ Licensed occupational therapists and licensed occupational therapy assistants must complete thirty hours of ~~((continuing education))~~ continued competency every two years.

(1) A minimum of twenty hours must be directly related to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010.

~~((The))~~ (2) Any remaining ~~((ten))~~ hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant.

(3) Beginning January 1, 2014, as part of their continued competency, occupational therapists and occupational therapy assistants are required to obtain at least three hours of

training every six years in suicide assessment as specified in WAC 246-847-066.

(a) Except as provided in (b) of this subsection, an occupational therapist or occupational therapy assistant must complete the first training required by this section during the first full continued competency reporting period after January 1, 2014, or the first full continued competency reporting period after initial licensure, whichever occurs later.

(b) An occupational therapist or occupational therapy assistant applying for initial licensure on or after January 1, 2014, may delay completion of the first training required by this section for six years after initial licensure if:

(i) He or she can demonstrate successful completion of a three-hour training program in suicide assessment that was completed no more than six years prior to the application for initial licensure; and

(ii) The training meets the qualifications listed in WAC 246-847-066.

~~(4)~~ The thirty ~~(contact)~~ continued competency hours must be obtained through two or more of the activities listed ~~(below)~~ in this subsection. Documentation for all activities must include licensee's name, date of activity, and number of hours. Additional specific documentation is defined below:

~~((+))~~ (a) Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance.

~~((2))~~ (b) In-service training. The required documentation for this activity is a certificate or documentation of attendance.

~~((3))~~ (c) Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance.

~~((4))~~ (d) Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript.

~~((5))~~ (e) Publications. The required documentation for this activity is a copy of the publication.

~~((6))~~ (f) Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period.

~~((7))~~ (g) Interactive online courses. The required documentation for this activity is a certificate or documentation of completion.

~~((8))~~ (h) Development of instructional materials incorporating alternative media such as: Video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process.

~~((9))~~ (i) Professional manuscript review. The required documentation for this activity is a letter from publishing organization verifying review of manuscript. A maximum of ten hours is allowed per reporting period for this category.

~~((+))~~ (j) Guest lecturer for occupational therapy related academic course work (academia not primary role).

The required documentation for this activity is a letter or other documentation from instructor.

~~((+))~~ (k) Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten hours is allowed per reporting period for this category.

~~((+2))~~ (l) Self-study of cassette, tape, video tape, or other multimedia device, or book. The required documentation for this activity is a two page synopsis of each item written by the licensee. A maximum of ten hours is allowed per reporting period for this category.

~~((+3))~~ (m) Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. A maximum of ten hours per supervisor is allowed per reporting period for this category.

NEW SECTION

WAC 246-847-066 Suicide assessment training standards. (1) A qualifying training in suicide assessment must:

(a) Be an empirically supported training in suicide assessment that includes risk assessment, screening, and referral;

(b) Be provided by a single provider and must be at least three hours in length which may be provided in one or more sessions.

(2) The hours spent completing a training program in suicide assessment under this section count toward meeting any applicable continued competency requirements.

(3) Nothing in this section is intended to expand or limit the occupational therapist or occupational therapy assistant scope of practice.

WSR 13-22-092

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed November 6, 2013, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-023.

Title of Rule and Other Identifying Information: WAC 314-02-102 What are the requirements for a grocery store licensee to conduct beer and wine tastings? and 314-02-106 What is a spirits retailer license?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 11, 2013, at 10:00 a.m.

Date of Intended Adoption: December 18, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail kjm@liq.wa.gov, fax (360) 664-9689, by December 11, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by December 11, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5396 and SSB 5517 passed in the 2013 legislative session directs the board to adopt rules to implement the new privileges that allow a spirits retailer to conduct spirits tastings. The requirements for grocery store licensees to conduct beer and wine tastings changed.

Reasons Supporting Proposal: Rules are needed to clarify the law and what requirements licensees must meet to obtain and maintain these privileges.

Statutory Authority for Adoption: RCW 66.24.363 and 66.24.660.

Statute Being Implemented: RCW 66.24.363 and 66.24.660.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 663-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

November 6, 2013
Sharon Foster
Chairman

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

WAC 314-02-102 What are the requirements for a grocery store licensee to conduct beer and wine tastings?

(1) To be issued a beer and wine tasting endorsement, the licensee must meet the following criteria:

~~(a) ((The licensee has retail sales of grocery products for off-premises consumption, not to include candy, soda pop, beer or wine, that are more than fifty percent of the licensee's gross sales, or the licensee is a membership organization that requires members to be at least eighteen years of age;~~

~~(b))~~ (b) The licensee operates a fully enclosed retail area encompassing at least ~~((nine))~~ ten thousand square feet. The board may issue the endorsement to a licensee with a retail area with less than ~~((nine))~~ ten thousand square feet if there is no licensee in the community that meets the ~~((nine))~~ ten thousand square foot requirement under the following conditions: There must be at least two employees on duty any time the licensee is conducting beer and wine tasting events. One employee must be dedicated to beer and wine tastings during these events;

~~((c))~~ (c) The licensee has not had more than one public safety administrative violation within the last two years. The two-year window is counted from two years prior to the date

of the application for the beer and wine tasting endorsement. (See WAC 314-29-020 for a list of public safety violations.)

(2) In addition to the conditions in RCW 66.24.363, a beer and wine tasting must be conducted under the following:

(a) The licensee must provide a sketch of the tasting area. Fixed or moveable barriers are required around the tasting area to ensure persons under twenty-one years of age do not possess or consume alcohol;

(b) Signs advertising beer and wine tastings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(c) Persons serving beer and wine during tasting events must hold a class 12 alcohol server permit.

(3) Licensees are required to send a list of scheduled beer and wine tastings to their regional enforcement office at the beginning of each month. The date and time for each beer and wine tasting must be included.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-02-106 What is a spirits retailer license?

(1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail licensee. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seven percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) A spirits retail licensee may apply for a spirits sampling endorsement to conduct spirits sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For spirits retail licensees that also hold a grocery store license, signs advertising spirits samplings may not be

placed in the windows or outside of the premises that can be viewed from the public right of way:

(ii) For spirits retail licensees that also hold a beer/wine specialty store license, advertising of spirits sampling may be advertised but not state that sampling is free of charge.

(c) Spirits samplings are to be conducted in the following manner:

(i) Spirits samplings service area and facilities must be located within the licensees' fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area.

(ii) The licensee must provide a sketch of the sampling area. Fixed or moveable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. The sketch is to be included with the application for the spirits sampling endorsement.

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples must be unaltered.

(iv) The licensee must have food available for the sampling participants.

(v) Customers must remain in the service area while consuming samples.

(vi) All employees serving spirits during sampling events must hold a class 12 server permit.

(vii) There must be at least two employees on duty when conducting spirits sampling events.

(viii) Spirits sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled spirits samplings to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included.

(6) The annual fee for a spirits retail license is one hundred sixty-six dollars.

Date of Intended Adoption: April 30, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 23, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by April 23, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of a stakeholder petition for rule making to clarify RCW 66.28.170 regarding discrimination in price to purchaser for resale prohibited. Confusion in the alcohol industry regarding "volume discounts" since the passing of Initiative 1183 require further clarification in the rules.

Reasons Supporting Proposal: Additional rule language needs to be created to fully clarify the statute.

Statutory Authority for Adoption: RCW 66.8.030 [66.08.030].

Statute Being Implemented: RCW 66.28.170.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

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

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

November 6, 2013

Sharon Foster

Chairman

WSR 13-22-095
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed November 6, 2013, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-026.

Title of Rule and Other Identifying Information: Six new sections are being created in chapter 314-23 WAC: WAC 314-23-060 What are "volume discounts"?, 314-23-065 What are "bona fide business practices"?, 314-23-070 What is "marketplace"?, 314-23-075 What constitutes "undue influence"?, 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees?, and 314-23-085 What type of discounts are not allowed?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on April 23, 2014, at 10:00 a.m.

NEW SECTION

WAC 314-23-060 What are "volume discounts"?

Volume discounts are discounts that are based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor that are allowed. However, the limitations on interactions between the levels of licenses remain, including the prohibition on undue influence and sales below cost.

NEW SECTION

WAC 314-23-065 What are "bona fide business practices"? Bona fide business practices are business practices that do not violate local government, state or federal laws.

NEW SECTION

WAC 314-23-070 What is "marketplace"? Marketplace is limited to businesses in geographic recognized market areas such as town, city, county or other recognized geo-

graphic area in which distribution services are provided. Does not include various business types such as on-premises licensed retailers versus off-premises licensed retailers.

NEW SECTION

WAC 314-23-075 What constitutes "undue influence"? Per RCW 66.28.285 "undue influence" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as, but not limited to, the following:

(1) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(2) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(3) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(4) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member including requiring a percentage of their spirits back-bar, well-drinks, wine by the glass or any combination of sales items in order to participate in a discount plan;

(5) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(6) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(7) An industry member having a continuing obligation to sell a product to a retailer;

(8) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(9) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this section;

(10) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that the product is not offered to all retailers in the local market on the same terms.

NEW SECTION

WAC 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? Yes, distributors or other licensed suppliers are allowed to provide volume discounts to licensed on-premises and off-premises retailers. The discounts must be based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor. However, the limitations on interactions between the levels of licenses remain,

including the prohibition on undue influence and sales below cost.

NEW SECTION

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

(1) **Volume discounts that violate local, state, or federal laws.**

(2) **Volume discounts based on percentage of back-bar etc., is not allowed:** This practice includes a distributor providing a percentage discount, only if the licensee dedicates a percentage of their spirits back-bar, well-drinks, and wine by the glass, or any combination of sales items of that distributor's products, in order to receive a price discount.

(3) **Different discount pricing for on-premises and off-premises licensees ("channeling") is not allowed:** This practice involves a distributor providing different volume discounts to on-premises licensees than they offer to off-premises licensees in the same "market area."

(4) **Discounts on purchases beyond the day of purchase period are not allowed:** This practice involves whether to use the current daily time frame for determining the level of volume discount as opposed to an extended time period such as a weekly or monthly billing cycle to determine volume discount rates.

(5) **Discounts on a combined order that is delivered to licensed sites are not allowed:** This practice includes limiting volume discounts for combined orders to the "central warehouse" or a location to which the order is delivered. As a result the delivery of product to multiple sites cannot be used in determining the volume discount for a combined order.