

WSR 16-21-032
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed October 11, 2016, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-112.

Title of Rule and Other Identifying Information: Towing businesses.

Hearing Location(s): Washington State Patrol, General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504-2600, on November 23, 2016, at 9:00 a.m.

Date of Intended Adoption: November 28, 2016.

Submit Written Comments to: Sergeant J. D. Strup, Commercial Vehicle Division, P.O. Box 42614, Olympia, WA 98504-2614, e-mail jd.strup@wsp.wa.gov, fax (360) 596-3829, by November 22, 2016.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by November 18, 2016, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is a need to update sections within chapter 204-91A WAC to clarify the language of the rules as follows:

- Under the definitions section cleanup to the definitions are provided and terms are amended throughout to ensure consistency within the chapter.

- Definitions are consolidated and new definitions are added for inspection certificate and section commander.

- Procedural rules are amended with regard to hearings to clarify representation and deposition processes.

- Language regarding complaint investigations is amended to provide clarification.

- Personal property handling procedures are amended to clarify tow operators' responsibilities.

- Tow operator restrictions are clarified with regard to repeated refusal or failure to respond, requirements for notification if a tow operator is unavailable or changes business hours and professional conduct.

- Requirements are clarified to require the tow truck drivers' first and last name on the inventory record and first name on their clothing.

- Clarification is provided regarding who can request a tow operator at a collision scene and where impounded vehicles from a collision must be taken.

- Owner's authorized representative is added to clarify who is authorized to reclaim a vehicle at the conclusion of a special event or overflow situation.

Reasons Supporting Proposal: Updates are to provide clarity and consistency in terms used throughout the chapter and cleanup existing language.

Statutory Authority for Adoption: RCW 46.55.115.

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

Name of Agency Personnel Responsible for Drafting: Sergeant J. D. Strup, P.O. Box 42614, Olympia, WA 98504-2614, (360) 596-3804; Implementation and Enforcement: Commercial Vehicle Division, P.O. Box 42614, Olympia, WA 98504-2614, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not pose a more than minor cost to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant rules change. The changes clarify language throughout the chapter by updating terms, and amend[ing] procedural rules.

October 10, 2016

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-030 Definitions. The following definitions will apply throughout this chapter:

(1) "Chief" means the chief of the Washington state patrol.

(2) "Department" means the Washington state department of licensing.

(3) "Designee" means a person designated by the chief of the Washington state patrol.

(4) "Director" means the director of the department of licensing.

(5) "District commander" means the commanding officer or designee of ~~((an))~~ a geographical area established by the Washington state patrol.

(6) "Emergent move" or "emergent movement" means a law enforcement directed movement of any vehicle by a tow truck, utilizing any safe means, for the purposes of clearing the roadway in the interest of safety and/or for the reduction of congestion. ~~((Emergent movement of any oversized or overweight vehicle(s) or combination of vehicles requiring a permit must only be made to the nearest safe location, until such time as a permit is acquired or until the load can be made legal by reducing the nonfixed load. Emergent movement of a vehicle is limited to a distance of five miles, unless an exception is granted by a patrol supervisor based on special circumstances.))~~

(7) "Highway" ~~((means the entire width between the boundary lines of every highway publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel))~~ has the same meaning as provided in chapter 46.04 RCW.

(8) "Initial tow" means services provided including, but not limited to, collisions, incidents, disableds, and impound requests, as a result of an original call, on a particular vehicle, that the tow operator receives from the patrol using a copy of a current rotational call list for the particular zone.

(9) "Inspection certificate" means an inspection report and a tow inspection summary report completed by an inspector.

(10) "Inspector" means a commissioned officer of the Washington state patrol who has been designated as a tow truck inspector by the patrol.

~~((letter))~~ (11) "Letter of appointment" means a ~~((letter))~~ document issued by the Washington state patrol and signed by the patrol and registered tow truck operator that authorizes ~~((a registered))~~ the tow ~~((truck))~~ operator to tow and store vehicles for the patrol on a rotational or contractual basis in a

specified area. The letter of appointment contains a rotational tow rate cap agreement that specifies the maximum tow rates that may be charged for services provided as a result of patrol originated calls.

~~((11))~~ "Letter of contractual agreement" means the document, attached to the letter of appointment, that specifies the maximum tow rates that may be charged for services provided as a result of state patrol originated calls.)

(12) "Owner/operator" means an owner of a towing business who is active in the general management of the ~~((towing))~~ business.

(13) "Patrol" means the Washington state patrol as defined in RCW 43.43.010.

(14) "Place of business" means a building located in an assigned tow zone that the registered tow truck operator occupies, either continuously or at regular times, where tow business books and records are kept and tow business is transacted.

(15) "Registered tow truck operator" or "tow operator" means a person who engages in the impounding, transporting, or storage of unauthorized vehicles, or in the disposal of abandoned vehicles.

(16) "Secondary tow" means towing services from ~~((an))~~ a tow operator's storage facility or place of business to another location designated by the owner/agent of a vehicle, when the initial towing services were the result of a call from the patrol.

(17) "Section" means the section designated by the chief of the Washington state patrol to coordinate the tow truck inspection program, maintain tow truck files, and issue letters of appointment.

(18) "Section commander" means the commanding officer or designee of the section.

(19) "Special event" means any event that causes an unusually large number of impounded vehicles and/or tow calls in a short period of time and which is declared as such by the district commander or designee.

~~((19))~~ (20) "Special event storage area" means an area used for temporarily storing vehicles impounded/towed from special events. Approval for such areas must be obtained from the department, the patrol, and appropriate city and county jurisdictions.

~~((20))~~ (21) "State recognized holiday" means a legal holiday as outlined under RCW 1.16.050.

~~((21))~~ (22) "Storage area" means the approved yard and buildings (primary and secondary) where stored vehicles are kept. The storage areas and fencing must comply with the requirements established by the department and local zoning rules and regulations. Both primary and secondary storage areas must be physically located within the tow zone assigned to the tow operator under a letter of appointment.

(23) "Tow truck" ~~((means a motor vehicle that is equipped for and used in the business of towing or otherwise transporting other vehicles with specific equipment approved by the patrol.~~

~~((23))~~ has the same meaning as provided in RCW 46.55.-010.

(24) "Tow truck number" ~~((means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.~~

~~((23))~~ has the same meaning as provided in RCW 46.55.010.

(25) "Tow truck permit" ~~((means the permit issued annually by the department that has the classification of service that the tow truck may provide stamped upon it.~~

~~((24))~~ has the same meaning as provided in RCW 46.55.010.

(26) "Tow truck service" means the towing, moving, transporting, or impounding of vehicles, together with personal effects and cargo, by a registered tow truck operator utilizing equipment approved by the patrol.

~~((25))~~ (27) "Tow zone" means that specific geographical area designated by the district commander for the removal of vehicles as defined in Title 46 RCW and this chapter.

~~((26))~~ "Vehicle storage area" ~~means the approved yard and buildings (primary and secondary) where stored vehicles are kept. The storage areas and fencing must comply with the requirements established by the department and all local zoning rules and regulations. Both primary and secondary storage areas must be physically located within the tow zone assigned to the operator.)~~

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-090 Hearing procedure. Hearings under this chapter will be pursuant to chapters 34.05 RCW(~~(; 446-08))~~) and 10-08 WAC, as supplemented by this section.

(1) The presiding officer will conduct the hearing and any prehearing conference(s).

(2) The burden of proof in any hearing will be on the applicant seeking a letter of appointment, or the person or agency seeking the suspension or revocation of a letter of appointment, or other action by the chief or designee. The chief or designee, after having heard and considered all pertinent evidence, or if the hearing is conducted by an administrative law judge, after having considered a record of a hearing conducted by an administrative law judge duly appointed pursuant to chapter 34.12 RCW, will make written findings of facts and conclusions based on evidence presented.

(3) Oral proceedings must be recorded by a method chosen by the patrol and such recording will become part of the hearing record.

(4) During an adjudicative proceeding, no person may appear in a representative capacity other than the following:

(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(b) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law; and/or

(c) A bona fide officer, partner, sole proprietor, or authorized manager of a sole proprietorship, partnership, or corporation who appears for such sole proprietorship, partnership, or corporation.

(5) The presiding officer will decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the

superior court civil rules. The presiding officer will condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer will consider:

- (a) Whether all parties are represented by counsel;
- (b) Whether undue expense or delay in bringing the case to hearing will result;
- (c) Whether the discovery will promote the orderly and prompt conduct of the proceeding; and
- (d) Whether the interests of justice will be promoted.

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-110 Complaints. (1) ~~((All law enforcement or local licensing agencies that receive))~~ Complaints received by the patrol involving registered tow truck operators ((must forward complaints)) will be forwarded to the department, along with ((all)) the results from ((the)) any complaint investigation((s)) and other supporting documents((, to the department)).

(2) The patrol will investigate all complaints involving deficient equipment ((deficiencies)) of a registered tow truck operator.

(3) The patrol will investigate all complaints that a letter of appointment holder has failed to comply or no longer complies with any requirement or provision of law or this chapter.

(4) Complaints investigated by the patrol will be reviewed by the chief or designee before ((forwarding)) being forwarded to the department.

~~((4))~~ (5) A complete copy of all complaints investigated by the patrol will be kept on file in accordance with applicable records retention requirements.

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-130 Personal property handling procedures. All personal belongings and contents in the vehicle that are not permanently attached must be kept intact, and must be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. The tow operator must without charge and upon demand, release personal property not being held for evidence purposes by the impounding agency, to the vehicle's owner or agent during normal business hours of 8:00 a.m. to 5:00 p.m. except for weekends and state recognized holidays. Release procedures must also follow guidelines as set forth in chapters 308-61 WAC and 46.55 RCW.

The vehicle contents, less items listed in WAC and RCW, and personal property not picked up prior to the vehicle going to auction must remain with the vehicle and may not be kept by the tow operator or sold at auction to fulfill a lien against the vehicle.

(1) The items of personal property that the state patrol will not accept in response to RCW 46.55.090 include but are not limited to the following:

- (a) Tire chains;
- (b) Spare tire and wheels;
- (c) Used auto parts and accessories;

- (d) Seat covers;
- (e) Fuel containers;
- (f) Jacks and lug wrenches;
- (g) Radios, stereos, and other items attached to the vehicle by bolts, screws, or some other manner that incorporates them to the vehicle. These items must remain with the vehicle;
- (h) Refuse, trash, garbage, open or empty alcohol containers and perishable items;
- (i) Soiled or mildewed items, including clothing, shoes, blankets, and tarps having no actual value;
- (j) Miscellaneous unofficial papers and other items having no actual value.

(2) Items that must be turned over to the patrol within forty-eight hours and inventoried include, but are not limited to:

- (a) Money;
- (b) Wallets and purses;
- (c) Bank and check books;
- (d) Bank and credit cards;
- (e) Official identification cards, operator's license and passports;
- (f) Jewelry;
- (g) Firearms and any type weapon;
- (h) Contraband including controlled substances;
- (i) Stocks, bonds, money orders, bank certificates, travelers checks, postage stamps, and food stamps;
- (j) Other items of obvious value.

(3) The tow operator must not remove or damage any vehicle parts permanently affixed to the vehicle, i.e., trunk locks or door locks. The tow operator must allow the vehicle's legal or registered owner or ((driver of a vehicle)) the owner's authorized representative to remove specialized hand controls, provided that their removal does not damage the vehicle.

(4) If a vehicle is equipped with an ignition interlock system as outlined in RCW 46.20.720, the tow operator must contact the ignition interlock company through the phone number provided on the ignition interlock label within forty-eight hours to inform them that the vehicle has been impounded. The ignition interlock system must be removed by a qualified technician and released to the installing company, at no charge and upon proof of ownership, prior to the auction of the vehicle. The removal of the ignition interlock system must not render the vehicle inoperable.

(5) After the certified sale letter has been mailed, the tow operator may dispose of any perishable items or items that may rot, decay, or otherwise cause substantial odor within the interior of the vehicle.

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-150 Towing procedure. Officers of the patrol will obtain towing services to remove damaged or disabled vehicles from the highway or to remove vehicles from the highway with the following limitations:

(1) If the vehicle does not constitute an obstruction to traffic and the ~~((owner/operator of the vehicle))~~ vehicle's owner or operator is present at the scene and appears compe-

tent to determine disposition of the vehicle, the ~~((owner/operator may, upon request, make his own))~~ vehicle's owner or operator may make the arrangements for removal. This does not affect rotational positions.

(2) If the vehicle is to be removed from the scene, the ~~((owner/operator of the vehicle))~~ vehicle's owner or operator may make a specific request for a particular tow operator. The request will be honored by the officer of the patrol if the requested tow operator is reasonably available and the request is otherwise reasonable in view of the circumstances at the scene. This does not affect rotational positions.

(3) When the ~~((owner/operator of the vehicle))~~ vehicle's owner or operator makes no specific request, or ~~((when the owner/operator))~~ is incapacitated or ((is)) unavailable, the officer of the patrol will, when practicable, obtain towing services by notifying the radio communications center and requesting tow service at that location.

(4) The chief or designee will specify that tow services obtained by the patrol will be on a contractual, rotational, or other basis in specific geographical areas in the state.

(5) For the purposes of rotational or contractual tow requests, an approved tow truck must be used only in the tow zone designated by the district commander. The patrol may, when tow service is not reasonably available within ~~((a))~~ the given zone, obtain service from an adjacent zone.

(6) The patrol may ~~((adopt rules that will))~~ allow approved towing firms to establish their own central dispatch centers to dispatch tow trucks at the request of the patrol in selected geographical areas of the state.

(a) These dispatch centers will be the responsibility of those member towing firms that utilize this type of service, and must dispatch the specific company requested.

(b) The patrol communications center will advise the towing dispatch center of the approximate location, number of tow trucks needed, number of occupants, make, model and color of the vehicle, if available, and the reason for the call. The towing dispatch center will be responsible for dispatching the participating firm's tow trucks.

(c) ~~((Permanent))~~ Records of all tow trucks dispatched at the request of the patrol ((with)) must be maintained by the towing dispatch center for a period of three years.

(7) Tow operators responding to calls from the patrol must be capable of transporting one occupant. In those instances where the occupant is argumentative, disabled, or otherwise incapable of riding in a tow truck, the patrol will provide or obtain alternative transportation.

(8) Emergent movement of any oversized or overweight vehicle or combination of vehicles requiring a permit must only be made to the nearest safe location, until such time as a permit is acquired or until the load can be made legal by reducing the nonfixed load. Emergent movement of a vehicle is limited to a distance of five miles, unless an exception is granted by a patrol supervisor based on special circumstances.

AMENDATORY SECTION (Amending WSR 13-18-065, filed 9/3/13, effective 10/4/13)

WAC 204-91A-180 Additional ~~((vehicle towing/operator))~~ towing and tow operator qualifications, restrictions, and requirements.

ditions, and requirements. In addition to the requirements contained in WAC 204-91A-170, registered tow truck operators appointed pursuant to this chapter must conform to all laws and administrative rules pertaining to the tow industry and must observe the following practices and procedures:

(1) When called by the patrol during normal business hours, the tow ~~((truck))~~ operator must dispatch a tow truck, from within the assigned zone within five minutes after receiving the call. Tow trucks must be registered to and belong to the particular tow business that is called and assigned only to that tow zone. If an officer at the scene deems it necessary, the officer may authorize additional assistance from a registered tow ~~((truck))~~ operator outside of the tow zone.

(2) When called by the patrol after normal business hours, the tow ~~((truck))~~ operator must dispatch a tow truck from within the assigned zone within fifteen minutes after receiving the call.

(3) The tow truck that is dispatched must arrive at the stated location within a reasonable time considering distance, traffic, and weather conditions.

(4) If for any reason a tow operator is unable to dispatch a tow truck within the stated time or if the dispatched truck will be delayed for any reason, the tow operator must advise the patrol stating the reason and estimated time of arrival. In the event the tow truck fails to arrive at the scene within a reasonable time, the patrol will contact another tow operator to respond to the scene and will cancel the original tow.

(5) A tow operator on rotation who is unable to dispatch or arrive within the times stated in subsections (1), (2), (3), and (4) of this section will forfeit the tow operator's turn and be placed at the bottom of the rotation list as if the tow operator had responded.

(6) ~~((Consistent))~~ Repeated refusal or failure of the appointee to respond to calls from the patrol for towing services or to provide the requested services may result in the suspension or revocation of the tow operator's letter of appointment.

(7) If the tow operator will be unavailable for twenty-four hours or more to respond to rotational calls with a class "A," "B," or "C" tow truck, the tow operator must advise the appropriate patrol office ~~((when the tow company is temporarily unavailable to respond to rotational calls with a class "A," "B," or "C" tow truck)).~~ Unavailability may occur due to conditions including, but not limited to, other tow truck commitments, tow truck disabled and/or under repair, unforeseen driver shortage due to illness. ~~((The period of unavailability may last less than an hour or much longer.))~~ The tow operator ~~((will))~~ must give the reason for unavailability and ~~((approximately))~~ the approximate date and time when the company will be available to respond to calls.

The tow company will be removed from the rotational list and will not be called until the tow operator advises the patrol that the company is once again able to respond to calls with an "A," "B," or "C" class truck. In all such cases, the tow company will resume its normal position on the rotational list without regard to any missed calls or its position prior to being unavailable.

(8) The tow operator must advise the patrol whenever a private call is received for a tow with circumstances that indi-

cate that the tow is for a vehicle that has been involved in a collision, incident, or equipment breakdown on the public roadway. The tow operator also must advise the patrol of all private calls to motor vehicle collisions on private property resulting in bodily injury or death.

(9) The tow operator must notify the patrol before moving any vehicle involved in a collision on a public highway under the jurisdiction of the patrol as defined in the motor vehicle code, Title 46 RCW, or where it appears that the driver of the vehicle to be moved is under the influence of intoxicants or drugs, or is otherwise incapacitated.

(10) Other than a service patrol established and funded by the department of transportation, a tow operator must not solicit tow or roadside services by patrolling the public roadways searching for disabled vehicles or vehicles involved in a traffic collision.

(11) When the patrol is in charge of a collision scene or other such incident, a tow operator must not respond to such scene unless his services have been specifically requested by the patrol, the ~~((driver/owner, or his agent))~~ vehicle's owner or operator, or the owner's authorized representative.

(12) The tow operator must be available, or will ensure that specific employees are available, twenty-four hours a day for the purpose of receiving calls or arranging for the release of vehicles. Business hours will be posted conspicuously at the tow operator's place of business so they can be seen during business hours and nonbusiness hours. A copy ~~((will))~~ must also be sent to the ~~((section and patrol district commander))~~ inspector of the district in which the tow operator does business. Changes of business hours ~~((will))~~ must be sent to the department ~~((the section, and the patrol district commander))~~ and the inspector ten days before their effective date.

(13) The tow operator must post a current copy of tow and storage rates, on a form approved by the department and the patrol, in the following locations:

(a) At the entrance to the place of business, in a conspicuous location, plainly visible and capable of being read by the public, whether the business is open or closed. If, in order to meet this requirement, the rate sheets must be placed in a location, exposed to the elements, they must be protected so as to remain legible.

(b) Inside the business location, where business is commonly transacted. The rate sheets must be posted in such manner as to be clearly and plainly visible and read at all times by customers of the business.

(c) A copy of the current rates will be sent to the department, the section, and the patrol district commander of the district in which the tow operator has applied for a letter of appointment. Notice of any change(s) in service rates will be forwarded to the department, the section, and the district commander of the area ten days before the effective date of the changes. Charges made for towing services arising from calls initiated by the patrol must be consistent with current posted towing rates and must be based only upon services listed on the prescribed form.

(d) In the event that ~~((an))~~ a tow operator has only a class "B" truck and utilizes it for class "A" and "B" type tows, the tow operator must file a rate sheet that specifies the rates charged for the different types of tows.

(e) Whenever any tow operator utilizes a larger truck than the towed vehicle warrants, the tow operator must charge fees based on the size of the towed vehicle not the size of the truck used.

(14) Charges made for towing services arising from calls initiated by the patrol must not exceed the maximum rates established by the chief.

(15) Unless other arrangements are made with commissioned patrol personnel at the scene, all impounded vehicles must be taken to the tow operators nearest approved storage location within the tow operator's assigned tow zone.

(16) The tow operator will maintain, for three years, records on towed and released vehicles which were towed at the request of the patrol. Such records will be available for inspection by the patrol during normal business hours at the tow operator's place of business. Records will include, but not be limited to:

(a) An itemized receipt of all charges for the services provided.

(b) A tow impound record inventory or copy thereof made out by the trooper at the scene of the tow and signed by the tow operator.

(c) All other records required by the department.

(17) The first and last name of the ~~((registered))~~ tow truck ((operator)) driver will be placed on the tow impound inventory record made out by the patrol officer at the scene upon verification of their driver's license; except that the signature may be provided on existing forms with form number 3000-110-076 (R 7/11) until current stock is depleted.

(18) Tow operators ~~((will))~~ must obtain and maintain a current registration ((as a licensed tow truck operator pursuant to)) certificate as required by RCW 46.55.020.

(19) Tow operators must perform towing tasks competently. The standard of competence will be that quality of work which is accepted as efficient and effective within the towing industry. The tow operator must ensure tow truck drivers responding to calls initiated by the patrol have completed a minimum of one four-hour tow truck driver training course every five years. The tow operator must keep a file documenting training.

(20) No tow operator, employee, or agent will misappropriate, wrongfully convert to his/her own use, or abuse property belonging to another and entrusted to his/her care or storage.

(21) Tow ~~((truck))~~ operators must use emergency lights to warn other motorists only when at the scene of collisions, disabled vehicles, and/or recoveries. Such lighting must not be used when traveling to or from the scene.

(22) Tow ~~((truck))~~ operators are required to clean collision/incident scenes of all vehicle glass, debris, and vehicle liquid spills of one gallon or less.

(23) Specific operating restrictions and/or requirements, by truck class, are as follows:

(a) The standard air brake release tools (caging stud assemblies) required to be carried in the class "B," "B-2," and "C" trucks must be used, whenever necessary, to preserve potential evidence involving brake equipment or adjustment settings. When ~~((an))~~ a tow operator is attempting to move a vehicle equipped with locked spring parking brakes that cannot be released by external air supply, the caging assemblies

must be used to release the brake tension. Under no circumstances will the towed vehicle's brake assemblies or adjustments be moved or disturbed in any way that will prevent later determination of the precollision or incident settings.

(b) Class "B" or "B-2" trucks in excess of twenty-three thousand pounds gross vehicle weight rating need not carry dollies when towing or recovering heavy vehicles.

(24) Whenever a "special event or overflow" storage lot is approved by the department, the patrol and appropriate city/county jurisdictions, the following must apply:

(a) The tow operator must maintain personnel at the lot twenty-four hours per day for security and vehicle and/or personal property release. If necessary, reimbursement for such labor must be part of the contract for the "special event" if appropriate or by amended storage rates with a waiver of the ten-day rate change notice requirement approved by the department and the patrol.

(b) At the conclusion of a "special event or overflow" situation, all vehicles not reclaimed by the vehicle's owner or the owner's authorized representative must be towed to the tow operator's regular storage facility and processed in the normal fashion. No additional fee must be charged for towing the vehicle from the overflow lot to the regular storage facility.

(25) All work performed by the tow operator and/or employee must be in the most professional and expeditious manner. Tow operators and employees must refrain from any unprofessional actions while towing for or conducting towing business at the request of the patrol. The actions include, but are not limited to, any of the following:

(a) Lack of service, selective service, or refusal to provide service which the tow operator should be capable of performing;

(b) Exhibiting any signs of either alcohol, drug use, or both;

(c) Displaying any objects, logos, slogans, or graphic material within the view of the public that contains any form of pornography, profanity, or prejudice toward any person or group of persons; and

(d) Directing toward a customer any profanity, obscene language, or slurs based on the person's culture, race, gender or sexual preference.

(26) Tow operators must, when required by the patrol or the department, cause to be displayed on each approved truck, decals indicating truck class, patrol district, and/or assigned tow zone.

(27) When responding to a patrol call, tow truck (~~operators~~) driver must wear clothing identifying the company and the driver's first name.

(28) Tow truck (~~operators~~) drivers performing recovery, impounding, or towing must wear work vests of highly visible materials, or equivalent distinguishing apparel when outside of the towing vehicle as outlined in WAC 296-155-200(5) and Code of Federal Regulations, Title 23 Part 634.3.

(29) Tow (~~truck~~) operators must not display any sign, shield, marking, accessory, or insignia on uniforms or vehicles indicating the equipment or vehicle marking are similar to or belong to any public law enforcement agency. Tow (~~truck~~) operators must not engage in any advertisement

indicating an official connection with the patrol or other law enforcement agency.

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WASHINGTON STATE PATROL

[Filed October 11, 2016, 9:19 a.m.]

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Date of Intended Adoption: November 28, 2016.

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Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by November 18, 2016, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is a need to update WAC 204-91A-170 as follows:

- Clarify that minimum tow truck equipment standards apply to all registered tow truck operators.
- Cleanup terms used throughout the section.
- Clarify the requirements for a class S tow/recovery truck.

Reasons Supporting Proposal: Updates are to provide clarity and consistency in terms used throughout the chapter and cleanup existing language.

Statutory Authority for Adoption: RCW 46.55.115 and 446.55.050 [46.55.050].

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

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A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant rules change. The changes clarify language throughout the chapter by updating terms, amend[ing] procedural rules for requesting a class S truck while clarifying language to coincide with restrictions under Washington state statute for emergency equipment on a private vehicle.

October 10, 2016

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 14-17-104, filed 8/19/14, effective 9/19/14)

WAC 204-91A-170 Minimum tow truck equipment standards. (1) This section applies to all registered tow truck operators.

(2) All tow/recovery trucks used by a registered tow truck operator for public or private impounds or in response to patrol requests must meet the minimum standards listed in this section.

(a) Classes "A," "B," "B-2," "C," "D" only if factory equipped with a boom or retractable boom, "E" only if factory equipped with a side recovery system, and "S-1" are considered recovery trucks for patrol requests and must be used by the registered tow truck operator in response to these requests unless the tow operator requests and patrol accepts nonrecovery trucks or other equipment.

(b) The patrol will provide information concerning the general description of the type and condition of the vehicle and its type of load if applicable at the time of a request for an initial tow if reasonably available.

~~((2))~~ (3) **Minimum standards:**

(a) All equipment used in conjunction with the tow truck winching system must be used in such a way as not to exceed the equipment working load limit. All equipment must comply with the Washington safety and health administration (WSHA) regulation if applicable.

Industry standards set the working load limit of wire rope or equivalent material at one-fifth of the manufacturer's rated nominal or breaking strength.

(b) Each wire rope or equivalent material must be capable of being fully extended from and fully wound onto its drum. Each wire rope or equivalent material must meet the industry standards for specified type of use with equipment.

OSHA (1410.179 (h)(2)(iii)) requires **no less** than two wraps of rope remain on drum when rope is "fully extended." This is to ensure the full load **never** bears on the rope to drum connection.

(c) The wire rope on each recovery class truck must be equivalent to a 6 x 19 or 6 x 37 "extra improved plowed steel" (XIP) independent wire rope center (IWRC), and must meet all industry standards for working load limit.

(i) The tow operator must retain a receipt of purchase from the manufacturer indicating the type and WLL of wire rope, and document the type and date the wire rope was installed on each vehicle.

(ii) Class "A," "D," and "E" trucks may utilize either IWRC or fiber core wire rope.

(d) All wire rope must be in good working order. The following industry standards for **out-of-service** criteria will apply:

(i) No more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay.

(ii) Excessive abrasion causing the loss of more than one-third the original diameter of an outside individual wire.

(iii) Evidence of rope deterioration from corrosion.

(iv) Kinking, crushing, or other damage that results in detrimental distortion of the rope structure.

(v) Any evidence of heat damage.

(vi) Any marked reduction in diameter either along the entire main length or in one section.

(vii) Unlaying or opening up of a tucked splice.

(viii) Core protrusion along the entire length.

(ix) End attachments that are cracked, deformed, worn, or loosened.

(x) Any indication of strand or wire slippage in end attachments.

(xi) More than one broken wire in the vicinity of fittings.

(e) Wire rope end connections shall be swaged or, if clamped, must have a minimum of three forged clamps spaced a minimum of six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the cable. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size for the cable being clamped.

(i) Recovery or tow hooks must be installed, maintained, and used in the manner in which the manufacturer prescribes.

(ii) Recovery or tow hooks must be replaced if the throat opening has increased beyond the manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.

(iii) Wire rope clamps must be installed and torqued per manufacturer specifications.

(f) All wire rope related equipment, sheaves, etc., must conform to the diameter of the wire rope being used or to the original tow truck equipment manufacturer specifications.

(g) All winching equipment, booms, snatch blocks, etc., must have permanently affixed durable factory identification, stating the working load limit. If this identification has been removed or is no longer readable, it is criteria for placing the item out-of-service. Equipment may be reinspected by a recognized recertification company. If the equipment is acceptable, it may be reidentified with a working load limit and a recertification company identifier. It will be deemed acceptable if the tow operator maintains a copy of the certification of winching equipment provided the serial number on the equipment corresponds with the certification provided by the manufacturer.

(h) Snatch block hooks that were manufactured with a retractable safety retention clip must have a functional clip installed.

(i) All block and tackle equipment used in the winching system which shows signs of permanent deformation, significant wear or damage is criteria for placing the item out-of-service.

(j) All "J" hook chain assemblies must be grade "7" chain or better.

(k) Safety chains must only be used for the securing of vehicles to the truck. Must be minimum grade "7" chain or meet the original manufacturer's recommendations. Safety chain hooks that were manufactured with retractable safety retention clips must have a functional clip installed.

(l) Comply with legal lighting, equipment, and license requirements.

(m) Portable tail, stop, and turn signal lights for vehicles being towed. When in use, the lights must be mounted on the same level and as widely spaced laterally as practicable.

(n) Have department of licensing registration and truck numbers painted or permanently affixed to both sides of the

truck. Have firm's name, city of address, and phone number permanently affixed to both sides of the vehicle. Letters must be a minimum of three inches high with one-half inch strokes.

(o) Have a revolving, strobe, or intermittent red light with three hundred sixty degrees visibility. Trucks may also be equipped with flashing amber and/or white lights which may be used in conjunction with the red lamps. Additionally, trucks must also be equipped with a warning light visible from the driver seat which is energized when the red revolving light or flashing amber lights are activated.

(p) Have a broom, minimum twelve inches wide, with a handle at least four feet long.

(q) Have a scoop type shovel, minimum seven inches wide, overall length minimum three feet long and a minimum of a three-gallon hard or solid sided receptacle (trash bags of any type will not meet this requirement) able to contain debris typically found at collision scenes without breaking.

(r) Be maintained in a reasonably clean condition.

(s) Have at least one steel pinch bar four feet long, tapered on one end and flattened on the other with a minimum diameter of three-quarters of an inch.

(t) Have a two-way radio or mobile telephone capable of communicating with a base station. A citizen band radio does not suffice. The communication device must:

(i) Be in proper working order and function correctly throughout the assigned tow areas for all towing operations including on-call tow truck drivers.

(ii) Be used in a lawful manner.

(u) Have one 20 BC rated or two 10 BC rated fire extinguishers accessible and secured on or in the tow truck.

(v) Axle weight must comply with the requirements of RCW 46.37.351.

(w) Carry two gallons of absorbent material designed to and capable of absorbing a one-gallon liquid spill from a motor vehicle. For the purposes of this chapter, vehicular liquids consist of motor oil, antifreeze, transmission fluid, and gear oil.

~~((3))~~ **(4) Class "A" tow trucks:** Trucks that are capable of towing and recovery of passenger cars, pickup trucks, small trailers, or equivalent vehicles. Class "A" tow trucks must meet the requirements of subsection ~~((2))~~ **(3)(a)** through (w) of this section, and in addition must have:

(a) A fourteen thousand five hundred pound minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Dual tires on the rear axle.

(c) A minimum of one hundred feet of three-eighths inch continuous length XIP wire rope on each drum, measured from the point of attachment at the drum to the hook.

(d) A minimum eight-ton boom rating with a single hydraulic boom. Dual winches to control a minimum of two service drums.

(e) A minimum of two snatch blocks rated at 4.0 tons each.

(f) A wheel lift, tow sling, or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles not otherwise towable. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie

down, or as otherwise required by the equipment manufacturer.

(h) If equipped with a wheel lift system, it must have a fully extended working load rating of at least three thousand pounds and a seven thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be minimum grade "7" chain with matching fittings.

(j) Permanently affixed safety chains.

~~((4))~~ **(5) Class "B" tow trucks:** Trucks that are capable of towing and/or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles. Class "B" tow trucks must meet the requirements of subsection ~~((2))~~ **(3)(a)** through (w) of this section, and in addition must have:

(a) Eighteen thousand pounds minimum manufacturer's gross vehicle weight rating (GVWR).

(b) A minimum of one twelve-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of one hundred feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(d) A minimum of four standard release tools (caging stud assemblies).

(e) A minimum of two snatch blocks rated at 4.0 tons each.

(f) A wheel lift, tow sling, or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles not otherwise towable when the class "B" tow truck is being used for class "A" tows. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(h) If equipped with a wheel lift system, it must have a fully extended working load limit of at least six thousand pounds and a twenty thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(i) A minimum of one ten-foot or two five-foot one-half inch diameter recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(j) Permanently affixed safety chains.

~~((5))~~ **(6) Class "B-2" tow trucks:** Trucks that are capable of towing or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles and are rated at over 30,000 GVWR with air brakes. Class "B-2" tow trucks must meet the requirements of subsection ~~((2))~~ **(3)(a)** through (w) of this section, and in addition must have:

(a) A minimum of one hundred fifty feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(b) A minimum of one fourteen-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of two snatch blocks rated at 6.0 tons each.

(d) Air brakes and a system capable of supplying air to towed vehicles.

(e) Permanently affixed safety chains.

(f) Class "B-2" tow trucks must also meet the requirements of subsection ~~((4))~~ (5)(d), (f), (g), (h), and (i) of this section.

~~((6))~~ (7) **Class "C" tow trucks and class "C" rotator trucks:** Trucks that are capable of towing and/or recovery of large trucks, trailers, buses, motor homes, or similar vehicles. Class "C" trucks must meet the requirements of subsection ~~((2))~~ (3)(a) through (w) of this section, and in addition must have:

(a) A forty-six thousand pound manufacturer's gross vehicle weight rating (GVWR).

(b) Tandem rear axle truck chassis (both drive axles).

(c) A minimum of thirty-ton boom rating with a hydraulic boom. Dual winches to control a minimum of two service drums.

(d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on each drum measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) A wheel lift or under lift system, it must have a fully extended working load limit of at least twelve thousand pounds. The transported vehicle must be attached to the wheel lift or under lift with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.

(i) Permanently affixed safety chains.

(j) All chains must be a minimum of grade "7," except as otherwise specified in this section.

(k) A wheel lift, tow sling, or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(l) A minimum of two snatch blocks rated at 8.0 tons each.

~~((7))~~ (8) **Class "D" tow trucks:** Trucks that are equipped for and primarily used as "wheel lift" or nonrecovery trucks. Class "D" tow trucks, unless specifically factory equipped with a boom or a retractable boom, are not designed for vehicle recovery and therefore must not be used as a replacement for a class "A" truck unless specifically authorized by the patrol. Class "D" tow trucks must meet the requirements of subsection ~~((2))~~ (3)(a) through (w) of this section, and in addition must have:

(a) A 10,000 thousand pound manufacturer's gross vehicle weight rating (GVWR).

(b) A portable dolly or its equivalent for hauling vehicles not otherwise towable. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(c) A wheel lift assembly with a fully extended manufacturer's working load limit of three thousand pounds and a seven thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(d) One winch and drum with one hundred feet of three-eighths inch XIP wire rope meeting class "A" requirements.

(e) One snatch block rated at 3.5 tons.

(f) A minimum of one five-foot recovery chain for use in the winching system and must be a minimum of grade "7" chain with matching fittings.

(g) Permanently affixed safety chains.

~~((8))~~ (9) **Class "E" tow trucks:** Trucks that are primarily designed and intended to transport other vehicles by loading and carrying the transported vehicle entirely on the truck. These vehicles may be a flatbed, slide back, tilt bed, or rail design truck. Class "E" trucks, unless specifically factory equipped with a side recovery system, are not designed for vehicle recovery and therefore must not be used as a replacement for a class "A" truck unless specifically authorized by the patrol.

(a) Class "E" trucks must meet the requirements of subsection ~~((2))~~ (3)(a) through (w) of this section, and in addition must have:

(i) Four tie downs with a minimum working load limit of three thousand three hundred pounds. The tie downs must be grade "7" or stronger chain, wire rope, nylon strap, or steel strap.

All four tie downs must be used when securing a vehicle. The tie downs must be affixed to the axle, tires, or frame of the transported vehicle both front and rear. All tie down ends must be affixed to the truck bed or rail in a manner that will prevent movement of the transported vehicle. Factory style "T" hook tie downs may be used for front and rear securement.

(ii) One snatch block rated at 4.0 tons.

(iii) Dual tires on the rear axle.

(iv) Fourteen thousand five hundred pound gross vehicle weight rating (GVWR).

(v) Current licensing and tonnage equal to the maximum combination GVWR.

(vi) Four-ton winch rating.

(vii) Fifty feet three-eighths inch XIP fiber core or IWRC wire rope.

(viii) One five-foot grade "7" chain with matching fittings for use in winching.

(ix) Nineteen feet of usable bed capable of carrying vehicles.

(x) Portable lights when the truck is used in towing mode. When in use, the lights must be mounted on the same level and as widely spaced laterally as practicable.

(b) Class "E" tow trucks may be equipped with a sling, tow bar, and/or a wheel lift system.

(i) If equipped with a towing system:

(A) The system must have a manufacturer's rating appropriate to the vehicle being towed. If used in a towing mode (as opposed to carrying), a sling, tow bar, and/or wheel lift assembly can be used and must have a manufacturer's rating appropriate to the vehicle being towed.

(B) The tow truck must have permanently affixed safety chains.

(ii) If using a wheel lift system, the transported vehicle must be attached to the wheel lift with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(c) If factory equipped with a side vehicle recovery system, such system must meet all the winch and wire rope minimum requirements listed for a class "A" truck.

~~((9))~~ **(10) Class "S" tow/recovery trucks:** Tow/recovery trucks that cannot meet the requirements of class "A," "B," "C," "D," or "E" and are not eligible for appropriate waiver as outlined in WAC 204-91A-070(4), may be approved as class "S" (special).

(a) To be designated as a class "S" truck, the tow operator must submit a request for approval ~~((through the district commander))~~ to the section that must include:

- (i) Why the truck is needed;
- (ii) What the truck will be used for;
- (iii) The vehicle size;
- (iv) Purchased tonnage if required;
- (v) Capability; and
- (vi) The equipment carried or used with the truck.

(b) The gross vehicle weight rating of the class "S" truck will determine the appropriate equipment required.

(c) The section will forward the request to the district commander. If the district commander approves the request, the request will be ~~((forwarded))~~ returned to the section with recommendations for equipment and/or operation instructions or limitations to the section for review and final approval. If ~~((approval is granted))~~ the section approves the request, the equipment must be inspected as outlined in WAC 204-91A-040 with reports forwarded in the normal manner.

~~((10))~~ (d) If a class "S" truck is used for private purposes, any red emergency lights that are exposed to public view must be removed or covered with an opaque hood, and no emergency lights may be operated during such period of time.

(11) Class "S-1 rotator" trucks: Trucks that are capable of recovery, towing, or both of large trucks, trailers, buses, motor homes, or similar vehicles. Class "S-1 rotator" trucks must meet the requirements of subsection ~~((2))~~ **(3)**(a) through (w) of this section, and in addition must have:

- (a) A fifty-two thousand pound manufacturer's GVWR.
- (b) Tandem or triple rear axle truck chassis with at least two drive axles.
- (c) A minimum of forty ton rotating boom rating with a single boom.
- (d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on two drums measured from the point of attachment at the drum to the hook.
- (e) Air brakes and a system capable of supplying air to towed vehicles.
- (f) A minimum of four standard release tools (caging stud assemblies).
- (g) A wheel lift system that has a fully extended working load limit of at least twelve thousand pounds. The transported vehicle must be attached to the wheel lift or under lift with an adjustable tie down, or as otherwise required by the equipment manufacturer.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.

(i) All chains must be a minimum of grade "7," except as otherwise specified in this section.

(j) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(k) A minimum of two snatch blocks rated at eight tons each.

(l) Permanently affixed safety chains.

~~((11))~~ **(12)** Tow trucks rated as class "A," "B," "B-2," "C," or "E" that are currently in-service with tow operators holding a current letter of appointment issued by the patrol, not meeting the criteria for classification listed in this section will be allowed to remain on the rotation with those companies.

~~((12) This section shall be effective on March 1, 2011.)~~

WSR 16-21-035

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 11, 2016, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-030.

Title of Rule and Other Identifying Information: WAC 390-16-234 Transfers of surplus and nonsurplus candidate funds.

Hearing Location(s): Office of the Public Disclosure Commission (PDC), 711 Capitol Way, Room 206, Olympia, WA 98504, on Thursday, December 8, 2016, at 9:30 a.m.

Date of Intended Adoption: December 8, 2016.

Submit Written Comments to: Evelyn Fielding-Lopez, P.O. Box 40908, Olympia, WA 98504, e-mail evelyn.lopez@pdc.wa.gov, fax (360) 664-2735, by November 30, 2016.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail Jana.Greer@pdc.wa.gov or (360) 753-1985.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 390-16-234 allows a candidate to transfer campaign funds to another candidate for the purpose of making joint campaign expenditures. The proposed amendment sets a deadline for transferring funds: Two business days from the date of the expenditure. The proposed amendment prohibits a transfer that exceeds the candidate's proportionate share of the joint expenditure and requires any funds not used for the joint expenditure to be returned within one business day of the expenditure.

Reasons Supporting Proposal: PDC proposes these amendments to accommodate candidates who are making joint campaign expenditures under circumstances that do not allow each candidate to directly pay their proportionate share. The proposal establishes deadlines so that transfers are allowed under restricted parameters, so as to prevent loans made with campaign funds or other illegal contributions, in accordance with RCW 42.17A.430(8).

Statutory Authority for Adoption: RCW 42.17A.110.

Statute Being Implemented: RCW 42.17A.240 and 42.17A.430.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed amendments allow a routine campaign practice to continue, but establish parameters so as to prevent illegal campaign contributions. No fiscal impact is expected to result from these amendments.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; Implementation and Enforcement: Evelyn Lopez, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. PDC is not an agency listed in subsection (5)(1)(i) of RCW 34.05.328. Further, PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection [subsection] (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

October 4, 2016

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-234 Transfers of (~~surplus and nonsurplus~~) candidate funds. (1) (~~One candidate may reimburse another for the former's proportionate share of documented and properly reported joint campaign expenses without the transaction constituting a "transfer" within the meaning of RCW 42.17A.430.~~) Candidates are encouraged to directly pay to a vendor their proportionate share of joint campaign expenses. When separate, direct payments are not possible, one candidate may transfer campaign funds to another candidate without violating RCW 42.17A.430(8): Provided, That:

(a) The transferred funds are used exclusively for the joint expenditure;

(b) The amount may not exceed the prorated share attributable to the candidate who transfers the funds;

(c) The funds are transferred within two business days of the expenditure;

(d) Any transferred funds not used for the joint expenditure are returned no later than one business day after the expenditure is made; and

(e) The purpose of the transferred funds is timely disclosed as would be required for a direct expenditure.

(2) Candidate surplus funds may be transferred without limit to a bona fide political party or to a caucus political committee.

(3) Except as provided in subsections (1) and (2) of this section, no candidate or candidate's authorized committee may transfer surplus or nonsurplus funds to any other candidate or political committee.

WSR 16-21-036

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 11, 2016, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-027.

Title of Rule and Other Identifying Information: New WAC 390-16-236 Surplus funds accounts—Disclosure.

Hearing Location(s): Office of the Public Disclosure Commission (PDC), 711 Capitol Way, Room 206, Olympia, WA 98504, on Thursday, December 8, 2016, at 9:30 a.m.

Date of Intended Adoption: December 8, 2016.

Submit Written Comments to: Evelyn Fielding-Lopez, P.O. Box 40908, Olympia, WA 98504, e-mail evelyn.lopez@pdc.wa.gov, fax (360) 664-2735, by November 30, 2016.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail Jana.Greer@pdc.wa.gov or (360) 753-1985.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule establishes deadlines for reporting expenditures made from a surplus funds account. Surplus funds are the unspent campaign contributions remaining after the election that are not needed to satisfy campaign debts. RCW 42.17A.430 allows an elected official to establish a bank account in which only surplus funds are deposited. The account may be used by elected officials for nonreimbursed, public office-related expenses and other uses provided for in RCW 42.17A.430. Expenditures from the account must be disclosed, but there is no prescribed reporting schedule.

Reasons Supporting Proposal: Establishing a reporting schedule eliminates confusion over when reports are due and provides the public with timely information about how surplus funds are spent. The proposed disclosure schedule aligns with the statutory deadlines for filing campaign reports, a schedule that is likely to be familiar to surplus funds account holders. Establishing a reporting schedule is also likely to stop the complaints alleging lack of disclosure of surplus funds spending the commission has received. The proposed new rule establishes an enforceable disclosure schedule and is expected to make disclosure of surplus funds expenditures more reliable and uniform.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.240(11).

Statute Being Implemented: RCW 42.17A.240 and 42.17A.430.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No fiscal impact is expected to result from the proposed rule.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; Implementation and Enforcement: Evelyn Lopez, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. PDC is not an agency listed in subsection (5)(1)(i) of RCW 34.05.328. Further, PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection [subsection] (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

October 4, 2016

Lori Anderson
Communications and
Training Officer

NEW SECTION

WAC 390-16-236 Surplus funds accounts—Disclosure. (1) Registering a surplus funds account.

(a) Any person who opens an account into which surplus funds will be deposited shall register the account by filing PDC Form C-1, Candidate Registration with the public disclosure commission. The committee name on the C-1 will be the name used by the campaign committee that raised the surplus funds followed by the designation, "surplus funds account." The C-1 must identify by name the treasurer of the account and the bank or depository where the account is held.

(b) The C-1 must be filed within two weeks after the date the account is opened.

(2) Depositing surplus funds.

(a) After a surplus funds account is established, a candidate may deposit into the account all surplus funds from subsequent campaigns.

(b) Only surplus funds may be deposited in a surplus funds account.

(c) A candidate who deposits surplus funds into a surplus funds account discloses an expenditure of campaign funds with the description "transfer to surplus funds account," the amount transferred, and the date the transfer occurred.

(3) Disclosing surplus funds expenditures.

(a) The treasurer shall file with the commission a report on the tenth day of each month detailing expenditures made in the preceding calendar month. This report need only be filed if the total expenditures made since the last such report exceeded two hundred dollars. The report shall be on PDC Form C-4, Campaign Summary Receipt & Expenditures.

(b) The treasurer shall file reports as required by (a) of this subsection until the account is closed, at which time a final report shall be filed.

(c) All reports filed disclosing expenditures from the surplus funds account shall be certified as correct by the treasurer.

WSR 16-21-042

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed October 12, 2016, 9:21 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-840-990, practical and registered nursing, fees and renewal cycle. Proposing fee adjustments to align licensing fee revenues with the actual costs of regulating these professions. The department is coordinating rule making with the nursing care quality assurance commission.

Hearing Location(s): Department of Health, Town Center, 111 Israel Road, Building 2, Room 145, Tumwater, WA 98501, on November 30, 2016, at 1:00 p.m.

Date of Intended Adoption: December 7, 2016.

Submit Written Comments to: Nancy Elliott, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by November 30, 2016.

Assistance for Persons with Disabilities: Contact Nancy Elliott by November 16, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: It has been determined that current licensing fees will not generate sufficient revenue to cover the costs of administering and regulating nursing professions. The goal of the proposed fee adjustment is to align licensing fee revenues with the actual costs of regulating these professions, while bringing year-end fund balances to the level needed to cover unanticipated expenses over a ten year period. This proposal includes a fee reduction for nursing technicians and licensed practical nurses (LPN) because these credentials are less costly to administer than the other two credentials.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. Based on six year projections of fee revenue and expenses for each profession, using best available data, revenue from the current nursing profession fees are anticipated to lose pace with future expenditures. Without the proposed adjustments, the program's year-end reserves will fall below the recommended fund balance over a ten year period.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.-280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nancy Elliott, 111 Israel Road, Tumwater, WA 98501, (360) 236-4878; and Enforcement: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

October 10, 2016
John Wiesman, DrPH MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-24-097, filed 12/3/13, effective 2/1/14)

WAC 246-840-990 Fees and renewal cycle. (1) ~~((Applicants for a practical nurse license must pay the application fee, the LPN UW online access fee (HEAL-WA)*, and the nursing center surcharge fee when applying for a license. Licenses for practical nurse must be renewed))~~ A licensed practical nurse (LPN) or a registered nurse (RN) must renew his or her license every year on the ((practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses must pay the renewal fee, the HEAL-WA fee, and the nursing center surcharge fee when renewing licenses)) licensee's birthday.

(2) ~~When applying for a license an applicant((s)) for ((a registered nurse)) an initial or renewal LPN license or RN license must pay, in addition to the application fee, the ((RN UW online access fee (HEAL-WA), and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the HEAL-WA fee, and the nursing center surcharge fee when renewing licenses.~~

(3) ~~Licenses for)~~ University of Washington (UW) health sciences online library access (HEAL-WA) surcharge and the central nursing resource center (CNRC) surcharge, as required in RCW 43.70.110.

(3) ~~An advanced registered nurse ((must be renewed)) practitioner (ARNP) must renew his or her license every two years on the ((practitioner's)) licensee's birthday ((as provided in chapter 246-12 WAC, Part 2)). An ARNP must also hold a valid RN license and pay all associated fees every year on the licensee's birthday.~~

(4) ~~((Registrations for))~~ A nursing technician((s)) must ((be renewed)) renew his or her registration every year on the practitioner's birthday ((as provided in chapter 246-12 WAC, Part 2)). The renewal must be accompanied by an attestation as ((described)) required in RCW 18.79.370((-This attestation will)) that includes the nursing technician's anticipated

graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010 (15).

~~(5) ((The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:~~

RN/LPN fees:

Title of Fee	Fee
RN application (initial or endorsement)	\$67.00
LPN application (initial or endorsement)	67.00
RN license renewal	76.00
RN renewal retired active	45.00
RN late renewal retired active	23.00
LPN license renewal	75.00
LPN renewal retired active	45.00
LPN late renewal retired active	23.00
LPN HEAL-WA* surcharge—Initial license and renewal	16.00
Late renewal penalty	50.00
Expired license reissuance	70.00
Inactive renewal	40.00
Expired inactive license reissuance	40.00
Inactive late renewal penalty	30.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
RN HEAL-WA* surcharge—Initial license and renewal	16.00

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per specialty)	\$92.00
ARNP renewal with or without prescriptive authority (per specialty)	96.00
ARNP late renewal penalty (per specialty)	50.00
ARNP duplicate license (per specialty)	20.00
ARNP written verification of license (per specialty)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	\$92.00
Renewal of registration	91.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

* HEAL-WA is the University of Washington health sciences online library- (See RCW 43.70.110.))

A practitioner who holds more than one credential will be charged separate fees for each credential, in compliance with chapter 246-12 WAC, Part 2 and RCW 43.70.110.

(6) The following nonrefundable fees will be charged:

Application Fees

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner¹</u>	<u>Nursing Technician</u>
Application Fee	99	64	125	25
HEAL-WA Surcharge	16	16	0	0
CNRC Surcharge	5	5	0	0
Total	120	85	125	25

¹Pays a \$125 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

On Time Renewal

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner²</u>	<u>Nursing Technician</u>
Renewal Fee	99	64	125	25
HEAL-WA Surcharge	16	16	0	0
CNRC Surcharge	5	5	0	0
Total	120	85	125	25

²Pays a \$125 renewal fee per specialty license once every 2 years. Must also renew RN license every year.

Late Renewal - Up to One Year Past the Expiration

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner³</u>	<u>Nursing Technician</u>
Renewal Fee	99	64	125	25
HEAL-WA Surcharge	16	16	0	0
CNRC Surcharge	5	5	0	0
Late Renewal Penalty	50	50	50	25
Total	170	135	175	50

³Pays \$50 per specialty license in late fees.

Late Renewal - One Year or More Expired

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
Renewal Fee	99	64	125
HEAL-WA Surcharge	16	16	0
CNRC Surcharge	5	5	0
Late Renewal Penalty	50	50	50

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Expired Licenses Reissuance</u>	<u>70</u>	<u>70</u>	<u>0</u>
<u>Total</u>	<u>240</u>	<u>205</u>	<u>175</u>

Retired Active Renewal

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>
<u>CNRC Surcharge</u>	<u>5</u>	<u>5</u>
<u>Total</u>	<u>65</u>	<u>65</u>

Retired Active Renewal—Late Renewal - Up to One Year Past the Expiration

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>
<u>CNRC Surcharge</u>	<u>5</u>	<u>5</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>
<u>Total</u>	<u>110</u>	<u>110</u>

Retired Active Renewal—Late Renewal - One Year or More Expired

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>
<u>CNRC Surcharge</u>	<u>5</u>	<u>5</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>
<u>Expired License Reissuance</u>	<u>70</u>	<u>70</u>
<u>Total</u>	<u>180</u>	<u>180</u>

Inactive License Renewal

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>	<u>40</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>CNRC Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>
<u>Total</u>	<u>65</u>	<u>65</u>	<u>40</u>

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Inactive License Renewal—Late Renewal - Up to One Year Past the Expiration</u>			
	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>	<u>40</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>CNRC Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>	<u>40</u>
<u>Total</u>	<u>110</u>	<u>110</u>	<u>80</u>

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Inactive License Renewal—Late Renewal - One Year or More Expired</u>			
	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>
<u>Renewal Fee</u>	<u>44</u>	<u>44</u>	<u>40</u>
<u>HEAL-WA Surcharge</u>	<u>16</u>	<u>16</u>	<u>0</u>
<u>CNRC Surcharge</u>	<u>5</u>	<u>5</u>	<u>0</u>
<u>Late Renewal Penalty</u>	<u>45</u>	<u>45</u>	<u>40</u>
<u>Expired License Reissuance</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>Total</u>	<u>150</u>	<u>150</u>	<u>120</u>

Other fees

	<u>Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>	<u>Nursing Technician</u>
<u>Duplicate licensee or registration</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>15</u>
<u>Verification of licensure</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>

WSR 16-21-050
PROPOSED RULES
HEALTH CARE AUTHORITY
 (Washington Apple Health)
 [Filed October 12, 2016, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-12-121.

Title of Rule and Other Identifying Information: WAC 182-503-0050 Washington apple health—Verification of eligibility factors.

Hearing Location(s): Health Care Authority (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://www.hca.wa.gov/documents/directions_

to_csp.pdf or directions can be obtained by calling (360) 725-1000), on November 22, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 23, 2016.

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 November 22, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Amber Loughheed by November 18, 2016, TTY (800) 848-5429, (360) 725-1349, or e-mail amber.loughheed@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the process it uses to verify eligibility for Washington apple health programs.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-5534, (360) 725-1408; Implementation and Enforcement: Rebecca Janeczko, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0752.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing does not create a disproportionate 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 the joint administrative rules review committee or applied voluntarily.

October 12, 2016
Wendy Barcus
Rules Coordinator

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

WAC 182-503-0050 (~~Washington apple health — Verification requirements.~~) Verification of eligibility factors. For the purposes of this section, "we" refers to the medicaid agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage. ~~((We have different eligibility verification processes and standards depending on whether the Washington apple health (WAH) program is a modified adjusted gross income (MAGI)-based WAH program, a non-MAGI-based WAH program, or a deemed eligible program as described in WAC 182-503-0510.~~

(1) ~~We may ask for verification of information that you give us when you apply, renew, or report a change in your household circumstances.~~

(2) The following provisions apply to all WAH programs:

(a) ~~We will only require information from you that is both needed to determine eligibility and readily available, which means information that you can get within three business days. If the verification we require costs money, we will pay for it or get the information in another way. After we approve your WAH coverage based on information that is readily available, we may ask for verification information that is more determinative of your eligibility but that may require more than three working days to obtain.~~

(b) ~~We may consider information from various data sources before asking you to provide verification information. These various data sources include, but are not limited to, those listed below:~~

- (i) ~~Washington state employment security department;~~
- (ii) ~~The Internal Revenue Service;~~
- (iii) ~~United States Department of Homeland Security;~~
- (iv) ~~The Social Security Administration;~~
- (v) ~~Other state and federal data bases; and~~
- (vi) ~~Other commercially available electronic data bases.~~

(c) ~~After we attempt to verify your information with information from various data sources listed in (b) of this~~

~~subsection, we may ask you for more information or consider information from third-party contacts, such as employers, landlords, and insurance companies if:~~

~~(i) The information you provided cannot be verified through our data sources;~~

~~(ii) The data match is not reasonably compatible (as defined in WAC 182-500-0095) with the information you self-attested to or other sources; or~~

~~(iii) The information you self-attested to is contradictory, confusing, or outdated.~~

~~(d) When we need more information from you to determine your eligibility for WAH coverage, we send all notices according to the requirements of WAC 182-518-0015 and follow the rules below:~~

~~(i) If you are eligible for equal access services as described in WAC 182-503-0120 or limited-English proficiency services as described in WAC 182-503-0110, we help you comply with the requirements of this section.~~

~~(ii) We will not deny or delay your application because you fail to provide the information in a particular type or form. We must accept and consider alternative verification.~~

~~(iii) If you request more time to provide information, we allow you the time requested.~~

~~(iv) We will not deny you eligibility during any time period we have given you to provide more information unless we have conclusive evidence of your ineligibility.~~

~~(v) If we do not timely receive your information, we determine your eligibility based on all the information we have received on or before the date of the decision, including information we obtained from the various data sources listed in (b) of this subsection. If we cannot determine your eligibility, we deny or terminate your WAH coverage and send you a notice that states when we will reconsider the application as described in WAC 182-503-0080.~~

~~(vi) Once we verify an eligibility factor that is not subject to change, we will not require ongoing or additional verification of that factor. This includes, but is not limited to, citizenship, family relationships; Social Security numbers; and dates of birth, death, marriage, dissolution of marriage, or legal separation.~~

(3) If you are applying for MAGI-based programs:

(a) ~~Except as described in (b) of this subsection, we must accept your self-attestation (defined in WAC 182-500-0100) of eligibility factors (including your income and tax deductions). If your self-attestation indicates eligibility, we find you eligible for MAGI-based WAH.~~

(b) ~~We follow the procedures in subsection (1) of this section and use data matching to verify your citizenship or immigration status, and Social Security number. If we are unable to verify a required eligibility factor through data matching, we ask you to provide the verification we need.~~

(c) ~~After we have determined your eligibility, we may conduct a post-eligibility review to verify your self-attestation. We use various means to verify your circumstances including, but not limited to, information that is available from the sources listed in subsection (2)(b) and (c) of this section and from the following sources:~~

- (i) ~~The supplemental nutrition assistance program (SNAP).~~
- (ii) ~~Department of social and health services cash programs, including temporary assistance for needy families~~

(TANF), diversion cash assistance (DCA), refugee cash assistance (RCA), aged, blind, and disabled cash assistance (ABD), and pregnant women's cash assistance (PWA).

(d) If we are unable to verify your self-attested information using the procedures in subsection (1) of this section, we will contact you and may request documentation. If you give us a reasonable explanation that confirms your eligibility, we may not require additional documentation.

(4) If you are applying for non-MAGI-based programs:

(a) We must first verify your eligibility factors according to MAGI-based standards described in subsection (2) of this section. If you are eligible for a MAGI-based WAH program, we must find you eligible for that program.

(b) Even if you are eligible for MAGI-based coverage, we will still consider you for non-MAGI-based programs if the programs offer you services or coverage options that are not available in MAGI-based programs.

(c) We may need additional verification to determine eligibility for non-MAGI-based programs including, but not limited to:

(i) Income and income deductions;

(ii) Medical expenses required to meet a spenddown liability (see WAC 182-519-0110);

(iii) Medical expenses and other post-eligibility deductions used to determine eligibility for long-term care programs (see WAC 182-513-1380);

(iv) Resources; and

(v) Any other questionable information.

(d) Additional eligibility factors and verification standards are described in:

(i) Chapter 182-507 WAC, refugee medical and alien medical programs;

(ii) Chapter 182-508 WAC, medical care services;

(iii) Chapter 182-511 WAC, WAH for workers with disabilities;

(iv) Chapter 182-512 WAC, SSI-related medical programs;

(v) Chapters 182-513 and 182-515 WAC, SSI-related long-term care programs;

(vi) Chapter 182-517 WAC, medicare savings programs; and

(vii) Chapter 182-519 WAC, medically needy and spenddown programs.

(5) If you are deemed eligible for one of the programs described in WAC 182-503-0510(4), we do not require additional verification of information from you.)

(1) **General rules.**

(a) We may verify the information we use to determine, redetermine, or terminate your Washington apple health eligibility.

(b) We verify the eligibility factors listed in WAC 182-503-0505(3).

(c) Before we ask you to provide records to verify an eligibility factor, we use information available from state data bases, including data from the department of social and health services and the department of employment security, federal data bases, or commercially available data bases to verify the eligibility factor.

(d) We do not require you to submit a record unless it is necessary to determine or redetermine your eligibility.

(e) If you can obtain verification within three business days and we determine the verification is sufficient to con-

firm an eligibility factor, we base our initial eligibility decision upon that record.

(f) We may require information to verify an eligibility factor if the information we received:

(i) Cannot be verified through available data sources;

(ii) Did not verify an eligibility factor; or

(iii) Is contradictory, confusing, or outdated.

(g) If a fee is required to obtain a necessary record, we pay the fee.

(h) We do not deny or delay your application if you failed to provide information to verify an eligibility factor in a particular type or form.

(i) Unless there is only one way to verify an eligibility factor, we accept alternative forms of verification. If you give us a reasonable explanation that confirms your eligibility, we may not require additional documentation.

(j) Once we verify an eligibility factor that will not change, we may not require additional verification. Examples include:

(i) U.S. citizenship;

(ii) Family relationships by birth;

(iii) Social Security numbers; and

(iv) Dates of birth, death, marriage, dissolution of marriage, or legal separation.

(k) If we cannot verify your immigration status and you are otherwise eligible for Washington apple health, we approve coverage and give additional time to verify your immigration status.

(2) **Submission timelines.**

(a) We allow at least ten calendar days for you to submit requested information.

(b) If you request more time to provide information, we allow the time requested.

(c) If the tenth day falls on a weekend or a legal holiday as described in RCW 1.16.050, the due date is the next business day.

(d) We do not deny or terminate your eligibility when we give you more time to provide information.

(e) If we do not receive your information by the due date, we make a determination based on all the information available.

(3) **Notice requirements.**

(a) When we need more information from you to determine your eligibility for Washington apple health coverage, we send all notices according to the requirements of WAC 182-518-0015.

(b) If we cannot determine you are eligible, we send you a denial notice including information on when we reconsider a denied application under WAC 182-503-0080.

(4) **Equal access and limited-English proficiency services.** If you are eligible for equal access services under WAC 182-503-0120 or limited-English proficiency services under WAC 182-503-0110, we provide legally sufficient support services.

(5) **Eligibility factors for nonmodified adjusted gross income (MAGI)-based programs.** If you apply for a non-MAGI program under WAC 182-503-0510(3), we verify the factors in WAC 182-503-0505(3). In addition, we verify:

(a) Household composition, if spousal or dependent deeming under chapter 182-512 WAC or spousal or dependent allowance under chapters 182-513 and 182-515 WAC applies;

(b) Income and income deductions;

(c) Resources, including trusts, annuities, and life estates under chapters 182-512, 182-513, and 182-516 WAC;

(d) Medical expenses required to meet any spenddown liability under WAC 182-519-0110;

(e) All post-eligibility deductions used to determine cost of care for clients eligible for long-term services and supports under chapters 182-513 and 182-515 WAC;

(f) Transfers of assets under chapter 182-513 WAC when the program is subject to transfer of assets limitations;

(g) Shelter costs for long-term care cases where spousal and dependent allowances apply;

(h) Blindness or disability, if you claim either; and

(i) Social Security number for a community spouse if needed when you apply for long-term care.

(6) Post-eligibility review for MAGI-based programs.

(a) After we approve your coverage, we may conduct a post-eligibility review to verify your self-attested information.

(b) When conducting a post-eligibility review, we attempt to verify eligibility factors using your self-attested information available to us through state, federal, and commercially available data sources, or other third parties, before requiring you to provide information.

(c) You may be required to provide additional information if:

(i) We cannot verify an eligibility factor through other data sources listed in subsection (b) of this section; or

(ii) The information received from the data source is not reasonably compatible with your self-attestation.

(7) Reapplication following post-eligibility review. If your eligibility for MAGI-based Washington apple health terminates because of a post-eligibility review and you reapply, we may request verification of eligibility factors prior to determining eligibility.

WSR 16-21-054

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed October 13, 2016, 2:14 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-254-070 Fees for specialized radioactive material licenses, 246-254-080 Fees for medical and veterinary radioactive licenses, 246-254-090 Fees for industrial radioactive materials licenses, 246-254-100 Fees for laboratory radioactive material licenses, and 246-254-120 Fees for licensing and compliance actions, to increase fees in order to meet the increased costs of operating the radioactive materials program.

Hearing Location(s): Town Center 2 Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on December 6, 2016, at 1:00 p.m.

Date of Intended Adoption: December 9, 2016.

Submit Written Comments to: Peter Beaton, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, e-mail <https://fortress.wa.gov/doh/policyreview>, by December 6, 2016.

Assistance for Persons with Disabilities: Contact Nerissa Lancendorfer by November 29, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The radioactive materials program (program) is a fee-supported program that licenses and inspects approximately three hundred eighty-four facilities in Washington state. This proposed rule change increases fees for those facilities by seventeen percent to offset the increased cost of administering the program.

Reasons Supporting Proposal: The department of health (department) is authorized under RCW 43.20B.020, 43.70.250, and 70.98.080 to charge fees that are sufficient to cover the cost of administering the program. The department is also required under RCW 43.70.110 to charge licensing fees to businesses based on the cost of regulating the licensed activity. The fee increase is necessary because the program is currently not generating sufficient revenue to offset the increased cost of administer[ing] the program.

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.110, 43.70.250.

Statute Being Implemented: RCW 70.98.080, 43.20B.020, 43.70.110, 43.70.250.

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: Peter Beaton, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4031; Implementation and Enforcement: Craig Lawrence, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

October 13, 2016

Clark Halvorson

Assistant Secretary

Division of Environmental Public Health

AMENDATORY SECTION (Amending WSR 08-14-075, filed 6/26/08, effective 7/27/08)

WAC 246-254-070 Fees for specialized radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

(a) ~~\$(9,164))~~ 10,721 for operation of a single nuclear pharmacy.

(b) ~~\$(15,628))~~ 18,284 for operation of a single nuclear laundry.

(c) ~~\$(15,628))~~ 18,284 for a license authorizing a single facility to use more than one curie of unsealed radioactive

material in the manufacture and distribution of radioactive products or devices containing radioactive material.

(d) ~~\$(5,476)~~ 6,406 for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) ~~\$(1,408)~~ 1,647 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) ~~\$(10,484)~~ 12,266 for a license authorizing decontamination services operating from a single facility.

(g) ~~\$(4,956)~~ 5,798 for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) ~~\$(2,208)~~ 2,583 for a license authorizing health physics services, leak testing, calibration services, equipment servicing, or possession of sealed sources for purpose of sales demonstration only.

(i) ~~\$(2,592)~~ 3,032 for a civil defense license.

(j) ~~\$(780)~~ 912 for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) ~~\$(31,016)~~ 36,288 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than one curie.

(b) ~~\$(14,336)~~ 16,773 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) ~~\$(11,520)~~ 13,478 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of ~~((one thousand dollars))~~ \$1,170;

(b) Billing at the rate of ~~\$(162)~~ 189 for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise non-refundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of ~~((sixteen thousand dollars))~~ \$18,720 which shall be

credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending WSR 08-14-075, filed 6/26/08, effective 7/27/08)

WAC 246-254-080 Fees for medical and veterinary radioactive material use. (1) Licensees authorized possession or use of radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(a) ~~\$(7,748)~~ 9,065 for operation of a mobile nuclear medicine program from a single base of operation;

(b) ~~\$(5,648)~~ 6,608 for the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, at a single facility (diagnostic imaging and localization nuclear medicine);

(c) ~~\$(4,892)~~ 5,723 for the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201 at a single facility (radiopharmaceutical therapy);

(d) ~~\$(7,800)~~ 9,126 for the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201, and/or the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (combination diagnostic nuclear medicine and/or radiopharmaceutical therapy), and/or sealed source (manual or machine) therapy;

(e) ~~\$(4,192)~~ 4,904 for the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (manual brachytherapy);

(f) ~~\$(2,592)~~ 3,032 for the use of sealed sources in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit, as defined in WAC 246-240-351, at a single facility (machine brachytherapy);

(g) ~~\$(3,936)~~ 4,605 for a license authorizing medical or veterinary possession of greater than two hundred millicuries total possession of radioactive material at a single facility;

(h) ~~\$(3,132)~~ 3,664 for a license authorizing medical or veterinary possession of greater than thirty millicuries but less than or equal to two hundred millicuries total possession of radioactive material at a single facility;

(i) ~~\$(2,292)~~ 2,681 for a license authorizing medical or veterinary possession of less than or equal to thirty millicuries total possession of radioactive material at a single facility;

(j) ~~\$(2,020)~~ 2,363 for the use of unsealed radioactive material for uptake, dilution and/or excretion studies for which a written directive is not required, as defined in WAC 246-240-151, at a single facility (diagnostic uptake, dilution, and excretion nuclear medicine);

(k) ~~\$(1,260))~~ 1,474 for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

(2) The fee for a license authorizing multiple locations shall be increased by fifty percent of the annual fee for each additional location.

AMENDATORY SECTION (Amending WSR 08-14-075, filed 6/26/08, effective 7/27/08)

WAC 246-254-090 Fees for industrial radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) ~~\$(9,124))~~ 10,675 for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) ~~\$(12,232))~~ 14,311 for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) ~~\$(5,992))~~ 7,010 for a license authorizing well-log-ging activities including the use of radioactive tracers operating from a single storage facility.

(d) ~~\$(1,292))~~ 1,511 for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) ~~\$(1,408))~~ 1,647 for a license authorizing possession of any nonportable sealed source, including special nuclear material and excluding radioactive material used in a gas chromatograph at a single facility.

(f) ~~\$(888))~~ 1,038 for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) ~~\$(2,460))~~ 2,878 for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than one hundred curies at a single facility.

(h) ~~\$(13,076))~~ 15,298 for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) ~~\$(11,388))~~ 13,323 for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than five hundred kilograms of source material at a single facility.

(j) ~~\$(3,644))~~ 4,263 for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or five hundred kilograms of source material at a single facility.

(k) ~~\$(576))~~ 673 for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by fifty percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of ~~\$(116))~~ 135 to the department.

(4) General licensees required to register in accordance with WAC 246-233-020 (3)(k) shall forward an annual fee of ~~\$(344))~~ 402 to the department.

AMENDATORY SECTION (Amending WSR 08-14-075, filed 6/26/08, effective 7/27/08)

WAC 246-254-100 Fees for laboratory radioactive material licenses. (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:

(a) ~~\$(6,240))~~ 7,300 for a license authorizing possession at a single facility of unsealed sources in amounts greater than:

- (i) One millicurie of I-125 or I-131; or
- (ii) One hundred millicuries of H-3 or C-14; or
- (iii) Ten millicuries of any single isotope.

(b) ~~\$(3,080))~~ 3,603 for a license authorizing possession at a single facility of unsealed sources in amounts:

- (i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or
- (ii) Greater than ten millicuries and less than or equal to one hundred millicuries of H-3 or C-14; or
- (iii) Greater than one millicurie and less than or equal to ten millicuries of any single isotope.

(c) ~~\$(2,592))~~ 3,032 for a license authorizing possession at a single facility of unsealed sources in amounts:

- (i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or
- (ii) Greater than one millicurie and less than or equal to ten millicuries of H-3 or C-14; or
- (iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.

(d) ~~\$(888))~~ 1,038 for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:

- (i) Less than or equal to 0.01 millicurie of I-125 or I-131; or
- (ii) Less than or equal to one millicurie of H-3 or C-14; or
- (iii) Less than or equal to 0.1 millicurie of any other single isotope.

(e) ~~\$(1,196))~~ 1,399 for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcurie per gram.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location.

(3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of ~~\$(116))~~ 135 to the department.

AMENDATORY SECTION (Amending WSR 08-14-075, filed 6/26/08, effective 7/27/08)

WAC 246-254-120 Fees for licensing and compliance actions. (1) In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a

service fee for each additional licensing and compliance action as follows:

(a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of \$~~((+62))~~ 189 per hour of direct staff time associated with the follow-up inspection, not to exceed \$~~((+625))~~ 1,901 per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of \$~~((+62))~~ 189 per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed \$~~((4,063))~~ 4,753 per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of \$~~((260))~~ 304 in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of \$~~((+62))~~ 189 per hour of direct staff time associated with each sealed source and device evaluation, not to exceed \$~~((4,875))~~ 5,703 per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of \$~~((+62))~~ 189 per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding ten percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of \$~~((+62))~~ 189 per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within thirty days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

WSR 16-21-055

PROPOSED RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed October 13, 2016, 2:56 p.m.]

Supplemental Notice to WSR 16-10-106.

Preproposal statement of inquiry was filed as WSR 15-17-076.

Title of Rule and Other Identifying Information: New WAC 246-918-185 Training in suicide assessment, treatment, and management for allopathic physician assistants, this is a supplemental proposal to proposed rules filed as WSR 16-10-106 on May 4, 2016.

Hearing Location(s): Capital Event Center, Educational Service District (ESD) 113, 6005 Tyee Drive S.W., Tumwater, WA 98512, (360) 464-6700, on December 1, 2016, at 8:30 a.m.

Date of Intended Adoption: December 1, 2016.

Submit Written Comments to: Daidria Underwood, P.O. Box 47866, Olympia, WA 98504-7866, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by November 23, 2016.

Assistance for Persons with Disabilities: Contact Daidria Underwood by November 17, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 2315, chapter 71, Laws of 2014, requires allopathic physician assistants (among other professions) to complete a one time, six hour training in suicide assessment, treatment, and management. Chapter 249, Laws of 2015 (ESHB 1424) revised the requirement date and the proposed rule incorporates that change as well. The proposed rule also incorporates an allowance in ESHB 1424 for the medical quality assurance commission (commission) to exempt certain physician assistants from the training. Supplemental: The original proposal defined brief or limited patient contact, which allowed for an exemption. As a result of public comment the commission decided not to define the term, but to allow physician assistants to determine whether they have brief or limited patient contact. Once the exemption no longer applies, the physician assistant must complete the training during the first full reporting period.

Reasons Supporting Proposal: The proposed rules implement suicide prevention training as required in ESHB 2315 as well as ESHB 1424. Supplemental: The law does not address the situation where a physician assistant is exempt but subsequently has more than brief or limited patient contact. The commission proposes to address this situation by requiring that these physician assistants must complete the training during the first full reporting period after the exemption no longer applies.

Statutory Authority for Adoption: RCW 18.71.017.

Statute Being Implemented: RCW 43.70.442 and 18.71.-080.

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

Name of Proponent: Medical quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Daidria Underwood, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2727; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2755.

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 Daidria Underwood, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, e-mail daidria.underwood@doh.wa.gov.

October 13, 2016

Melanie de Leon
Executive Director

NEW SECTION

WAC 246-918-185 Training in suicide assessment, treatment, and management. (1) A licensed physician assistant must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

(3) Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.

(4) Beginning July 1, 2017, the training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

(5) The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-918-180.

(6) The commission exempts any licensed physician assistant from the training requirements of this section if the physician assistant has only brief or limited patient contact, or no patient contact.

WSR 16-21-056

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed October 13, 2016, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-055.

Title of Rule and Other Identifying Information: Fire protection sprinkler system contractors.

Hearing Location(s): Washington State Patrol, General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504-2600, on November 28, 2016, at 9:00 a.m.

Date of Intended Adoption: November 29, 2016.

Submit Written Comments to: Chief Deputy State Fire Marshal Dan Johnson, P.O. Box 42600, Olympia, WA 98504-2600, e-mail dan.johnson@wsp.wa.gov, fax (360) 596-3934, by November 23, 2016.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by November 23, 2016, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will provide cleanup to the chapter which will include clarification with regard to the penalty levels for individual/contractor violations as well as provide clarification regarding the certification requirements.

Reasons Supporting Proposal: Updates are to provide clarity and consistency in terms used and cleanup existing language.

Statutory Authority for Adoption: RCW 18.270.900 and 18.160.030.

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

Name of Agency Personnel Responsible for Drafting: Dan Johnson, P.O. Box 42600, Olympia, WA 98504, (360) 596-3913; Implementation and Enforcement: Fire Protection Bureau, P.O. Box 42600, Olympia, WA 98504, (360) 596-3900.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not pose a more than minor cost to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant rules change. The changes clarify language throughout the chapter by updating references to state/national law/standards, and other language without changing its effect.

October 10, 2016

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-018 License and certification requirements. (1) **Fire protection sprinkler contractors**, only a licensed contractor, who has at least one certificate holder on staff certified to license level consistent with the contractor's license, by the director, can bid, offer to bid, contract, or perform the designing, installation, inspection, testing, maintenance, or repair of a NFPA fire protection sprinkler system or any part of such a system based on the level of the contractor license. The following levels will apply to contractor licenses issued by the director:

(a) **Level 1 contractor license** - (~~NFPA 13D, and underground work (NFPA 24) or inspection, testing and maintenance (NFPA 25) for~~) Residential structures consistent with the definitions found within NFPA 13D.

(b) **Level 2 contractor license** - (~~NFPA 13D or NFPA 13R and underground work (NFPA 24) or inspection, testing and maintenance (NFPA 25) for NFPA 13D or NFPA 13R;~~) Residential structures consistent with the definitions found within NFPA 13D, NFPA 13R, and NFPA 25. NFPA 24 is applicable only when the water main supplying the fire sprinkler system is equal to or greater than four inches in size.

(c) **Level 3 contractor license** - (~~NFPA 13D, NFPA 13R, NFPA 13 systems, or underground work (NFPA 24) or inspection, testing and maintenance (NFPA 25);~~) Includes

work defined by Levels 1 and 2. This license is applicable to structures and fire protection sprinkler systems defined in NFPA 13, NFPA 24, and NFPA 25.

(d) **Level U contractor license** - Specialized license for underground work (NFPA 24) only.

(e) **Level I&T (inspection and testing) contractor license** - Specialized license for inspection and testing work (NFPA 25). This license level allows for inspection or testing

of a (~~NFPA 13D~~) NFPA 13R(;) or NFPA 13, wet and dry pipe fire protection sprinkler system, provided that the:

(i) Inspection and testing technician must limit his or her work on the fire protection sprinkler system to the contractor's license level; and

(ii) Testing and maintenance of fire protection sprinkler systems such as preaction, deluge, foam or fire pumps, will be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump.

Chart 1: Fire Protection Sprinkler Contractors

Level of Contractor License	Standard Defining Work to be Performed				
	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Level 1 Contractor One- and two-family dwellings and manufactured homes	Yes	No	No	((Yes)) <u>No</u>	((Yes (See WAC 212-80-018- (e)(i)))) <u>No</u>
Level 2 Contractor Residential Occupancies Up To and Including Four Stories in Height	Yes	Yes	No	((Yes)) <u>No</u> <u>Only if water main supplying the sprinkler system is equal or greater than 4 inches in size.</u> <u>(See WAC 212-80-018 (1)(b))</u>	Yes (See WAC 212-80-018 (e)(i))
Level 3 Contractor All Types of Structures	Yes	Yes	Yes	Yes	Yes (See WAC 212-80-018 (e)(i))
Level U Contractor Underground	No	No	No	Yes	No
Level I&T Inspection and Testing Contractor	No	No	No	No	<u>Yes</u> Inspection/testing only (See WAC 212-80-018 (e)(ii))

(2) **Fire protection sprinkler system certification** - Only a certificate holder may prepare layout drawings or install, inspect, test, maintain, or repair a fire protection sprinkler system or any part of such a system based on his or her design certification level.

(a) **Design certification** - The following levels will apply to design certifications issued by the director:

(i) **Level 1 design certification** - NFPA 13D(~~and~~ ~~underground work (NFPA 24) or inspection, testing, and maintenance (NFPA 25) for NFPA 13D~~)).

(ii) **Level 2 design certification** - NFPA 13D or NFPA 13R, and underground work (NFPA 24) when the designed and installed underground main is four inches or greater in size or inspection, testing, and maintenance (NFPA 25) for (~~NFPA 13D or~~) NFPA 13R.

(iii) **Level 3 design certification** - NFPA 13, NFPA 13R, or NFPA 13D, underground work (NFPA 24), and

inspection, testing, and maintenance (NFPA 25) for NFPA 13D, NFPA 13R, and NFPA 13.

(b) **Specialized certifications** - The following level will apply to specialized certifications issued by the director:

(i) **Level U certification** - NFPA 24; supervise the installation, inspection, and testing of the underground fire protection sprinkler underground piping.

(ii) **Level ITT - Inspection and testing technician** - NFPA 25 for inspection or testing of a (~~NFPA 13D~~) NFPA 13R(;) or NFPA 13, wet and dry pipe fire protection sprinkler. The inspection and testing technician must limit his or her work to the inspection and testing contractor's license level under subsection (1)(e) of this section.

(c) Sprinkler fitter certifications - The following levels will apply to specialized certifications issued by the director:

(i) Journey-level sprinkler fitter certification - Installs, alters and repairs sprinkler, standpipe, hose, or other hazard systems for fire protection purposes that are an assem-

bly of piping or conduit beginning at the connection to the primary water supply within a building, sprinkler tank heater, air line and all tanks and pumps attached thereto.

(ii) **Residential-level sprinkler fitter certification** - Limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13D and NFPA 13R. A residential level sprinkler fitter certification may also perform installation and

repair of NFPA 13 fire protection sprinkler systems and components while under the direct supervision of a certified journey-level sprinkler fitter.

(iii) **Trainee-level sprinkler fitter certification** - Limited to performing sprinkler fittings under the direct supervision of a journey-level sprinkler fitter or residential sprinkler fitter certified to perform the type of services the trainee level sprinkler fitter is providing.

Chart 2: Fire Protection Sprinkler Certifications

Level of Certificate Holder - See Note (1)	Standard Defining Work That May Be Performed				
	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Level 1 Design Certification	Yes	No	No	(Yes (NFPA 13D Systems Only)) No	No
Level 2 Design Certification	Yes	Yes	No	Yes ((NFPA 13D and/or NFPA 13R Systems Only)) (Restricted to only certain NFPA 13R systems) (see WAC 212-80-018 (1)(b))	(No) Yes (Restricted to only 13R systems)
Level 3 Design Certification	Yes	Yes	Yes	Yes	(No) Yes
Level U ((Design)) Certification	No	No	No	Yes	No
Level ITT ((Design)) Certification	No	No	No	No	Yes See subsection (1)(e) of this section for exceptions
<u>Journey-Level Sprinkler Fitter</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Residential-Level Sprinkler Fitter</u>	<u>Yes</u>	<u>Yes</u>	<u>Only if under the direct supervision of a journey-level sprinkler fitter</u>	<u>No</u>	<u>No</u>
<u>Trainee-Level Sprinkler Fitter</u>	<u>Only if under the direct supervision of a residential/journey-level sprinkler fitter</u>	<u>Only if under the direct supervision of a residential/journey-level sprinkler fitter</u>	<u>Only if under the direct supervision of a journey-level sprinkler fitter</u>	<u>No</u>	<u>No</u>

Chart 3: Certificate Level Required for Level of License

Contractor Level	1	2	3	U	I&T
Building Type	One- and two-family dwellings and manufactured homes	Dwellings up to and including four stories in height	All dwellings and commercial or high occupancy facilities	Dedicated underground fire service main of a water based fire protection system	Inspection, testing, and maintenance of water based fire protection systems
Certificate Holder Level Needed to Qualify for License	1	2	3	U	ITT

(3) **May a person who has two levels of certification as provided by subsection (2) of this section work for two different licensed contractors if the person only uses one type of certification for each licensed contractor?** No. RCW 18.160.040(10) prohibits a certificate holder from working for more than one licensed contractor.

(4) **May a contractor obtain a fire protection sprinkler system license if the contractor employs only sprinkler fitters?** No. A sprinkler fitter may only install piping from approved plans with a design certification.

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-093 Certificate holder certification. (1) How do I become a certificate holder? The issuance of a certificate is dependent on employment with a licensed contractor. All applications for a certificate must be submitted with the fire protection sprinkler system contractor's license application. A certificate application will not be processed without the fire protection sprinkler system contractor's license application. All applications must be made on the forms provided by the director and include the required fees provided by WAC 212-80-098 and documentation for the required level of certification as provided by this section.

- (a) **For Level 1 design certification**, the applicant must:
 - (i) Have satisfactorily passed with a final score of eighty percent or better an examination administered by the director, or present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved Level 2 certification in the field of water-based fire protection system layout; or
 - (ii) Be a Washington licensed professional engineer.
- (b) **For Level 2 design certification**, the applicant must:
 - (i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 2 in the field of water-based fire protection systems layout; or
 - (ii) Be a Washington licensed professional engineer.
- (c) **For Level 3 design certification**, the applicant must either:
 - (i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 3 in the field of water-based fire protection systems layout; or

- (ii) Be a Washington licensed professional engineer.
- (d) **For Level U certification**, the applicant must have satisfactorily passed with a final score of eighty percent or better an examination administered by the director.
- (e) **For inspection and testing technician certification**, the applicant must:
 - (i) Possess a National Institute for Certification and Engineering Technologies Inspection, Testing and Maintenance Level 2 or Level 3 certification; and
 - (ii) Perform work consistent with the employing contractor's licensing level.
- (f) **For journey-level sprinkler fitter certification**, the applicant must:
 - (i) Provide evidence on the forms provided by the director of at least eight thousand hours of trade related fire protection sprinkler system experience in installation and repair;
 - (ii) Not have more than three thousand hours of experience in residential sprinkler fitting; and
 - (iii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.
- (g) **For residential sprinkler fitter certification**, the applicant must:
 - (i) Provide evidence on the forms provided by the director, of at least four thousand hours of trade related fire protection sprinkler system experience in installation, repair, and maintenance; and
 - (ii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.
- (h) **For journey- or residential-level sprinkler fitter training certification**, except as provided by (g)(i) of this subsection, the applicant must:
 - (i) Provide evidence to the director, on the forms provided by the director, of trade related employment by a licensed contractor;
 - (ii) Remain employed by a licensed contractor to maintain trainee status; and
 - (iii) Only engage in the fire protection sprinkler system trade when under the supervision of a certified journey level or residential installer.
- (i) For a professional engineer ((is exempt from certification when acting solely in a professional capacity-)) to act as a Level 1, 2, or 3 certificate of competency holder and be issued a stamp, the professional engineer must:
 - (i) Be licensed by the department of licensing;
 - (ii) Obtain a Level 1, Level 2, or Level 3 certificate;

- (iii) Properly register with the department of licensing;
- (iv) Complete the application process for certification provided by WAC 212-80-093;
- (v) Pay fees provided by WAC 212-80-073; ~~((and))~~
- (vi) Supply the director with proof that he or she holds a current, valid state of Washington registration as a professional engineer; and

- (vii) Otherwise the professional engineer is exempt from certification when acting solely in a professional capacity.
- (2) Proof of competency to the satisfaction of the director is mandatory.

Certificate of Competency Holder Requirements				
Certificate of Competency Level	Application Required	Certification or Exam Required	Stamp Issued	Type of work performed by Certificate Holder
Level 1	Yes	NICET Level 2 or pass an exam (See ((a) of this subsection)) <u>WAC 212-80-093 (1)(a)</u>)	Yes	Designs <u>NFPA 13D</u> fire sprinkler systems or <u>inspection, testing, maintenance (NFPA 25)</u> for <u>NFPA 13D</u>
Level 2	Yes	NICET Level 2 (See ((b) of this subsection)) <u>WAC 212-80-093 (1)(b)</u>)	Yes	Designs <u>NFPA 13D, 13R</u> or certain <u>NFPA 24</u> (Restricted to only certain <u>NFPA 13R</u> systems, see <u>WAC 212-80-018 (1)(b)</u>) fire sprinkler systems or <u>inspection, testing, maintenance (NFPA 25)</u> for <u>NFPA 13D</u> or <u>13R</u>
Level 3	Yes	NICET Level 3 or 4 (See ((b) of this subsection)) <u>WAC 212-80-093 (1)(b)</u>)	Yes	Designs <u>NFPA 13, 13D, 13R</u> or <u>24</u> fire sprinkler systems or <u>inspection, testing, maintenance (NFPA 25)</u> for <u>NFPA 13, 13D</u> or <u>13R</u>
Level "U"	Yes	Pass an exam (See ((c) of this subsection)) <u>WAC 212-80-093 (1)(c)</u>)	Yes	Supervises or performs the underground installation of fire sprinkler system piping ((regardless of the level it will be at the above ground connection, (i.e., Level 1, 2, or 3)))
Inspection, Testing Technician (ITT) Employed by an Inspection & Testing Contractor	Yes	NICET Level 2 (See ((d) of this subsection)) <u>WAC 212-80-093 (1)(d)</u>)	No	Performs inspection or testing on <u>NFPA ((13D;)) 13R((;))</u> or <u>13</u> , wet and dry pipe fire protection systems only
Inspection, Testing Technician (ITT) Employed by a Level ((1- or)) 2 Contractor	Yes	NICET Level 2 (See ((d) of this subsection)) <u>WAC 212-80-093 (1)(d)</u>)	No	Performs inspection, testing and maintenance on <u>NFPA ((13D;)) 13R((;))</u> or <u>13</u> , wet and dry pipe fire protection systems only

Certificate of Competency Holder Requirements				
Certificate of Competency Level	Application Required	Certification or Exam Required	Stamp Issued	Type of work performed by Certificate Holder
Inspection, Testing Technician (ITT) Employed by a Level 3 Contractor	Yes	NICET Level 2 (See ((d) of this subsection)) <u>WAC 212-80-093 (1)(d)</u>)	No	Same as ITT above and includes the testing of other fire protection systems such as preaction, deluge, foam, or fire pump
Journey Sprinkler Fitter	Yes	Pass an exam (See ((e) of this subsection)) <u>WAC 212-80-093 (1)(e)</u>)	No	Installs and repairs NFPA 13D, 13R, or 13 fire sprinkler systems
Residential Sprinkler Fitter	Yes	Pass an exam (See ((f) of this subsection)) <u>WAC 212-80-093 (1)(f)</u>)	No	Installs, repairs, and performs maintenance on fire sprinkler systems in residential occupancies
Professional Engineer (P.E.) Licensed in Washington State	((No)) <u>Only if acting as a Level 1, 2 or 3 certificate of competency holder</u>	Licensed with department of licensing	By DOL <u>unless acting as a Level 1, 2, or 3 certificate of competency holder</u>	<u>Designs, evaluates or consults on fire protection fire sprinkler systems</u>

(3) All information submitted by an applicant to the director to apply for a certificate must be true and accurate. If the director finds that information or documents submitted by an applicant is false, misleading, or has been altered in an effort to meet the requirements provided by this chapter, the finding will constitute a level 3 violation.

(4) A violation of this section that involves a contractor allowing an employee to engage in performing fire protection sprinkler system work:

(a) Without a license or certificate, or with a license or certificate that has been expired for one or more years is a level 3 violation.

(b) With a license or certificate that has been expired for more than ninety days and less than one year is a level 2 violation.

(c) With a license or certificate that has been expired less than ninety days is a level 1 violation.

(d) By engaging in the trade of fire sprinkler fitting without having a valid sprinkler fitter certificate of competency issued for the work being conducted is a level 3 violation.

(e) By a trainee sprinkler fitter engaging in the trade of fire sprinkler fitting without the direct supervision of a certified residential or journey sprinkler fitter is a level 3 violation.

(f) As a trainee without a trainee certificate but with the direct supervision of a certified residential or journey sprinkler fitter is a level 1 violation.

WSR 16-21-060
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed October 14, 2016, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-066.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-76-10135 Qualifications—Caregiver and 388-76-10660 Chemical restraints.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on November 22, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 23, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., November 22, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 8, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department identified WAC 388-76-10135 and 388-76-10660 for amend-

ment because of public comments received during the public hearing on August 23, 2016, for proposed rules filed as WSR 16-14-037. However, these WAC sections could not be included in the permanent rule amendments filed as WSR 16-20-095 because the amendments of these sections had not been proposed under WSR 16-14-037 and could not be included in the permanent amendments per RCW 34.05.340(2).

Reasons Supporting Proposal: The amendment to WAC 388-76-10660 is necessary to match the statute, and the amendments to both sections are needed for clarity, are beneficial to regulated entities, and are consistent with a recent rule filing.

Statutory Authority for Adoption: Chapter 70.128 RCW.

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: Sherise Baltazar, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98513; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310(4), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

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

October 13, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10135 Qualifications—Caregiver. The adult family home must ensure each caregiver has the following minimum qualifications:

- (1) Be eighteen years of age or older;
- (2) ~~((Have))~~ Has a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;
- (3) ~~((Have))~~ Has basic communication skills to:
 - (a) Be able to communicate or make provisions to communicate with the resident in his or her primary language; and
 - (b) Understand and speak English well enough to:
 - (i) Respond appropriately to emergency situations; and
 - (ii) Read, understand, and implement resident negotiated care plans(-);
- (4) ~~((Completion of))~~ Has completed the training requirements ~~((that were))~~ in effect on the date ~~((they were))~~

the caregiver was hired, including the requirements ~~((described in))~~ applicable to the caregiver under chapter 388-112 WAC;

(5) ~~((Have))~~ Has no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;

(6) ~~((Have))~~ Has none of the negative actions listed in WAC 388-76-10180;

(7) ~~((Have))~~ Has a current valid first(-)aid ~~((and))~~ card or certificate as required in chapter 388-112 WAC, except nurses, who are exempt from this requirement;

(8) Has a valid cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and

~~((8))~~ (9) Meets the tuberculosis screening ~~((to establish tuberculosis status per))~~ requirements of this chapter.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10660 Chemical restraints. (1) ~~((For the purposes of this section "chemical restraint" means a drug that is given))~~ "Chemical restraint(s)" cannot be used for discipline or convenience ~~((and not required to treat the resident's medical symptoms)).~~

(2) ~~((The adult family home must ensure that each resident is free from chemical restraints))~~ Must only be used within the guidelines as "chemical restraint" is defined.

WSR 16-21-063
WITHDRAWL OF PROPOSED RULES
GAMBLING COMMISSION
[Filed October 14, 2016, 5:01 p.m.]

Following is our agency's notice to withdraw WAC 230-15-140, filed as WSR 16-20-098, on October 4, 2016. The petitioner withdrew their petition at the October commission meeting.

Michelle Rancour
Acting Rules Coordinator

WSR 16-21-067
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-14—Filed October 17, 2016, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-080.

Title of Rule and Other Identifying Information: Principle based reserving (PBR).

Hearing Location(s): Insurance Commissioner's Office, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98504, on November 22, 2016, at 10:00 a.m.

Date of Intended Adoption: November 23, 2016.

Submit Written Comments to: Jim Tompkins, P.O. Box 40260, Olympia, WA 98504-0260, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 21, 2016.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by November 21, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will consider adopting rules to implement PBR and adopting the valuation manual.

Reasons Supporting Proposal: During the 2016 legislative session, chapter 142, Laws of 2016, regarding PBR for life insurance companies was enacted. Part of this legislation includes the adoption and use of the valuation manual when certain conditions have been met. When these conditions have been met the effective date of the use of the valuation manual needs to be established.

Statutory Authority for Adoption: RCW 48.02.060, 48.74.090, and 48.74.100(5).

Statute Being Implemented: RCW 48.74.100.

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

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

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 98504-0260 [40260], Olympia, WA 98504-0260, (360) 725-7036; Implementation and Enforcement: Doug Hartz, P.O. Box 98504-0255 [40255], Olympia, WA 98504-0255, (360) 725-7214.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The domestic insurance issuers that are affected by this rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. This rule simply announces that the conditions set by the legislature for its enactment have occurred and therefore the office of the insurance commissioner is adopting the Washington state statute without material change. This meets the conditions found under RCW 34.05.328 (5)(b)(iii).

October 17, 2016

Mike Kreidler
Insurance Commissioner

SUBCHAPTER A: ADOPTION OF VALUATION MANUAL

NEW SECTION

WAC 284-74-600 Authority, purpose, and definition.

(1) The purpose of this subchapter is to formally adopt the valuation manual adopted by the National Association of Insurance Commissioners as specified in chapter 48.74 RCW.

(2) "Valuation manual" has the meaning set forth in RCW 48.74.015.

NEW SECTION

WAC 284-74-610 Determination of operative date of valuation manual. (1) The insurance commissioner hereby makes the following determination:

(a) The valuation manual was adopted by the National Association of Insurance Commissioners on December 2, 2012, by an affirmative vote of forty-three members, representing over three-fourths of the members voting.

(b) The standard valuation law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and conditions, has been enacted by states representing over eighty-five percent of the direct premiums written as reported in the following annual statements submitted in 2008: Life, accident and health annual statements; health annual statements; or fraternal annual statements.

(c) The standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and conditions, has been enacted by forty-six states.

(2) Therefore, the operative date of the valuation manual for this state is January 1, 2017.

WSR 16-21-068

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-17—Filed October 17, 2016, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-101.

Title of Rule and Other Identifying Information: Transfer regulatory authority over independent review organization (IRO) from the department of health (DOH) to office of the insurance commissioner (OIC).

Hearing Location(s): OIC, Training Room (TR-120), 5000 Capitol Boulevard S.E., Tumwater, WA 98504-0255, on November 22, 2016, at 9:00 a.m.

Date of Intended Adoption: November 23, 2016.

Submit Written Comments to: Stacy Middleton, P.O. [Box] 40260, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 21, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 16, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2326, passed in 2016, requires that by January 1, 2017, the regulatory authority over IRO be transferred from DOH to OIC. The legislation requires that rules be adopted providing procedure and criteria for certifying IROs by taking into consideration rules adopted by DOH that regulate IROs. The rules adopted must require IROs to report decisions and associated information directly to OIC via the commissioner's online data base. As part of this process, we've created a new chapter, chapter 284-43A WAC, and moved IRO related chapters

from chapter 284-43 WAC and rule language from DOH into the new chapter.

Reasons Supporting Proposal: The legislation requires that rules be adopted providing procedure and criteria for certifying IROs by taking into consideration rules adopted by DOH that regulate IROs.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.535, and 48.43.537.

Statute Being Implemented: RCW 48.43.535 and 48.43.537.

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

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

Name of Agency Personnel Responsible for Drafting: Stacy Middleton, 302 Sid Snyder Avenue, Olympia, WA 98504-0260, (360) 725-9651; Implementation: Doug Hartz, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7214; and Enforcement: AnnaLisa Gellermann, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The issuers and IROs that must comply with the rule are not domestic small businesses, pursuant to chapter 19.85 RCW. In addition, the requirements added by the new IRO regulations largely reflect the same requirements that were already present in the IRO regulations previously issued by DOH and OIC. The only substantive changes (timing of final decision submission, setting a fifteen business day deadline to qualify as responding to a commissioner's inquiry "promptly," and submitting an annual attestation certifying that the IRO is still compliant with legal requirements) will not cause any IRO to incur more than minor costs, as defined in chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Stacy Middleton, P.O. Box 40260, Olympia, WA 98504-0260, phone (360) 725-9651, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 17, 2016

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-3010 Definitions. These definitions apply to the sections in this subchapter, WAC 284-43-3030 through ~~((284-43-3210))~~ 284-43-3190 and 284-43A-140:

"Adverse benefit determination" has the same meaning as defined in RCW 48.43.005 and WAC 284-43-0160.

"Appellant" means an applicant or a person covered as an enrollee, subscriber, policy holder, participant, or beneficiary of an individual or group health plan, and when designated, their representative. Consistent with the requirements of WAC 284-43-2000, providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant

has not formally notified the health plan or carrier of the designation.

"External appeal or review" means the request by an appellant for an independent review organization to determine whether the carrier or health plan's internal appeal decisions are correct.

"Internal appeal or review" means an appellant's request for a carrier or health plan to review and reconsider an adverse benefit determination.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-4000 Application of subchapter F. Subchapter F applies to grandfathered health plans. For any grandfathered health plan as defined in RCW 48.43.005, a carrier may comply with RCW 48.43.530 and 48.43.535 by using an appeal process that conforms to the procedures and standards set forth in WAC 284-43-4020 through ~~((284-43-4060))~~ 284-43-4040 and 284-43A-150.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-4040 Procedures for review and appeal of adverse determinations. (1) An enrollee or the enrollee's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the enrollee may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the enrollee of its decision within fourteen days of receipt of the appeal unless the carrier notifies the enrollee that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the enrollee.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the enrollee's life or materially jeopardize the enrollee's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the enrollee's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC ~~((284-43-4060))~~ 284-43-4040 and 284-43A-150.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of an enrollee appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the enrollee's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the enrollee or a provider acting on behalf of the enrollee.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the enrollee a written notification of the adverse determination that includes the actual reasons

for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-5900 Effective date. The effective date of WAC 284-43-0160, 284-170-200, 284-170-360, 284-43-2000, 284-43-4020, 284-43-4040, (~~284-43-4060, and~~) 284-43-5130, and 284-43A-150 is July 1, 2001.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-43-3210 External review of adverse benefit determinations.

WAC 284-43-4060 Independent review of adverse determinations.

Chapter 284-43A WAC

INDEPENDENT REVIEW ORGANIZATIONS (IROs)

SUBCHAPTER A

GENERAL PROVISIONS

NEW SECTION

WAC 284-43A-001 Purpose and scope. (1) Purpose. These rules are adopted by the Washington state office of the insurance commissioner to implement the provisions of RCW 48.43.535 regarding the certification and requirements of independent review organizations (IROs) and requirements for carriers referring review of adverse benefit determinations to IROs. Certified IROs are qualified to receive referrals from the commissioner or designee under RCW 48.43.535 to make binding determinations related to health care coverage and payment disputes between health insurance carriers and their enrollees.

(2) Other applicable rules. Independent review is also subject to rules of the commissioner implementing RCW 48.43.535.

(3) Applicability. These rules apply to independent review cases originating in Washington state under RCW 48.43.535, and to independent review organizations conducting these reviews.

NEW SECTION

WAC 284-43A-010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Adverse benefit determination" has the same meaning as defined in RCW 48.43.005 and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a

request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Appellant" means an applicant or a person covered as an enrollee, subscriber, policyholder, participant, or beneficiary of an individual or group health plan, and when designated, their representative, as defined in WAC 284-43-3010. Consistent with the requirements of WAC 284-43-2000, providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

(3) "Applicant" means a person or entity seeking to become a Washington certified independent review organization (IRO).

(4) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-4040 and 284-43-4060.

(5) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-0160(14).

(6) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(7) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(8) "Clinical reviewer" means a medical reviewer, as defined in this section.

(9) "Conflict of interest" means violation of any provision of WAC 284-43A-050 including, but not limited to, material familial, professional and financial affiliations.

(10) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical re-viewer is also interpreting health plan coverage and contract provisions, that reviewer shall have the qualifications required of a contract specialist and clinical reviewer.

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

(12) "Enrollee" or "covered person" means an individual covered by a health plan including a subscriber, a policy-

holder, or beneficiary of a group plan, as defined in WAC 284-43-0160(5). "Enrollee" means an "appellant" as defined in WAC 284-43-3010. "Enrollee" also means a person lawfully acting on behalf of the enrollee including, but not limited to, a parent or guardian.

(13) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(14) "Health care provider" or "provider" as used in WAC 284-43-0160 (13)(a) and (b), means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(15) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

(16) "Independent review organization" or "IRO" means an entity certified by the commissioner under this chapter.

(17) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(18) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

(19) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

(20) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

(21) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical and mental health journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the federal Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet Institute of Medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

(22) "Referral" means receipt by an IRO of notification from the insurance commissioner or designee that a case has been assigned to that IRO under provisions of RCW 48.43.-535.

(23) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

SUBCHAPTER B

CERTIFICATION AND REQUIREMENTS FOR INDEPENDENT REVIEW ORGANIZATIONS (IROs)

NEW SECTION

WAC 284-43A-020 General requirements for certification. In order to qualify for certification, an IRO shall:

(1) Submit an application for certification to the commissioner as described in RCW 48.43.537.

(2) Hold a current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(3) Demonstrate expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and application of other health plan coverage and contract provisions.

(4) Demonstrate the ability to handle a full range of review cases, including contract provisions, occurring in Washington state. Certified IROs may contract with more specialized review organizations; however, the certified IRO shall ensure that each review conducted meets all the requirements of this chapter.

(5) Demonstrate capability to review administrative and contractual coverage issues, as well as medical necessity and effectiveness, and the appropriateness of experimental and investigational treatments.

(6) Comply with all conflict of interest provisions in WAC 284-43A-050.

(7) Maintain and assign qualified expert reviewers in compliance with WAC 284-43A-060.

(8) Conduct reviews, reach determinations and document determinations consistent with WAC 284-43A-040 through 284-43A-090.

(9) Maintain administrative processes and capabilities in compliance with WAC 284-43A-040.

NEW SECTION

WAC 284-43A-030 Application for certification as an IRO. (1) To be certified as an IRO under this chapter, an organization must make an application to the commissioner upon a form to be furnished by the commissioner as required under RCW 48.43.537 and submitted using the commissioner's online service. The application must include or be accompanied by the following:

(a) An attestation on the form required by the commissioner, signed by a company officer, certifying that all requirements within RCW 48.43.537 and this chapter will be met;

(b) Evidence of current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process;

(i) Applicants shall authorize release of information from primary sources, including full reports of site visits, inspections, and audits; and

(ii) The commissioner may require the applicant to indicate which documents demonstrate compliance with specific Washington state certification requirements under this chapter.

(c) Other documentation including, but not limited to, legal and financial information, policies and procedures, and data that are pertinent to requirements of this chapter; and

(d) Any other pertinent information required by the commissioner.

(2) Commissioner investigation and verification activities regarding the applicant may include, but are not limited to:

(a) Review of application and filings for completeness and compliance with standards;

(b) Primary-source verification with accreditation or regulatory bodies of compliance with requirements which are used to demonstrate compliance with certain standards in this chapter;

(c) Other means of determining regulatory and accreditation histories; and

(d) Exercising any power of the commissioner under WAC 284-43A-110.

NEW SECTION

WAC 284-43A-040 Administrative processes and capabilities of IROs. (1) An IRO shall maintain written policies and procedures covering all aspects of review.

(2) An IRO shall ensure the confidentiality of medical records and other personal health information received for use in independent reviews, in accordance with applicable federal and state laws.

(3) An IRO shall have a quality assurance program that ensures the timeliness, quality of review, and communication of determinations to enrollees and carriers. The quality assur-

ance program must ensure the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers.

(a) The quality assurance program must include a written plan addressing scope and objectives, program organization, monitoring and oversight mechanisms, and evaluation and organizational improvement of IRO activities.

(b) Quality of reviews includes use of appropriate methods to match the case, confidentiality, and systematic evaluation of complaints for patterns or trends. Complaints must be recorded, including the nature of the complaint and the resolution. The commissioner may examine the complaint records.

(c) Organizational improvement efforts must include the implementation of action plans to improve or correct identified problems, and communication of the results of action plans to staff and reviewers.

(4) An IRO shall maintain case logs and case files with full documentation of referrals, reviewers, questions posed, information considered (including sources of the information and citations of studies or criteria), determinations and their rationale, communication with parties in the dispute including notices given, and key dates in the process, for at least six years following the review.

(5) An IRO shall maintain a training program for staff and expert reviewers, addressing at least:

(a) Confidentiality;

(b) Neutrality and conflict of interest;

(c) Appropriate conduct of reviews;

(d) Documentation of evidence for determination; and

(e) In the case of contract specialists, principles of health contract law and any provisions of Washington state law determined to be essential.

(6) An IRO shall maintain business hours, methods of contact (including by telephone), procedures for after-hours requests, and other relevant procedures to ensure timely availability to conduct expedited as well as regular reviews.

(7) An IRO shall not disclose reviewers' identities. The commissioner will not require reviewers' identities as part of the certification application process, but may examine identified information about reviewers as part of enforcement activities.

(8) An IRO shall promptly report any attempt at interference by any party, including a state agency, to the commissioner.

(9) An IRO shall have a medical director who holds a current unrestricted license as a medical doctor or osteopathic physician and has had experience in direct patient care. The medical director shall provide guidance for clinical aspects of the independent review process and oversee the IRO's quality assurance and credentialing programs.

NEW SECTION

WAC 284-43A-050 Conflict of interest. (1) An IRO:

(a) Must not be a subsidiary of, or in any way owned or controlled by, a carrier or an association of health care providers or carriers;

(b) Shall provide information to the commissioner on its own organizational affiliations and potential conflicts of

interest at the time of application and when material changes occur;

(c) Shall immediately turn down a case referred by the commissioner if accepting it would constitute an organizational conflict of interest; and

(d) Shall ensure that reviewers are free from any actual or potential conflict of interest in assigned cases.

(2) An IRO, as well as its reviewers, must not have any material familial, professional, or financial affiliation, as defined in WAC 284-43A-010, with the health carrier, enrollee, enrollee's provider, that provider's medical or practice group, the facility at which the service would be provided, or the developer or manufacturer of a drug or device under review. An affiliation with any director, officer or executive of an IRO must be considered to be an affiliation with the IRO.

(3) The following do not constitute violations of this section:

(a) Staff affiliation with an academic medical center or National Cancer Institute-designated clinical cancer research center;

(b) Staff privileges at a health care facility;

(c) Maintaining a provider contract with a carrier which provides no more than five percent of the provider's or clinical group's annual revenue; or

(d) An IRO's receipt of a carrier's payment for independent re-views assigned by the commissioner under RCW 48.43.535.

(4) Notwithstanding the provisions of subsection (3) of this section, a potential reviewer must be considered to have a conflict of interest with regard to a facility or health plan, regardless of revenue from that source, if the potential reviewer is a member of a standing committee of: The facility, the health plan, or a provider network that contracts with the health plan.

(5) A conflict of interest may be waived only if both the enrollee and the health plan agree in writing after receiving full disclosure of the conflict, and only if:

(a) The conflict involves a reviewer, and no alternate reviewer with necessary special expertise is available; or

(b) The conflict involves an IRO and the commissioner determines that seeking a waiver of conflict is preferable to reassigning the review to a different IRO.

NEW SECTION

WAC 284-43A-060 Expert reviewers. (1) Each IRO shall maintain an adequate number and range of qualified expert reviewers in order to:

(a) Make determinations regarding the full range of independent review cases occurring in Washington state under RCW 48.43.535; and

(b) Meet timelines specified in WAC 284-43A-070(3) including those for expedited review.

(2) All reviewers must be health care providers with the exception of contract specialists.

(3) IROs shall maintain policies and practices that assure that all clinical reviewers:

(a) Hold a current, unrestricted license, certification, or registration in Washington state, or current, unrestricted cre-

dentials from another state with substantially comparable requirements, as determined by the department of health and outlined in the current edition of the department of health publication, *Health Care Professional Credentialing Requirements*;

(b) Have at least five years of recent clinical experience;

(c) Are board-certified in the case of a medical doctor, a doctor of osteopathy, a podiatrist, or a member of another profession in which board certification exists as determined by the department of health; and

(d) Have the ability to apply scientific standards of evidence in judging research literature pertinent to review issues, as demonstrated through relevant training or professional experience.

(4) Contract specialists must be knowledgeable in health insurance contract law, as evidenced by training and experience, but do not need to be an attorney or have any state credential.

(5) Assignment of appropriate reviewers to a case.

(a) An IRO shall assign one or more expert reviewers to each case, as necessary to meet requirements of this subsection.

(b) Any reviewer assigned to a case shall comply with the conflict of interest provisions in WAC 284-43A-050.

(c) The IRO shall assign one or more clinical reviewers to each case. All clinical reviewers assigned to a case shall each meet the following requirements:

(i) A clinical peer as defined in WAC 284-43A-010;

(ii) An expert in the treatment of the enrollee's medical condition that is the subject of the external review;

(iii) Knowledgeable about the recommended health care service or treatment through five years of recent or current actual clinical experience treating patients with the same or similar medical condition of the enrollee. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement; and

(iv) Have the ability to evaluate alternatives to the proposed treatment.

(d) If contract interpretation issues must be addressed, a contract specialist must be assigned to the review.

(e) Each IRO shall have a policy specifying the number and qualifications of reviewers to be assigned to each case. The number of expert reviewers should be dictated by what it takes to meet the requirements of this subsection.

(i) The number of expert reviewers should reflect the complexity of the case, the goal of avoiding unnecessary cost, and the need to avoid tie votes.

(ii) The IRO may consider, but shall not be bound by, recommendations regarding complexity from the carrier or attending provider.

(iii) Special attention should be given to situations such as review of experimental and investigational treatments that may benefit from an expanded panel.

NEW SECTION

WAC 284-43A-070 Independent review process. (1) Information for review.

(a) IROs shall, as necessary, request, accept, and consider the following information as relevant to a case:

(i) Information that the carrier is required to submit to the IRO under WAC 284-43A-140, including information identified in that section that is initially missing or incomplete as submitted by the carrier.

(ii) Other medical, scientific, and cost-effectiveness evidence which is relevant to the case. For the purposes of this section, medical, scientific, and cost-effectiveness evidence has the meaning defined in WAC 284-43A-010.

(b) After referral of a case, an IRO shall accept additional information from the enrollee, the carrier, or a provider acting on behalf of the enrollee or at the enrollee's request, provided the information is submitted within five business days of the referral or, in the case of an expedited referral, within twenty-four hours. The additional information must be related to the case and relevant to statutory criteria.

(c) The IRO shall forward this information to the carrier within one business day of receipt of the information.

(2) Completion of reviews. Once the commissioner or designee refers a review, the IRO shall proceed to final determination unless requested otherwise by both the carrier and the enrollee or the carrier notifies the IRO it has reversed its adverse benefit determination.

(3) Time frames for reviews.

(a) An IRO shall make its determination within the following time limits:

(i) If the review is not expedited, within fifteen days after receiving necessary information, or within twenty days after receiving the referral, whichever is earlier. In exceptional circumstances where information is incomplete, the determination may be delayed until no later than twenty-five days after receiving the referral.

(ii) If the review is expedited, as defined in WAC 284-43A-010, within seventy-two hours after receiving the referral. If information on whether a referral is expedited is not provided to the IRO, the IRO may presume that it is not an expedited review, but the IRO has the option to seek clarification from the commissioner or designee.

(b) An IRO shall provide notice to enrollees and the carrier of the result and basis for the determination, consistent with subsection (5) of this section, within two business days of making a determination in regular cases and immediately in expedited cases.

(c) As used in this subsection, a day is a calendar day, except that if the period ends on a weekend or an official Washington state holiday, the time limit is extended to the next business day. A business day is any day other than Saturday, Sunday or an official Washington state holiday.

(4) Decision-making procedures.

(a) The independent review process is intended to be neutral and independent of influence by any affected party or by state government. The commissioner may conduct investigations under the provisions of this chapter but the commissioner has no involvement in the disposition of specific cases.

(b) Independent review is a paper review process. These rules do not establish a right to in-person participation or attendance by the enrollee, the health plan, or the attending provider nor to reconsideration of IRO determinations.

(c) An IRO shall present cases to reviewers in a way that maximizes the likelihood of a clear, unambiguous determination. This may involve stating or restating the questions for review in a clear and precise manner that encourages yes or no answers.

(d) If more than one reviewer is used, the IRO shall:

(i) Provide an opportunity for the reviewers to exchange ideas and opinions about the case with one another, if requested by a reviewer. This must be done in a manner that avoids pressure on reviewers to take a position with which they do not agree and preserves a dissenting reviewer's opportunity to document the rationale for dissent in the case file.

(ii) Accept the majority decision of the clinical reviewers in determining clinical issues.

(e) When a case requires an interpretation regarding the application of health plan coverage provisions, that determination must be made by a reviewer or reviewers who are qualified as contract specialists.

(f) An IRO may uphold an adverse benefit determination if the patient or any provider refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond. An IRO may overturn an adverse benefit determination if the carrier refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond.

(g) If reviewers are deadlocked, the IRO may add another reviewer if time allows.

(h) If all pertinent information has been disclosed and reviewers are unable to make a determination, the IRO shall decide in favor of the enrollee.

(5) Notification and documentation of determinations. An IRO shall notify the enrollee and the carrier of the result and rationale for the determination, including its clinical basis unless the decision is wholly based on application of coverage provisions, within the time frame in subsection (3)(b) of this section.

(a) Documentation of the basis for the determination shall include references to supporting evidence, and if applicable, the rationale for any interpretation regarding the application of health plan coverage provisions.

(b) If the determination overrides the health plan's medical necessity or appropriateness standards, the rationale shall document why the health plan's standards are unreasonable or inconsistent with sound, evidence-based medical practice.

(c) The written report shall include the qualifications of reviewers but shall not disclose the identity of the reviewers.

(d) Notification of the determination must be provided initially by telephone, e-mail, or facsimile, followed by a written report by mail. In the case of expedited reviews the initial notification must be immediate and by telephone.

(6) Each IRO must submit final decision determination information to the commissioner's online service within three business days of the IRO's final decision. Data elements and procedures for submission are located on the commissioner's web site.

NEW SECTION

WAC 284-43A-080 Criteria and considerations for independent review determinations. (1) General criteria and considerations.

(a) The determination must be consistent with the standards in RCW 48.43.537, 48.43.535, and chapter 284-43A WAC.

(b) The expert reviewers from a certified IRO will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee.

(c) The IRO shall ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement.

(i) Clinical reviewers may override the health plan's medical necessity or appropriateness standards only if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice, or experimental or investigational treatment protocols.

(ii) Reviewers may make determinations about the application of general health plan coverage provisions to specific issues concerning health care services for an enrollee. For example, whether a specific service is excluded by more general benefit exclusion language may require independent interpretation.

(2) Medical necessity and appropriateness - Criteria and considerations. Only clinical reviewers may determine whether a service, which is the subject of an adverse decision, is medically necessary and appropriate. These determinations must be based upon their expert clinical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in Washington state.

(a) Medical standards of practice include the standards appropriately applied to physicians or other health care providers, as pertinent to the case.

(b) In considering medical standards of practice within Washington state:

(i) Clinical reviewers may use national standards of care, absent evidence presented by the health plan or enrollee that the Washington state standard of care is different.

(ii) A health care service or treatment should be considered part of the Washington state standard of practice if reviewers believe that failure to provide it would be inconsistent with that degree of care, skill and learning expected of a reasonably prudent health care provider acting in the same or similar circumstances.

(c) Medical necessity will be a factor in most cases referred to an IRO, but not necessarily in all. See WAC 284-43A-080.

(3) Health plan coverage provisions - Criteria and considerations. The following requirements must be observed when a review requires making determinations about the application of health plan coverage provisions to issues concerning health care services for an enrollee.

(a) These determinations must be made by one or more contract specialists meeting the requirements of WAC 284-43A-060(4), except that a clinical determination of medical necessity or appropriateness, by itself, is not an interpretation

of the scope of covered benefits and does not require a contract specialist.

(b) If the full health plan coverage agreement has not already been provided by the carrier under WAC 284-43A-140, the IRO shall request additional provisions from the health plan coverage agreement in effect during the relevant period of the enrollee's coverage, as necessary to have an adequate context for determinations.

(c) In general, the IRO and its contract specialists may assume that the contractual health plan coverage provisions themselves are consistent with the Washington Insurance Code (Title 48 RCW), absent information to the contrary. Primary responsibility for determining consistency with the insurance code, when at issue, rests with the commissioner.

(4) No provision of this chapter should be interpreted to establish a standard of medical care, or to create or eliminate any cause of action.

NEW SECTION

WAC 284-43A-090 Additional requirements for experimental or investigational treatment reviews. (1) In addition to the qualifications listed in WAC 284-43A-060 (3) and (5), at least part of the clinical reviewers' relevant, recent clinical experience must have been obtained in the past three years.

(2) Each clinical reviewer shall consider the following information, if appropriate and available, in reaching an opinion:

(a) The enrollee's pertinent medical records;

(b) The attending physician or health care provider's recommendation;

(c) Consulting reports from appropriate health care providers and other documents submitted by the carrier, enrollee, or enrollee's authorized representative, or the enrollee's treating physician or health care provider; and

(d) Whether:

(i) The terms of coverage under the enrollee's health benefit plan would have covered the treatment had the carrier not determined that the treatment was experimental or investigational;

(ii) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(iii) Medical or scientific evidence or evidence-based standards demonstrate that the recommended or requested health care service or treatment is more likely than any available standard health care service or treatment to be beneficial to the enrollee and the adverse risks would not be substantially increased over those of available standard health care services or treatments.

(3) Clinical reviewers shall include the following in their written opinions to the IRO:

(a) A description of the enrollee's medical condition;

(b) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is likely to be more beneficial to the enrollee than any available standard health care services or treatments and the

adverse risks would not be substantially increased over those of available standard health care services or treatments;

(c) A description and analysis of any medical, scientific evidence, or cost-effectiveness evidence as defined in WAC 284-43A-010;

(d) A description and analysis of any evidence-based standard as defined in WAC 284-43A-010; and

(e) Information on whether the reviewer's rationale for the opinion is based on subsection (2)(d) of this section.

(4) IROs shall include the following in their notification of the results and rationale for the determination:

(a) A general description of the reason for the request for external review;

(b) The written opinion of each clinical reviewer, including whether the recommended or requested health care service or treatment should be covered and the rationale for each reviewer's recommendation;

(c) The date the review was requested;

(d) The date the review was conducted;

(e) The date of the IRO's decision;

(f) The principle reason or reasons for the IRO's decision; and

(g) The rationale for the IRO's decision.

NEW SECTION

WAC 284-43A-100 Ongoing requirements for IROs.

A certified IRO shall:

(1) Comply with the provisions of RCW 48.43.535(5), and this chapter;

(2) Cooperate with the commissioner during investigations;

(3) Provide the commissioner with information requested in a prompt manner. A lack of response within fifteen business days from receipt of an inquiry will be considered untimely;

(4) Conduct annual self-assessments of compliance with Washington certification requirements;

(5) Maintain certification. Independent review organizations that are certified as of December 31st of the calendar year will be required to submit an annual recertification, using the commissioner's online service, no later than March 31st of the following calendar year. Recertification requires the following:

(a) Submission of an annual attestation on the form required by the commissioner, signed by a company officer, certifying that all requirements within RCW 48.43.537 and this title will be met.

(b) Submission of updated information to the commissioner if at any time there is a change in the information included in the application.

(c) Submit an annual statistical report with the commissioner on a form specified by the commissioner summarizing reviews conducted. The report shall include, but may not be limited to, volumes, types of cases, compliance with timelines for expedited and nonexpedited cases, determinations, number and nature of complaints, and compliance with the conflict of interest requirements described in WAC 284-43A-050.

(d) Submit any other pertinent information required by the commissioner.

NEW SECTION

WAC 284-43A-110 Powers of the commissioner. (1)

The commissioner may deny, suspend, revoke, or modify certification of an IRO if the commissioner has reason to believe the applicant, certified IRO, its agents, officers, directors, or any person with any interest in the IRO has failed or refused to comply with the requirements established under this chapter.

(2) The commissioner may conduct an on-site review, audit, and examine records to investigate complaints alleging that an applicant, certified IRO, or reviewer committed any conduct described in WAC 284-43A-120.

NEW SECTION

WAC 284-43A-120 Grounds for action against an applicant or a certified IRO. (1)

The commissioner may deny an application for certification, or suspend, revoke, or modify certification if the applicant, certified IRO, its agents, officers, directors, or any person with any interest:

(a) Makes a misrepresentation of, false statement of, or fails to disclose, a material fact to the commissioner. This applies to any data attached to any record requested or required by the commissioner or matter under investigation or in a self-assessment;

(b) Obtains or attempts to obtain certification by fraudulent means or misrepresentation;

(c) Fails or refuses to comply with the requirements of RCW 48.43.537, 48.43.535(5), or this chapter;

(d) Conducts business or advertising in a misleading or fraudulent manner;

(e) Refuses to allow the commissioner access to records, or fails to promptly produce for inspection any book, record, document, or item requested by the commissioner, or willfully interferes with an investigation;

(f) Accepts referral of cases from the commissioner under RCW 48.43.535 without certification, or with certification which has been terminated, or is subject to sanction;

(g) Was the holder of a license, certification, or contract issued by the commissioner or by any competent authority in any state, federal, or foreign jurisdiction that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(h) Had accreditation from a recognized national or state IRO accrediting body that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(i) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the commissioner and the lawful enforcement of any provision of this chapter. This includes, but is not limited to: Willful misrepresentation of facts during an investigation, or administrative proceeding, or any other legal action; or use of threats or harassment against any patient, client, customer, or witness; or use of financial inducements to any patient, client, customer, or witness to prevent or attempt to prevent him or her from providing evidence during an investigation, in an

administrative proceeding, or any other legal action involving the commissioner;

(j) Willfully prevents or interferes with any commissioner representative in the preservation of evidence;

(k) Misrepresented or was fraudulent in any aspect of the conduct of business;

(l) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an IRO;

(m) Violates any state or federal statute, or administrative rule regulating the IRO;

(n) Fails to comply with an order issued by the insurance commissioner or designee;

(o) Uses interference, coercion, discrimination, reprisal, or retaliation against a patient, client, or customer exercising his or her rights;

(p) Offers, gives, or promises anything of value or benefit to any federal, state, or local employee or official for the purpose of influencing that employee or official to circumvent federal, state, or local laws, regulations, or ordinances governing the certification holder or applicant;

(2) A person including, but not limited to, enrollees, carriers, and providers, may submit a written complaint to the commissioner alleging that a certified IRO committed conduct described in this section.

(3) An applicant or certified IRO may contest a commissioner decision or action according to the provisions of RCW 43.70.115, 48.43.535, chapter 34.05 RCW, and this chapter.

NEW SECTION

WAC 284-43A-130 Maximum fee schedule. This section sets the maximum fee schedule for independent reviews, and the process of review and determination of a case referred to an independent review organization (IRO).

(1) IROs may not charge more than the following amount for each review:

Category	Amount
Contract review, interpretation of health plan coverage provisions	\$600
Standard medical review, straightforward review of medical necessity or adverse determination	\$700
Highly specialized medical review of complex conditions or experimental or investigational treatment	\$1000
Medical review with multiple reviewers	\$1100
Surcharge for expedited review	\$200

The fees in this section include all costs for time and materials associated with the review including, but not limited to:

(a) Record transmission expenses such as postage and facsimile costs; and

(b) Medical record handling and duplication.

(2) If the IRO and the health care plan agree in advance that the referral includes both a contract review and a medical review, the IRO may charge both fees.

(3) If an IRO charges more than the maximum fees allowed under this section, the commissioner may take action as described in WAC 284-43A-120.

SUBCHAPTER C

REQUIREMENTS FOR CARRIERS IN USING INDEPENDENT REVIEW ORGANIZATIONS (IROs)

NEW SECTION

WAC 284-43A-140 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external independent review of the final internal adverse benefit determination. Carriers and health plans must inform appellants of their right to external independent review, and explain the process to exercise that right. If the appellant requests an external independent review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or that the re-quested service or supply is not efficacious or otherwise unjustified under evidence-based medical criteria. The carrier may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external independent review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system, using the commissioner's online service. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 284-43A-050.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers, are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider;

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan.

(d) Within one day of selecting the IRO, notify the appellant of the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the IRO will accept additional information in writing from the appellant for up to five business days after it receives the assignment. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) Each carrier and health plan must submit final independent review organization (IRO) decision determination information to the commissioner's online service within three business days of receipt of the IRO's final decision. Data elements and procedures for submission are located on the office of the insurance commissioner's web site.

(9) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535, and rules adopted in subchapter B of this chapter.

NEW SECTION

WAC 284-43A-150 Independent review of adverse determinations. Carriers must use the rotational registry system of certified independent review organizations (IROs) established by the commissioner.

(1) Using the commissioner's online service carriers must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 284-43A-050.

(2) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers are set forth on the insurance commissioner's web site (www.insurance.wa.gov).

(3) In addition to the requirements set forth in RCW 48.43.535(4), carriers must:

(a) Make available to the covered person and to any provider acting on behalf of the covered person all materials provided to an independent review organization reviewing the carrier's determination; and

(b) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan.

(4) Carriers must report to the commissioner each assignment made to an IRO not later than three business days after an assignment is made. Information regarding the enrollee's personal health should not be provided with the report.

(5) Each carrier and health plan must submit final IRO decision determination information using the commissioner's online service within three business days of receipt of the IRO's final decision. Data elements and procedures for submission are located on the office of the insurance commissioner's web site.

(6) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535, and rules adopted in subchapter B of this chapter.

WSR 16-21-069

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-20—Filed October 17, 2016, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-068.

Title of Rule and Other Identifying Information: Exceptions to providing consumers with an annual privacy notice.

Hearing Location(s): Office of the Insurance Commissioner (OIC), 5000 Capitol Boulevard S.E., Tumwater, WA, on November 22, 2016, at 3:30 p.m.

Date of Intended Adoption: November 23, 2016.

Submit Written Comments to: Jim Freeburg, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 22, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 18, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule eliminates the requirement for insurers to provide an annual privacy notice to consumers if certain conditions are met. The rule also cleans up a reference that was left out from a previous rule making.

Reasons Supporting Proposal: Changes to the Gramm-Leach-Bliley Act by the federal Fixing America's Surface Transportation (FAST) Act eliminate the annual notice (under certain conditions) as they are duplicative and the information can be obtained by alternate means.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.505, Gramm-Leach-Bliley Act, Public Law 102-106, Sec. 501(b), Sec. 505 (b)(2), and FAST Act, Public Law 114-94, Sec. 75001.

Statute Being Implemented: RCW 48.43.505.

Rule is necessary because of federal law, FAST Act, Public Law 114-94, Sec. 75001.

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

Name of Agency Personnel Responsible for Drafting: Jim Freeburg, P.O. Box 40255, Olympia, WA 98504, (360) 725-7170; Implementation: John Haworth, P.O. Box 40255, Olympia, WA 98504, (360) 725-7262; and Enforcement: AnnaLisa Gellerman [Gellermann], P.O. Box 40255, Olympia, WA 98504, (360) 725-7037.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The domestic financial institutions (insurance companies and carriers) that must comply with the rule are not small businesses, pursuant to chapter 19.85 RCW. In addition, the proposed rule reduces costs by eliminating an annual notice requirement for such institutions if they meet certain, already established conditions.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule (R 2016-20) is merely adopting the federal language from the FAST Act without making material change and is making other minor, nonsubstantive edits to existing rule sections to cleanup sectional and RCW cross-references. Because this proposed rule fits under the definition provided in RCW 34.05.328 (5)(b)(iii) and (iv), it does not require a cost-benefit analysis. A preliminary cost-benefit analysis may be obtained by contacting Jim Freeburg, P.O. Box 40255, Olympia, WA 98504, phone (360) 725-7170, e-mail jimf@oic.wa.gov.

October 17, 2016
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 02-08-019, filed 3/25/02, effective 4/25/02)

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

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

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

Examples.

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

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

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

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

(iv) Avoids multiple negatives;

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

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

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

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

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

(iii) Provides wide margins and ample line spacing;

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

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

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

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

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

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

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

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

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

Examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) "Control" means:

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

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

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

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

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

Examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((a))~~ Financial institution does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)(i) Subject to (b)(ii) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed

pursuant to ~~((section [insert section] of this state's laws))~~ chapters 48.15 RCW and 284-15 WAC.

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

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

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

PRIVACY NOTICE

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

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

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

(a) A licensee's affiliate; or

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

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

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

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

(i) Personally identifiable financial information; and

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

(b) Nonpublic personal financial information does not include:

(i) Health information;

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

(iii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

Examples of lists.

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

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

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

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

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

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

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

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

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

Examples.

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

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

(B) Account balance information and payment history;

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

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

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

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

(G) Information from a consumer report.

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

(A) Health information;

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

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

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

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

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

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

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

(c) Examples.

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

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

(iii) Reasonable basis.

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

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

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

WAC 284-04-205 Annual privacy notice to customers required. (1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year one, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2) A licensee that provides nonpublic information to nonaffiliated third parties only in accordance with WAC 284-04-400, 284-04-405, or 284-04-410 and has not changed its policies and practices with regard to disclosing nonpublic

information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or WAC 284-04-200 is not required to provide an annual disclosure under this section until the time the licensee fails to comply with any criteria described in this subsection.

(3)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired, paid up or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(iii) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

((3)) (4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to WAC 284-04-225.

WSR 16-21-070
WITHDRAWAL OF PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Filed October 17, 2016, 11:27 a.m.]

The office of the insurance commissioner is withdrawing the CR-102 for R 2015-06: Payee notifications, published [WAC 284-30-396] in WSR 16-08-024.

Our agency's reason for proposing the rule was to protect consumers in cases where an attorney received the settlement proceeds from an insurer for his client but then failed to fully transfer those proceeds to the consumer. However, the insurance industry has raised concerns about potential unforeseen costs in identifying affected insurance consumers and provid-

ing them with the notices the proposed rule would require. Our agency believes it will take some additional time to find a reasonable balance between these concerns and the need to protect insurance consumers. For this reason, our agency is withdrawing the CR-102.

We will contact individuals that provided comments during the CR-102 comment period, to notify them that we have withdrawn the CR-102.

Mike Kreidler
Insurance Commissioner

WSR 16-21-075
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed October 18, 2016, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-140.

Title of Rule and Other Identifying Information: Deferred compensation program (DCP) automatic enrollment: Recent legislation, ESSB 5435, will require state agencies to automatically enroll new full-time employees into the state's DCP unless the employee opts out. DCP rules will be revised to include administrative details. Local employers will continue to have the option to make DCP available to their employees, and may also elect to provide automatic enrollment. DCP enrollment will remain optional for eligible current employees and new employees who are not covered by the automatic enrollment provisions.

Hearing Location(s): Department of Retirement Systems (DRS), Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Tuesday, November 22, 2016, at 10:30 a.m.

Date of Intended Adoption: November 22, 2016.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-3166, by November 21, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by November 18, 2016, TTY (866) 377-8895 or (360) 586-5450.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Marla Mortensen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7214; Implementation: Shawn Merchant, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. DRS is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

October 18, 2016
 Jilene Siegel
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-050, filed 5/25/16, effective 6/25/16)

WAC 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Automatic enrollment.** A process of enrolling newly hired full-time employees as of January 1, 2017. See WAC 415-501-400 for details.

(3) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

(4) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

(5) **Deferred compensation.** The amount of the participant's compensation that is deferred (under a participation agreement). See WAC 415-501-400, 415-501-410 and 415-501-450.

(6) **Deferred compensation (plan) program or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

(7) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

(8) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

(9) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ten years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

(10) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

(11) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age seventy and one-half.

(12) **Participant.** An eligible employee who:

(a) ~~Who has submitted a participation agreement that is approved by the department; and~~

~~(b) Who either:~~

~~(i) Is currently deferring compensation under the plan;~~

or

~~(ii) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.~~

(13) **Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410 and 415-501-450.

(14) **You,** as used in this chapter, means a participant as defined in subsection ~~(11)~~ (12) of this section.

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-315 What are my employer's responsibilities? An employer has responsibilities including, but not limited to, determining employees' eligibility to participate, reporting and paying deferrals to the department, and monitoring for deferral limits ~~((and determining employees' eligibility to participate))~~.

The department's administration of the plan does not replace the employer's responsibilities.

AUTOMATIC ENROLLMENT

NEW SECTION

WAC 415-501-400 What is automatic enrollment? Effective January 1, 2017, state agencies and higher education employers must automatically enroll new full-time employees into the deferred compensation program (DCP). Students who work at a college or university and retirees who return to employment are exempt from automatic enrollment. Local employers, including school districts, may use the automatic enrollment provisions by submitting a resolution to the department.

For state employees and some higher education employees, full-time status is defined in WAC 357-01-174. For employees not covered under WAC 357-01-174, the definition of "full time" is at the employer's discretion.

The default deferral amount is three percent of your taxable compensation, but you may change your deferral amount at any time (see WAC 415-501-450 for details).

The default investment is the Retirement Strategy Fund that assumes retirement at age sixty-five. You may change your investments at any time (see WAC 415-501-475 for details).

If you are automatically enrolled in DCP, you will receive a mailed notification of automatic enrollment. If you want to alter your automatic enrollment, here are some actions you can take:

(1) Opt out: To prevent the three percent deferral from being deducted from your paycheck, opt out within thirty days of the date on the automatic enrollment notification. To do so, change the three percent default deduction to zero through your established online account or by contacting the DCP record keeper.

(2) Suspend enrollment and remove your contributions: Following your automatic enrollment, you may withdraw DCP deferrals that have been taken from your paycheck. To do so, change the three percent default deduction to zero and request a permissible withdrawal request form. The completed withdrawal request must be received by the DCP record keeper within ninety days of your first payroll contribution under this section. You will receive a distribution of your contributions, plus or minus earnings. These distributions are not eligible for rollover. If you do not request a permissible withdrawal within ninety days from your first payroll contribution, your contributions will be subject to the provisions for distributions described in WAC 415-501-485.

(3) Change your contribution: Adjust your contributions to a smaller or larger whole percentage or select a specific whole dollar amount. With DCP, you may change your contribution amount at any time. Changing your contribution within the first ninety days of automatic enrollment verifies your participation in the program, making you no longer eligible for permissible withdrawal.

(4) Change your investment selection: Select another DCP investment option. With DCP, you can change your investment options at any time.

(5) Reenroll: If you opt out, you may reenroll in DCP at any time (see WAC 415-501-410).

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-420 What are the ~~((annual))~~ deferral limits? (1) The minimum deferral is ~~((fifteen dollars per semi-monthly payroll period,))~~ thirty dollars ((for monthly payroll periods)) per month or one percent of monthly compensation.

(2) Except as provided in WAC 415-501-430 (catch-up provisions) and WAC 415-501-435 (uniformed service make-up contributions), the maximum annual deferral limit is the smaller of:

(a) One hundred percent of your includible compensation as defined in IRC Section 457 (e)(5), and Treasury Regulation 1.457.2(g), and determined without regard to community property laws; or

(b) The annual deferral limit established each year by the Internal Revenue Service. The annual deferral limit is published on the department's deferred compensation program web site.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-450 May I change my deferral amount? You may change the amount of your deferred compensation through the methods established by the department. Changes ~~((may))~~ must be made ~~((only))~~ in a whole dollar increment((s)) or whole percentage.

A change in the amount will be effective for any calendar month only if you notify the department of the change, through the methods available, prior to the month for which the change is requested and prior to your employer's established "cutoff date" for the payroll in which the change will occur.

AMENDATORY SECTION (Amending WSR 16-12-050, filed 5/25/16, effective 6/25/16)

WAC 415-501-475 ~~((May I choose how I want))~~ How will my deferred compensation be invested? (1) ~~((Yes:))~~ When you enroll, you may select one or more of the investment options offered.

(2) The department will invest one hundred percent of your future contributions in the Retirement Strategy Fund that assumes you will retire at age sixty-five if any of the following occurs during the enrollment process.

(a) An investment option is not selected.

(b) The total ~~((percentage))~~ does not equal one hundred percent when multiple investment options are selected.

(c) You are automatically enrolled into DCP.

(3) In general, you may change the investment of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. However, if necessary to protect the performance results of the DCP program, the department has the right to:

(a) Limit the number of times you change investment options;

(b) Limit the frequency of the changes;

(c) Limit the manner of making changes; or

(d) Impose other restrictions.

In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.

(4) Beneficiaries over age eighteen and former spouses may change the investment options through the methods established by the department once a separate account has been established for them. The guardian of a minor beneficiary may change the investment options on the minor's account if authorized by the order of guardianship.

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-480 How do I designate my beneficiaries? You have the right to designate a beneficiary or beneficiaries to receive your accumulated deferrals in the event of your death. You may change your beneficiary designation at any time online, or by filing a beneficiary change form with the department. The change will take effect upon the department's receipt of the beneficiary change form.

You may name:

(1) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(2) Your estate.

(3) An existing trust or a trust that is to be established under your last will. For an existing trust, you must provide a copy of the trust document and the name, address and telephone number of the current trustee.

You may name contingent beneficiaries in addition to primary beneficiaries.

WSR 16-21-076
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 18, 2016, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-132.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for Washington workers' compensation insurance; WAC 296-17A-0217 Concrete flatwork, 296-17A-0301 Landscape construction, and 296-17A-0302 Masonry.

Hearing Location(s): Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on December 5, 2016, at 10:00 a.m.

Date of Intended Adoption: January 17, 2017.

Submit Written Comments to: Karen Chamberlain, P.O. Box 44140, Tumwater, WA 98501, e-mail Karen.Chamberlain@lni.wa.gov, fax (360) 902-4988, by December 5, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by November 28, 2016, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing, effective April 1, 2017, to reclassify firms that perform paver stone installation work to classification 0301, Landscape construction. Paver stone installation work is currently reported in 0302, Masonry.

- Reclassifying paver firms from 0302, Masonry, to 0301, Landscape construction, would create a more fair playing field between specialty paver firms and landscape contractors who also perform paver stone installation. Currently, specialty paver installation firms report in risk classification 0302, Masonry, which carries a higher base rate than landscape construction.
- Paver stone installation companies and landscape construction companies have similar risk exposure to injury due to the similar work processes performed.
- The department proposes revising wording and formatting of the affected classifications to make the rules easier to understand and apply; and updating references in

the classifications to ensure the rule language reflects that paver installation work is to be classified in classification 0301, Landscape construction.

Reasons Supporting Proposal: Will create a more fair playing field between specialty paver firms and landscape contractors who also perform paver stone installation. This rule will better align these two industries as they have like degrees of hazard.

Statutory Authority for Adoption: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Chamberlain, Tumwater, (360) 902-4772; Implementation: Chris Bowe, Tumwater, (360) 902-4826; and Enforcement: Victoria Kennedy, Tumwater, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers, they are exempted from a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers, and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

October 18, 2016

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 13-11-128, filed 5/21/13, effective 7/1/13)

WAC 296-17A-0217 Classification 0217. (~~0217-00 Concrete flatwork—Construction and/or repair: N.O.C.~~)

~~Applies to contractors engaged in the construction and/or repair of concrete flatwork not covered by another classification (N.O.C.) such as, but not limited to, walkways, pathways, fences, and curbing. Work in this classification includes the set-up and tear-down of forms, placement of reinforcing steel and wire mesh, and the pouring and finishing of concrete.~~

~~This classification excludes land clearing and excavation which is to be reported separately in classification 0101; concrete work performed on or in connection with highway, street, or roadway projects including sidewalks, curbs, gutters, median or retaining walls, sawing, drilling, or cutting operations which is to be reported separately in classification 0214; concrete work contained within a concrete, masonry, iron or steel frame building or structure such as the foundation, floor slabs, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself which is to be reported separately in classification 0518; and the installation of preformed concrete or stone pavers which is to be reported separately in classification 0302.~~

0217-01 Concrete foundation and flatwork construction and repair: Wood structural buildings

Applies to contractors engaged in the construction and/or repair of concrete foundation and flatwork for wood structural buildings not to exceed three stories in height. This classification includes the set-up and tear down of forms, placement of reinforcing steel and wire mesh, pouring, and finishing of concrete footings, stem walls, floor pads, cellar or basement floors, garage floors, swimming pools and ponds. This includes incidental concrete work such as walkways or driveways when performed by a foundation contractor.

This classification excludes land clearing and excavation which is to be reported separately in classification 0101; concrete work performed on or in connection with highway, street, or roadway projects including sidewalks, curbs, gutters, median or retaining walls, sawing, drilling, or cutting operations as part of the roadway which is to be reported separately in classification 0214; concrete landscape curbing which is included in classification 0301-08; concrete work contained within a concrete, masonry, iron or steel frame building or structure such as the foundation, floor slabs, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself which is to be reported separately in classification 0518; and the installation of preformed concrete or stone pavers which is to be reported separately in classification 0302.

0217-02 Concrete sawing, drilling and cutting, N.O.C.

Applies to contractors engaged in concrete sawing, drilling and cutting not covered by another classification (N.O.C.), including repairs. Work contemplated by this classification includes concrete sawing, drilling and cutting operations in connection with wood frame and nonwood frame buildings or structures, including flatwork, which may or may not be part of the building structure, such as, but not limited to, foundations, walkways, driveways, patios and swimming pools which may or may not be part of the building or structure. Activities include, but are not limited to, the sawing, cutting and drilling for ventilation boxes in the footings or stem walls, cutting out for windows or door ways, preparing to mount brackets for stairways or interior bearing walls, cutting interior walls as part of a building renovation project, cutting out for electrical and switch boxes, and repairing defective areas.

This classification excludes concrete sawing, drilling, and cutting operations performed on or in connection with highway, street, or roadway projects including sidewalks, curbs, gutters, median or retaining walls as part of roadways which are to be reported separately in classification 0214; bridge construction which is to be reported separately in classification 0201; and new dam construction which is to be reported separately in classification 0701-)) Applies to:

Contractors engaged in the construction and/or repair of:

- Concrete flatwork not covered by another classification (N.O.C.);

- Concrete foundations and flatwork for wood structural buildings;

- Concrete sawing, drilling and cutting not covered by another classification (N.O.C.).

Work contemplated by this classification includes, but is not limited to:

- Set-up and tear down of forms;

- Placement of reinforcing steel and wire mesh;

- Pouring and finishing of concrete;

- Concrete sawing, drilling and cutting operations in connection with wood frame and nonwood frame buildings and structures.

Projects could include, but are not limited to:

- Walkways, pathways, patios, fences and curbing;

- Concrete footings, stem walls, floor pads, cellar or basement floors, garage floors;

- Swimming pools and ponds;

- Sawing, cutting and drilling for ventilation boxes in the footings or stem walls;

- Cutting out for windows or doorways;

- Preparing to mount brackets for stairways or interior bearing walls;

- Cutting interior walls as part of a building renovation project;

- Cutting out for electrical and switch boxes;

Repairing defective areas.

Excluded phases of work:

- Worker hours engaged in land clearing or excavation work for a land clearing or excavation contract, which are classified in 0101;

- Worker hours engaged in concrete work contained within a building or structure made of concrete, masonry, iron or steel frame, such as the foundation, floor slab, precast or poured in place bearing floors or wall panels, columns, pillars, metal erection or any other portion of the building or structure itself, which are classified in 0518;

- Worker hours engaged in paver stone installation projects such as, but not limited to: Driveways, walkways, patios and pool decks, which are classified in 0301;

- Worker hours engaged in concrete work performed on or in connection with projects on highways, streets, or roadways, including sidewalks, curbs, gutters, median or retaining walls, or sawing, drilling or cutting operations as part of the roadway which are classified in 0214;

- Worker hours engaged in bridge construction which are classified in 0201;

- Worker hours engaged in new dam construction which are classified in 0701;

- Worker hours engaged in concrete landscape curbing which are classified in 0301.

For administrative purposes, classification 0217 is divided into the following subclassifications:

0217-00 Concrete flatwork - Construction and/or repair: N.O.C.

0217-01 Concrete foundation and flatwork construction and repair: Wood structural buildings

0217-02 Concrete sawing, drilling and cutting, N.O.C.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-0301 Classification 0301. (~~0301-04 Lawn type sprinkler systems: Installation, service or repair~~)

Applies to contractors engaged in the installation, service or repair of lawn type sprinkler systems. This type of activity is performed by landscaping contractors, plumbing contractors, and irrigation specialist contractors. Generally, lawn type sprinkler systems are installed at private residences or commercial businesses. The process involves identifying the area of land to be covered to determine the size and amount of pipe and sprinkler heads needed for the job. The installation involves cutting a trench in the ground (twelve to eighteen inches deep and wide enough to accommodate the pipe) with a vibrating plow or pipe pulling machine. Next, pipe is laid in the trench, glued, or otherwise joined, heads and emitters are installed, and the timer is hooked up. The system is checked for leaks, needed adjustments are made, and the pipe and heads are buried.

This classification excludes open canal type irrigation systems which are to be reported separately in classification 0108; the installation, service or repair of above or below ground agricultural/irrigation systems which is to be reported separately in classification 0301-06; and maintenance and cleaning of lawn sprinkler system pipes and heads done in connection with a landscape maintenance contract which is to be reported separately in classification 0308.

~~0301-06 Agricultural sprinkler/irrigation systems, N.O.C.: Installation, service or repair~~

Applies to contractors engaged in the installation, service or repair of above or below ground agricultural sprinkler and irrigation systems not covered by another classification (N.O.C.). The more common types of systems include below ground, fixed or movable, and wheel or impulse. Generally, these types differ from lawn sprinkler systems in that the size of pipes and pumps installed are much larger to produce the water pressure needed to irrigate large areas of land. Installation of below ground systems involves the use of trenching equipment to dig trenches, which are usually more than two feet deep to lay pipe. The above ground systems are laid out and assembled based on the need of the land area.

This classification excludes open canal type irrigation systems which are to be reported separately in classification 0108, and the installation, service or repair of lawn type sprinkler systems which is to be reported separately in classification 0301-04.

~~0301-08 Landscape construction operations, N.O.C.~~

Applies to landscape contractors engaged in new landscape construction or renovation projects not covered by another classification (N.O.C.). This classification also applies to specialist contractors engaged in the installation of invisible fences which are usually used to confine animals within a given area. Landscape construction work contemplated by this classification includes producing a preliminary drawing of the landscape or renovation project, preparing the ground (which may include tilling and spreading top soils or custom mix soils), installing sprinkler systems, planting trees, plants or shrubs, planting or replanting grass from seed

or sod, installing ground cover material or plastic to retard weeds, placing concrete borders, the incidental construction of rockery, extruded concrete curbing, fences, ponds, paths, walkways, arbors, trellis and gazebos when performed by employees of a landscape contractor as part of a landscape contract. If these activities are conducted separately from a landscape contract and not part of the landscape project, they must be reported separately in the classification applicable to the work being performed. Equipment used by contractors subject to this classification includes, but is not limited to, tractors with till attachments, small front end loaders, trenchers, mowers, fertilizer spreaders, wheelbarrows, and electric power tools.

Invisible fence construction work contemplated by this classification includes identifying the land area to be fenced, sketching a preliminary drawing, burying the wire in a narrow trench (about one inch wide by two to six inches deep) that has been dug along the field perimeter (or just securing the wire onto the ground around the perimeter), and connecting the low voltage transmitter box (usually about the size of a hand held calculator) that plugs into a 110 volt electrical outlet. This classification includes training sessions for the animal and related maintenance and repair at the customer's location. Equipment used to install invisible fences includes, but is not limited to, rakes or other hand tools, and small trench diggers.

This classification excludes all grading, clearing, or contouring of land which is to be reported separately in classification 0101; bulkheads not adjacent to water, or similar structures built of rock, which are to be reported separately in classification 0302; the installation or on-site maintenance of roofing materials composed of impermeable barriers, sod, soil, and plants, sometimes termed landscape roofing, living roofing, garden roofing, green/environmentally beneficial roofing, brown/biodiverse roofing, or vegetative roofing, which is to be reported in classification 0507; any installation or maintenance of a landscape roofing irrigation system, which is reported in classification 0507; and lawn care maintenance or chemical spraying or fumigating which is to be reported separately in classification 0308.) Applies to:

Contractors engaged in the installation, service and repair of:

- Lawn type sprinkler systems;
- Agriculture sprinkler and irrigation systems, including above or below ground;
- New landscape construction or renovation projects;
- Invisible fence installation, which is used to confine animals within a given area;
- Paver stone installation projects such as, but not limited to: Driveways, walkways, patios and pool decks. Common types of pavers used include brick, concrete and stone.

Common methods of paver installation include:

- Interlocking concrete pavers, which are primarily sand set, but in some cases mortar set;
- Permeable interlocking concrete pavers, which are installed to help reduce storm water runoff;
- Pedestal set pavers, when used for roof top decks and plaza areas to increase living space, or to meet certain environmental requirements (not acting as a roofing system).

Work contemplated by this classification includes, but is not limited to:

- Producing preliminary drawings of a landscape or renovation project;
- Identifying area of land to be covered, to determine size and amount of pipe and sprinkler heads needed for irrigation/sprinkler system install;
- Preparing the ground (may include tilling and spreading of top soils);
- Trenching;
- Burying wire in trench (invisible fencing);
- Connecting low voltage transmitter box for invisible fencing;
- Installing/repairing sprinkler systems;
- Planting trees, plants or shrubs;
- Planting or replacing grass from seed or sod;
- Installing ground cover material or plastic to retard weeds;
- Placing concrete borders;
- Installing concrete, brick or stone pavers to create walkways, pathways, pool decks, or patios.

Typical machinery includes, but is not limited to:

- Electric power tools;
- Fertilizer spreaders;
- Hand tools/rakes;
- Mowers;
- Small front end loaders;
- Tractors with till attachments;
- Trenchers;
- Wheelbarrows;
- Vibrating plow or pipe pulling machine.

This classification includes:

• Incidental construction of rockery, extruded concrete curbing, fences, ponds, walls, arbors, trellises and gazebos when performed by employee of a landscape contractor as part of a landscape contract.

- If these activities are conducted separately from a landscape contract and not part of a landscape project, they must be reported separately in the classification applicable to the work being performed.

• Incidental construction of walls and rockery performed by employees of a paver stone installation contractor as part of a paver installation contract.

- If these activities are conducted separately from a paver stone installation contract and not part of a paver stone project, they must be reported separately in the classification applicable to the work being performed.

Note: Incidental work is a minor part of an overall project or contract.

Example: A paving installation company creates the driveway, walkways, and patio at a residential home. The company finds that the lawn will slide onto the driveway unless a three foot tall retaining wall the length of the driveway is created. The creation of the retaining wall to protect the driveway is *incidental* to the paving installation project and may be reported in **0301**.

Excluded phases of work:

- Worker hours engaged in open canal type irrigation systems, which are classified in **0108**.
- Worker hours engaged in maintenance and cleaning of lawn sprinkler system pipes and heads done in connection

with a landscape maintenance contract which are classified in **0308**.

• Worker hours engaged in grading, clearing, or contouring of land which are classified in **0101**.

• Worker hours engaged in bulkheads not adjacent to water, or similar structures built of rock, which are classified in **0302**.

• Worker hours engaged in installation or on-site maintenance of roofing materials composed of impermeable barriers, sod, soil, and plants, sometimes termed landscape roofing, living roofing, or vegetative roofing, which are classified in **0507**.

• Worker hours engaged in paver installation on a roof by a roofing contractor, when acting as part of the roofing system, which are classified in **0507**.

• Worker hours engaged in installation or maintenance of a landscape roofing irrigation system, which are classified in **0507**.

• Worker hours engaged in lawn care maintenance or chemical spraying or fumigating which are classified in **0308**.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

For administrative purposes, classification 0301 is divided into the following subclassifications:

0301-04 Lawn type sprinkler systems: Installation, service or repair

0301-06 Agricultural sprinkler/irrigation systems, N.O.C.: Installation, service or repair

0301-08 Landscape construction operations, N.O.C.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-0302 Classification 0302.

0302-01 Brick, block, and stone masonry work, including repairs N.O.C.

Applies to contractors engaged in interior or exterior work in brick, block, stone, brick or stone veneer, granite, marble, slate, or quartz, not covered by another classification (N.O.C.). ((Applications in this classification also include, but are not limited to, concrete block, glass block, pavers, and slab or engineered stone products. Projects in this classification include, but are not limited to:

- Decorative additions to buildings and landscapes;
- Hardscape installations such as, but not limited to:
 - Driveways;
 - Fences;
 - Patios;
 - Steps;
 - Walkways;
 - Walls;
- Installation of slab stone or concrete countertops;
- Construction of entire buildings or structures with brick, block or stone products;
- Setting tombstones.

Work contemplated by this classification includes, but is not limited to:

- Cutting;
- Laying or installing;

- Polishing;
 - Dry setting or adhering with mortar;
 - Tuck pointing (filling and/or finishing brickwork or stonework joints with cement or mortar).
- This classification excludes:
- Tile setting and countertop installations as described in classification 0502;
 - Plastering, stuccoing or lathing work which is to be reported separately in classification 0303;
 - Incidental construction of rockery, paths, and walkways when performed by employees of a landscape contractor as part of a landscape project, which is to be reported in classification 0301;
 - Mechanically placed block or prefab panels next to a roadway for noise barrier, median or retaining walls, which is to be reported in classification 0219;
 - Concrete flat work which is to be reported separately in the classification applicable to the work being performed; and
 - Masonry work as described in classification 0302-02.

Special notes: Contractors who operate a shop to cut, mill and polish stone products are to be assigned classification 3104-53 for the shop work; contractors operating a shop to make finished concrete products are to be assigned classification 3509 for the shop work. When a business is assigned classification 3104 or 3509 for the shop operation, then classification 5206 "Permanent yard or shop" may no longer be applicable to the business.

Contractors often have a showroom to display examples of their work and products which they install. If all the conditions of the general reporting rules covering standard exception employees have been met, then employees engaged exclusively in showing the display area or showrooms to customers are to be assigned classification 6303.

0302-02 Masonry

Applies to contractors engaged in interior or exterior masonry work including, but not limited to, the construction, lining or relining of:

- Fireplaces;
- Chimneys;
- Blast furnaces;
- Fire pits;
- Ovens.

Work contemplated by this classification includes:

- Cutting and laying brick, block or stone;
 - Tuck pointing (filling and/or finishing brickwork or stonework joints with cement or mortar).
- This classification excludes:
- Plastering, stuccoing or lathing work which is to be reported separately in classification 0303;
 - Tile setting as described in classification 0502;
 - Concrete work which is to be reported separately in the classification applicable to the work being performed; and
 - All other masonry work which is to be reported in classification 0302-01.)

Projects in this classification include, but are not limited to:

- Decorative additions to buildings;
- Fences;

- Walls;
 - Installation of slab stone or concrete countertops;
 - Construction of entire buildings or structures with brick, block or stone products;
 - Setting tombstones.
- Work contemplated by this classification includes, but is not limited to:
- Cutting;
 - Laying or installing;
 - Polishing;
 - Dry setting or adhering with mortar;
 - Tuck pointing (filling and/or finishing brickwork or stonework joints with cement or mortar).

Excluded phases of work:

- Worker hours engaged in tile setting and countertop installations, as described in 0502, which are classified in 0502;
- Worker hours engaged in plastering, stuccoing or lathing work which are classified in 0303;
- Worker hours engaged in paver stone installation work projects such as, but not limited to, driveways, walkways, patios and pool decks which, if the conditions of WAC 296-17-31013 Building construction are met, may be reported separately in 0301;
- Worker hours engaged in mechanically placed block or prefab panels next to a roadway for noise barrier, median or retaining walls, which are to be reported in classification 0219;
- Worker hours engaged in concrete flat work which are to be classified separately in the classification applicable to the work being performed;
- Worker hours engaged in all other masonry work (as described in 0302-02), which are classified in 0302-02.

Special notes: Contractors who operate a shop to cut, mill and polish stone products are to be assigned classification 3104-53 for the shop work; contractors operating a shop to make finished concrete products are to be assigned classification 3509 for the shop work. When a business is assigned classification 3104 or 3509 for the shop operation, then classification 5206 "Permanent yard or shop" may no longer be applicable to the business.

Contractors often have a showroom to display examples of their work and products which they install. If all the conditions of the general reporting rules covering standard exception employees have been met, then employees engaged exclusively in showing the display area or showrooms to customers are to be assigned classification 6303.

0302-02 Masonry

Applies to contractors engaged in interior or exterior masonry work including, but not limited to, the construction, repair, lining or relining of:

- Blast furnaces;
- Benches;
- Chimneys;
- Decorative columns;
- Fire pits;
- Fireplaces/pads;
- Outdoor barbeques;
- Ovens;
- Planter boxes.

Work contemplated by this classification includes, but is not limited to:

- Cutting and laying brick, block or stone;
- Tuck pointing (filling and/or finishing brickwork or stonework joints with cement or mortar).

Excluded phases of work:

- Worker hours engaged in plastering, stuccoing or lathing work which are classified in **0303**;
- Worker hours engaged in tile setting and countertop installations, as described in 0502, which are classified in **0502**;
- Worker hours engaged in concrete work, which is classified in the classification applicable to the work being performed;
- Worker hours engaged in all other masonry work (as described in 0302-01), which are classified in **0302-01**.

WSR 16-21-077

PROPOSED RULES

THE EVERGREEN STATE COLLEGE

[Filed October 18, 2016, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-125.

Title of Rule and Other Identifying Information: Parking regulations, chapter 174-116 WAC.

Hearing Location(s): The Evergreen State College (TESC), 2700 Evergreen Parkway N.W., Seminar 2 Building, Room A-1105, Olympia, WA 98505, on Wednesday, November 30, 2016, at 12:30 - 1:30 p.m.

Date of Intended Adoption: Tuesday, January 3, 2017.

Submit Written Comments to: Andy Corn, Library 3009, TESC, 2700 Evergreen Parkway N.W., Olympia, WA 98505, e-mail corna@evergreen.edu, fax (360) 867-6886, by Tuesday, November 29, 2016.

Assistance for Persons with Disabilities: Contact Andy Corn, by Tuesday, November 29, 2016, TTY (360) 867-6834 or (360) 867-6296.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 174-116 WAC was last updated in 1999. TESC conducted a broad review process that identified possible ways that TESC's parking program and rules could be updated. The results of the review have been considered and the college has identified a number of revisions that include, but are not limited to, updating process of approving fines for parking violations, general housekeeping of the rules, and removal of components that are more appropriately addressed through TESC policy.

Reasons Supporting Proposal: This proposed rule is intended to govern motorcycle and motor vehicle parking at TESC. The purpose of these rules is to facilitate campus safety and access. (1) To expedite college business, protect state property, provide maximum safety and convenience for all; (2) to assure access at all times for emergency vehicles, equipment, and personnel; (3) to provide funds to establish, maintain and manage suitable, self-sustaining campus parking facilities through a principled and fairly administered

process; (4) to protect and control vehicular traffic; (5) to protect pedestrians; and (6) to encourage and support sustainable transportation, including travel to and from the college by means other than single occupancy vehicles.

Statutory Authority for Adoption: RCW 28B.40.120 (12).

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

Name of Proponent: TESC, governmental.

Name of Agency Personnel Responsible for Drafting: Andy Corn, Library 3009, 2700 Evergreen Parkway N.W., Olympia, WA 98505, (360) 867-6296; Implementation: Wendy Endress, Library 3009, 2700 Evergreen Parkway N.W., Olympia, WA 98505, (360) 867-6296; and Enforcement: Susie Seip, Seminar 3152, 2700 Evergreen Parkway N.W., Olympia, WA 98505, (360) 867-6352

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

A cost-benefit analysis is not required under RCW 34.05.328. TESC is not among the agencies required to prepare a cost-benefit analysis as specified in RCW 34.05.328.

October 14, 2016

John Carmichael

Chief of Staff

to the President

NEW SECTION

WAC 174-116-210 Purpose. These rules govern motorcycle and motor vehicle parking at The Evergreen State College (college). The purpose of these rules is to facilitate campus safety and access. Specifically, these rules are intended:

- (1) To expedite college business, protect state property, provide maximum safety and convenience for all;
- (2) To assure access at all times for emergency vehicles, equipment, and personnel;
- (3) To provide funds to establish, maintain and manage suitable, self-sustaining campus parking facilities through a principled and fairly administered process;
- (4) To protect and control vehicular traffic;
- (5) To protect pedestrians; and
- (6) To encourage and support sustainable transportation, including travel to and from the college by means other than single occupancy vehicles.

NEW SECTION

WAC 174-116-215 Regulations. Drivers and owners of vehicles on the property of the college are responsible for safe and lawful operation of those vehicles. Individuals operating or parking vehicles on college-owned property must at all times comply with the campus regulations, ordinances of Thurston County and laws of the state of Washington.

NEW SECTION

WAC 174-116-220 Authority. (1) The college through its board of trustees is authorized to establish traffic and parking regulations as stated in RCW 28B.10.560.

(2) The college is authorized to issue permits to park on the campus. All outstanding campus parking violations must be satisfactorily settled before a permit will be issued or renewed.

NEW SECTION

WAC 174-116-225 Emergencies. The vice-president for student affairs, or their designee, has the authority to suspend, modify or repeal any or all provisions in this chapter for an authorized college event or in the event of an emergency, disaster or other like contingency. Such action must be limited in duration and scope to meet the institutional needs of the college and/or address the dangers of the contingency.

NEW SECTION

WAC 174-116-230 Liability of college. The college assumes no liability for motor vehicles or their contents when such motor vehicles are on campus. The college offers parking permits to those desiring to park on campus. A parking permit licenses the holder (licensee) to park one motor vehicle in the lots designated on the permit. The college is not responsible for fire, theft, damage, or loss of vehicle or any article left in such vehicle. A parking permit is a license to park and no bailment is created. A "motor vehicle" is defined as a vehicle that is self-propelled; for example cars, trucks, and motorcycles. Motor vehicles include a neighborhood electric vehicle as defined in RCW 46.04.357 and a medium-speed electric vehicle as defined in RCW 46.04.295. Electric personal assistive mobility devices and power wheelchairs are not considered motor vehicles.

NEW SECTION

WAC 174-116-235 Enforcement. (1) Whenever an unattended vehicle is parked in violation of these regulations, the college may take the registration number and other identifiable information and may affix to such vehicle a parking citation in a conspicuously visible location.

(2) When an attended vehicle is parked in violation of these regulations, and upon request of a designated college official, the driver may be required to move the vehicle immediately to a designated parking area or off college property. Refusal to move the vehicle is a violation of these regulations and may warrant a parking citation.

NEW SECTION

WAC 174-116-240 Parking permits—General information. (1) Parking permits are issued by the college following application and the payment of the appropriate fees. All privately owned motor vehicles parked or left unattended on college property are required to display a currently valid Evergreen parking permit during specified days and hours. These hours are posted in each parking area at the entrance to

the parking areas, or along the roadways where parking is indicated. The college maintains the authority to sell and require the display of special event parking permits during times and days, including weekends, as established by the college. Vehicles parked on campus are required to display valid parking permits at all times and days of the week as established by these rules. A complete list of parking permits issued by the college is available in the parking services office and on the college web site.

(2) Fees for parking and the effective date thereof, will be approved by the president of the college. Prior to approval by the president, the college will, after notice, hold a hearing on the proposed fee schedule. The hearing will be open to the public, and will be presided over by a presiding officer designated by the president. The presiding officer will prepare a memorandum for consideration by the president, summarizing the contents of the presentations made at the hearing. Approved fee schedules will be available in the public area of the parking services office and on the college's web site.

NEW SECTION

WAC 174-116-241 Parking permits—Special exceptions. All persons parking vehicles on campus will park in available space as established by the college parking regulations and will pay the established parking fee except as follows:

(1) Vehicles with government tax exempt licenses will be allowed to park without charge.

(2) Members of the press, television, radio and wire services, on official business, after obtaining a permit from the parking office, may park without charge.

(3) Taxis and commercial delivery vehicles may enter the campus without payment of the parking fee only for pick-up and delivery of passengers, supplies and equipment.

(4) Permanently and temporarily disabled persons may request a disability parking placard from the parking office. Vehicles parked in handicapped-accessible spaces must display a paid parking permit and a state of Washington or college-issued temporary disabled parking placard to be valid.

NEW SECTION

WAC 174-116-242 Parking permits—Issuance and display. (1) All parking permits must be entirely visible and displayed on the vehicle in accordance with the instructions printed on the permit, with permit numbers and relevant dates visible. Vehicles that do not have visible and properly displayed permits may be cited for the violation of improperly displaying a permit.

(2) Ownership of permits is not transferable except when approved by parking services. If a registered vehicle is sold, the permit must be removed and returned to parking services for a replacement or any refund.

(3) Persons not residing on campus may apply for a duplicate permit for a second car either personally, family, or employer owned. Proof of ownership or appropriate authorization must be presented prior to issuance of a second permit. Two vehicles displaying the same numbered permit may not be parked on campus at the same time unless one also displays a valid daily permit.

(4) Vehicles displaying a valid permit may be parked in any designated campus parking lot authorized by the permit. Vehicle parking in the modular housing area is restricted to residents and other users authorized by parking services. F lot parking permits are valid in B, C, and F lots. Modular housing permits are valid in all of the campus parking lots.

(5) Permit holders may obtain a complimentary temporary daily permit for a vehicle being used as a temporary replacement.

(6) No vehicle may be parked on campus for the purpose of using such vehicle as a living unit. Any exception must be approved by the director of police services or their designee.

NEW SECTION

WAC 174-116-243 Parking permits—Validity and revocation. (1) Parking permits will be valid from the date of purchase through the expiration date and/or time stated on the permit.

(2) Parking permits are licenses and remain the property of the college. Parking permits may be revoked for any of the following reasons:

(a) When the purpose for which the permit was issued changes or no longer exists.

(b) When a permit is used in an unauthorized manner.

(c) Falsification of a second car parking permit application.

(d) Counterfeiting or altering a permit.

NEW SECTION

WAC 174-116-250 Responsibility and presumption in reference to illegal parking. (1) The registered owner or permit holder will be responsible for all parking violations involving the vehicle on which the permit is displayed.

(2) In any review, appeal or hearing alleging the violation of any parking regulation, proof of the following will create a presumption that the registered owner or permit holder was the person who parked or placed the vehicle in the location where the violation occurred:

(a) Proof that the vehicle described was stopped, standing or parked in violation of a regulation; and

(b) Proof that the person named in the citation was the registered owner or permit holder of the vehicle when the citation was issued.

NEW SECTION

WAC 174-116-255 Designated and assigned parking areas. (1) The motor vehicle laws of the state of Washington and these rules will be applicable at all times in areas covered under the scope of this policy including all college-owned property.

(2) No vehicle may be parked on the campus except in those areas set aside and designated as parking areas.

(3) No vehicle may be parked in any parking area without a valid, current permit for that area issued by parking services.

(4) Vehicles may park only within marked spaces provided in each parking lot.

(5) Metered parking spaces require appropriate payment in the corresponding parking meter for valid parking, regardless of any passes or permits displayed on the vehicle.

(6) Vehicles parked in electric vehicle charging spaces are required to display a valid parking permit, and must be actively charging as indicated by the charging station.

NEW SECTION

WAC 174-116-261 Parking—Prohibited places. (1) No vehicle may stop, stand or park so as to obstruct traffic along or upon any street or sidewalk or in any parking lot.

(2) No vehicle may park, stop or stand in a location likely to interfere with traffic flow except momentarily to pick up or discharge passengers.

(3) No vehicle may be parked on any lawn or grass areas except as required for maintenance or construction authorized by parking services.

(4) No vehicle will be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the violator to occupy a portion of more than one space or stall will not constitute a rationale for a violation of this section.

NEW SECTION

WAC 174-116-262 Impounding and immobilization of vehicles. (1) The expense of such impounding and storage will rest solely on the owner or permit holder of the vehicle. Neither the college nor its employees will be liable for loss or damage of any kind resulting from impounding and/or storage services provided by a private vendor.

(2) Any vehicle parked upon property of the college in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington, with at least three unpaid citations, with the oldest being at least thirty days old, may be either immobilized or impounded and removed for storage.

(3) Notice of intent to impound will be posted on the vehicle twenty-four hours prior to impound.

(4) If the vehicle is parked in a metered or timed space, notice of intent to impound will be posted on the vehicle for four hours prior to impound.

(5) Any vehicle that blocks, hinders, or obstructs a legally parked vehicle, crosswalk, sidewalk, disability access area, service drive, or loading zone may be cited, and after the college has made a reasonable attempt to contact the owner, the vehicle may be impounded immediately.

(6) Immobilization is defined as impounding the vehicle in place through the installation of a wheel boot, which is a device designed to prevent vehicles from being moved. It consists of a clamp that surrounds a vehicle wheel, and designed to prevent removal of both itself and the wheel. Release from in-place immobilization is contingent on payment of all outstanding fines and charges.

NEW SECTION

WAC 174-116-266 Disabled or inoperative vehicle. No disabled or inoperative vehicle will be parked on the cam-

pus for a period in excess of seventy-two hours without approval of parking services. Vehicles which have been parked for periods in excess of seventy-two hours and which appear to be disabled or inoperative may be impounded and stored at the expense of the registered owner. It is the responsibility of the owner or permit holder of a disabled vehicle to notify police or parking services of the vehicle's location and estimated time of removal or repair. A valid parking permit or pass must be displayed on the disabled vehicle while it is parked on campus.

NEW SECTION

WAC 174-116-270 Access. Privately owned motor vehicles will be driven only on those roadways designed and built for their use. Driveways and roads marked "service" may be used only by college employees in college-owned vehicles conducting official business, emergency vehicles, and authorized delivery vehicles. All other vehicles are prohibited from traveling or parking in these areas unless authorized by parking services. Brick-paved and other designated areas are for pedestrian and bicycle traffic only, except as needed for emergency vehicles or for maintenance of buildings or grounds. No person without authorization from the director of facilities or the director of police services will install, move, deface, or in any way change a sign, barricade, structure, marking or direction so placed, or previously placed, for the purpose of regulating traffic or parking.

NEW SECTION

WAC 174-116-275 Parking of motorcycles. (1) Motorcycles are, for the purpose of these regulations, considered to be motor vehicles and are subject to all parking regulations.

(2) Motorcycles may be parked in designated motorcycle parking areas in addition to the stalls in the regular parking lots.

(3) Motorcycles are not permitted on paths, sidewalks, in buildings or in pedestrian areas at any time.

NEW SECTION

WAC 174-116-280 Citations, late fees and fines. (1) Payment.

(a) Persons cited for violation of these regulations are required to pay a fine within ten days of the date of issuance of the citation. All parking fines and fees are due upon issuance. Thirty days after the issuance of the citation, a late fee will be added to the unpaid parking fine. For example, a parking citation issued on May 1st would be assessed a late fee on May 31st.

(b) All fines are payable at the cashier's office or other designated locations on campus. Fines may be paid in person or by telephone during normal business hours or by mail or online. The notice of citation, citation number or vehicle license plate number must accompany any fine payment.

(2) Types of citations:

- (a) No valid permit;
- (b) Overtime parking;
- (c) Improper position;

- (d) Parking in a restricted space;
- (e) Disabled zone;
- (f) Parked at painted curb;
- (g) Prohibited zone;
- (h) Obstructing traffic;
- (i) Parking in bus zone;
- (j) Fire lane;
- (k) Parked on grass;
- (l) Altered permit;
- (m) Nondesignated parking space;
- (n) Expired meter; and
- (o) Wheel-lock.

(3) Fine amounts:

(a) When a citation is issued, fines are determined in accordance with a fine schedule. The fine schedule and the effective date thereof is approved by the vice-president for student affairs or their designee, and available in the parking services office and on the college web site.

(b) Adjustments: When mitigating circumstances exist, the vice-president for student affairs or their designee may reduce or dismiss fines.

(4) Unpaid fines. If any fine remains unpaid after sixty days from the date of the notice of citation, the account may be referred for collection and subject to the college policy for accounts receivable collection process.

(5) Appeals: Citations may be appealed by submitting a written appeal to parking services within ten calendar days of the date the citation was issued. Appeals must be submitted to parking services in person, mail, or using the college web site. If a timely appeal is not filed, the citation becomes final. Appeals will be reviewed by a board consisting of voting members from the following groups: Students, classified staff, faculty, and exempt staff. A parking services representative will act as a consultant to the board and will vote only to break a tie. The board may uphold or dismiss the citation. If the board upholds the citation, it may reduce the fine amount. In no event may the board impose a fine exceeding the amount set forth in the fine schedule. Within ten calendar days following the board's review, parking services will notify the appellant, by mail or by e-mail, of the board's determination. Additional appeal rights are governed by RCW 28B.10.560.

NEW SECTION

WAC 174-116-285 Severability. If any provision of this chapter or its application to any person or circumstances is determined to be invalid, the remainder of the chapter and its application to other persons or circumstances is unaffected.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 174-116-010 Purpose.

WAC 174-116-011 Regulations.

WAC 174-116-020 Authority.

WAC 174-116-030 Enforcement.

- WAC 174-116-040 Parking permits—General information.
- WAC 174-116-041 Parking permits—Special exceptions.
- WAC 174-116-042 Parking permits—Special permits.
- WAC 174-116-043 Parking permits—Issuance and display.
- WAC 174-116-044 Parking permits—Validity periods.
- WAC 174-116-046 Parking permits—Revocations.
- WAC 174-116-050 Responsibility and presumption in reference to illegal parking.
- WAC 174-116-060 Designated and assigned parking areas.
- WAC 174-116-071 Parking—Prohibited places and fines.
- WAC 174-116-072 Impounding of vehicles.
- WAC 174-116-080 Access.
- WAC 174-116-091 Special parking and traffic regulations and restrictions authorized.
- WAC 174-116-092 Parking of motorcycles.
- WAC 174-116-119 Fines.
- WAC 174-116-121 Election to pay or contest a notice of infraction.
- WAC 174-116-122 Appeal/hearing procedure.
- WAC 174-116-123 Establishment of infraction review committee.
- WAC 174-116-124 Jurisdiction of the infraction review committee.
- WAC 174-116-125 Appeal/hearing procedure—Rules of evidence.
- WAC 174-116-126 Appeal/hearing—Procedure—Review decision.
- WAC 174-116-127 Appeal/hearing—Mitigation and suspension of fines.

WSR 16-21-079**PROPOSED RULES****CHARTER SCHOOL COMMISSION**

[Filed October 18, 2016, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-058.

Title of Rule and Other Identifying Information: Title 108 WAC Charter school commission; chapter 108-10 WAC, Introduction; chapter 108-20 WAC, Application; chapter 108-40 WAC, Charter school oversight and corrective action policy, renewal and nonrenewal policy, revocation policy, and termination protocol; and chapter 108-50 WAC, Public records.

Hearing Location(s): Washington State Charter School Commission, 1068 Washington Street S.E., Olympia, WA 98501, on Tuesday, December 6, 2016, at 10:00 a.m. - 11:10 a.m.

Date of Intended Adoption: December 8, 2016.

Submit Written Comments to: Sandy Green, P.O. Box 40996, Olympia, WA 98504-0996, e-mail sandy.green@k12.wa.us, by Wednesday, November 30, 2016.

Assistance for Persons with Disabilities: Contact Sandy Green by Friday, December 2, 2016, TTY (800) 833-6388 or (360) 725-5511.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 108-10 WAC. Introduction, the purpose of the proposed rule is to align language in the charter school commission's rule with the language in the new charter school law (E2SSB 6194). There are no anticipated effects of this change, as the changes being proposed are minor in nature and do not affect the intent or effect of the rule.

Chapter 108-20 WAC, Application, the purpose of the proposed rule is to align language in the charter school commission's rule with the language in the new charter school law (E2SSB 6194). There are no anticipated effects of the language changes, as the changes being proposed are minor in nature and do not affect the intent or effect of the rule. In addition to the language changes being proposed, sections related to "conversion schools" are deleted in entirety, per the new law. The anticipated effects of this rule change is that conversion schools are no longer allowed.

Chapter 108-40 WAC, Charter school oversight and corrective action policy, renewal and nonrenewal policy, revocation policy, and termination protocol, the purpose of the proposed rule is to align language in the charter school commission's rule with the language in the new charter school law (E2SSB 6194). There are no anticipated effects of the language changes, as the changes being proposed are minor in nature and do not affect the intent or effect of the rule.

Chapter 108-50 WAC, Public records, the purpose of the proposed rule is to update the charter school commission's public records officer and public records request processing protocol for charter school commission compliance with Public Records Act, chapter 42.56 RCW. The anticipated effects of the rule change is that the office of superintendent of public instruction will facilitate the public records request process; this does not affect the intent or effect of the rule.

Statutory Authority for Adoption: For chapters 108-10 and 108-20 WAC is RCW 28A.710.070; for chapter 108-40 WAC is RCW 28A.710.070, 28A.710.180, 28A.710.190, 28A.710.200; and for chapter 108-50 WAC is chapter 42.56 RCW.

Statute Being Implemented: For chapters 108-10 and 108-20 WAC is RCW 28A.710.070; for chapter 108-40 WAC is RCW 28A.710.070, 28A.710.180, 28A.710.190, 28A.710.200; and for chapter 108-50 WAC is 42.56 RCW.

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

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy Green, 1068 Washington, Olympia, WA 98501, (360) 725-5511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement or school district fiscal impact statement does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not provide material change to Washington state statute and are therefore exempt from the cost-benefit analysis.

October 18, 2016
Sandy Green
Executive Assistant

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-10-020 Authority. Authority for this title is RCW 28A.710.070, which establishes the Washington state charter school commission as an independent state agency whose mission is to authorize high-quality (~~(public)~~) charter public schools throughout the state and to ensure the highest standards of accountability and oversight for these schools.

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-20-010 Charter school application process information. (1) Information regarding the charter school application process shall be made available on the commission's web page. The information made available on the web page will include at a minimum: A timeline for the application process, a list of required application materials, the (~~(request)~~) solicitation for proposals (~~((RFP))~~), the scoring rubric used by evaluators, and the contact information for the commission's staff. General questions regarding the application process may be directed to the commission's staff.

(2) The commission may make available an in-person or online orientation session to provide an overview of the charter school application process, content required in the application, and the online platform.

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-20-070 Criteria used for application evaluation. The commission will grant approval only to charter school applicants that are able to demonstrate the capacity to successfully execute all elements of the educational, operational, financial, and governance plan. The charter school applications must demonstrate the applicants' competence in each of the components listed in RCW 28A.710.130 as well as any other requirements in chapter 28A.710 RCW and those outlined below in this section. The approval criteria include:

(1) An executive summary that outlines the school's mission and vision, (~~(target)~~) student population and community, location or geographic area for the proposed school and the school district where it will be located, the educational need and anticipated student population, leadership and governance, enrollment summary, a brief description of the plan for the school, and an explanation of how the applicant will successfully open and operate a high-quality school; community engagement, evidence of need, and parent and/or guardian and community support for the proposed charter school.

(2) A high-quality educational program design and capacity that addresses the following elements:

(a) A curriculum and instructional design framework, must present a clear and coherent framework for teaching and learning, that reflects the needs of the anticipated population and ensures all students will meet or exceed the state standard. This includes:

(i) A description of the basic learning environment (e.g., classroom-based, independent study), class size, classroom management, and structure.

(ii) An overview of the planned curriculum including a sample scope and sequence for one subject for each division (elementary, middle, high school) the school would serve. In addition, identified course outcomes and demonstrated alignment with applicable state standards.

(iii) Evidence that the educational program or key elements of the program are based on proven methods; evidence that the proposed educational program has a sound base in research, theory, and/or experience, and has been or is likely to be rigorous, engaging, and effective for the anticipated student population.

(iv) If the curricular content is developed, a summarized description of content choices such as text book selection, by subject, and rationale. The applicant must provide evidence that this curricular content will be appropriate and effective for the (~~(targeted)~~) students as well as adhere to the federal and state standards.

(v) If the curricular content is not developed, a plan for how the content will be developed between approval of the application and the opening of the school, including who will be responsible and when key stages will be completed.

(vi) A description of the primary teaching methods and instructional strategies that the school will expect teachers to use and why the strategies are well-suited for the anticipated student population.

(b) A description of student performance expectations for the school as a whole. If the applicant plans to adopt or develop additional academic expectations beyond the state and authorizer standards, an explanation of the types of expectations (content areas, grade levels). The applicant must also explain the policies, standards, and expectations for promoting students from one grade to the next.

(c) For applications that include high school, a detailed explanation of high school graduation requirements including, but not limited to: A description of the process of earning credit hours, calculating grade point averages, and what information will be available on transcripts, and elective courses offered; explanations of additional requirements that exceed state and authorizer standards; explanations of how these requirements ensure student readiness for college or post secondary opportunities; and an explanation of the systems and structures used for students at risk of dropping out and/or not meeting graduation requirements.

(d) An outline of the school calendar and schedule including, but not limited to: An explanation of how the calendar meets the needs of the school's educational program; the structure of the school day including the number of instructional hours/minutes in a day for core subjects; the length of the school day (start/dismissal times); and the min-

imum number of hours/minutes devoted to instruction in each grade.

(e) A description of the school culture including, but not limited to: A description of the culture or ethos of the proposed school; an explanation of how it will promote a positive academic environment and reinforce student intellectual and social development; the process of implementation of this culture among students and staff; and an explanation of how the school culture will serve students with special needs.

(f) If they are to be offered, an overview of supplemental programming including, but not limited to: Summer school offerings including the schedule, length, and anticipated participants; resource and staffing needs; extra-curricular or cocurricular activities offerings and how they will be funded. As anticipated for your ((target)) student population, an overview of programs addressing student mental, emotional, and social development and health, and how these programs will be funded; and other student-focused activities and programs integral to the educational and student development plans.

(g) Special populations and at-risk students includes, but is not limited to: A description of the overall plan to serve students with special needs; a description of more specific plans identifying how the school will meet the students' learning needs in the least restrictive environment possible as defined by state and federal special education guidelines and law; how the school will meet the needs of students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families; how the school will meet the needs of highly capable students; and how the school will comply with applicable laws and regulations governing services to these student populations.

(h) A culturally inclusive student recruitment and enrollment plan that includes, but is not limited to: An enrollment policy; plans for student recruitment and marketing that will provide equal access; and plans for outreach to families of ((targeted)) at-risk students, if applicable.

(i) Evidence that the proposed discipline plan has a sound base in, and some combination of, research, theory, experience, and best practice; and has an explanation of how it is likely to be effective for the anticipated student population. The discipline policy must be culturally responsive and comply with applicable state laws and authorizer policies which includes, but is not limited to: Equitable and fair practices with incentives to promote positive behavior and school climate; penalties for infractions; types of offenses; rights of students with disabilities in disciplinary actions and proceedings; procedures for due process when a student is suspended or expelled; and how students and parents and/or guardians will be informed of the discipline policy.

(j) ~~((Conversion schools. Proposed conversion schools must provide a detailed plan for how they intend to engage the school community and any information regarding steps already taken; additionally a detailed plan that demonstrates that the conversion school will have sufficient capacity to enroll all students who wish to remain enrolled in the school~~

~~after conversion; demonstrated support for the proposed conversion by a petition signed by a majority of teachers assigned to the school or a petition signed by a majority of parents and/or guardians of students in the school; if applicable, a description of the organization's prior experience in taking over or turning around an under-performing school; and specific ways it will engage and transform the existing school culture.~~

~~((k))~~ Education program capacity includes, but is not limited to: The identification of key members of the school's leadership team who will play a substantial role in school development and its success; the key members' qualifications to implement school design; identification and descriptions of organizations, agencies, or consultants that are partners in planning and establishing the school; the identification of the principal/head of school candidate and why this individual is well qualified to lead the school in achieving its mission (if no candidate identified, a description of the job and its qualifications, timeline, criteria, recruiting and selection process); a description of the responsibilities and qualifications of the school's leadership/management team beyond the principal/head of school; and who will be working full time, or nearly full time, to lead development of the school, and the plan to compensate them.

~~((l))~~ ~~((k))~~ The school's plan for using internal and external assessments to measure and report student progress, including those required by the state.

(3) Operations plan and capacity. A detailed plan and supporting information addressing the school's operations plan and capacity including the following elements:

(a) A detailed description of the school's governance includes, but is not limited to: Legal status and governing documents; organization charts that show the school governance, management, and staffing structure in the school's first year and for the term of the charter, and the roles and responsibilities of the governing board, staff, any related bodies, and any external organizations playing a role in the school's management; an explanation of the governance philosophy guiding the board; a description of the governance structure; a list of current and identified board members and their intended roles and responsibilities, including their interests in and qualification for serving the school's board as well as background information on the identified or proposed governing board members and proposed school leadership and management team; if there is no initial governing board, an explanation of how and when the transition to the formal governing board will take place; the procedure by which board members have been and will be selected and how frequently they will meet; a description of the board's ethical standards and procedures for identifying and addressing conflicts of interests; plans for increasing the capacity of the governing board; advisory bodies and the roles and duties of those bodies; and a description of the school's grievance process should a student or parent have an objection to the governing board policy or decision, administrative procedure, or practice at the school.

(b) An explanation of any proposed partnership agreement between a charter school and the school district or educational service district (ESD) in which it resides and a description of the terms of that agreement.

(c) Explanations of any other partnerships or contractual relationships central to the school's operations or mission; in the case of an application where the proposed charter school intends to contract with a nonprofit education service provider (ESP) for substantial educational services, management services, or both, the applicant must:

(i) Provide evidence of the nonprofit ESP's success in serving student populations similar to the ~~((targeted))~~ student population, including demonstrated academic achievement as well as successful management of nonacademic school functions if applicable;

(ii) Provide a term sheet setting forth the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff, and the ESP; scope of services and resources to be provided by the service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract; and

(iii) Disclose and explain any existing or potential conflicts of interest between the charter school board and proposed service provider or any affiliated business entities.

(d) A detailed description of the school's staffing includes, but is not limited to: Staff structure; staffing plans for the first year and for the term of the charter, hiring, management, and evaluation; professional development; and performance management.

(e) A detailed plan for engaging families in the school before it opens and once students are enrolled. The plan should include specifics on proposed events or activities to engage families.

(f) A detailed plan for acquiring a suitable facility including budget, facilities start up including backup or contingency plans, and a letter of intent. ~~((For a conversion school, the applicant must supply evidence that it has notified the encompassing school district of the conversion. A more detailed facilities plan will be required as part of the preopening requirements.))~~

(g) Start-up and ongoing operations include, but are not limited to: A detailed start-up plan for the school specifying tasks, timelines, and responsible individuals; transportation plan; food service plan; plans for all other significant operational or ancillary services; plan for safety and security for students, the facility, and property; description of types and levels of insurance coverage.

(h) A detailed description of the school's operations capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing operations plan with specific emphasis on staffing, performance management, professional development, general operations, and facilities management; organization's capacity and experience in facilities acquisition and management.

(4) Financial plan. A detailed description of the school's financial plan and capacity includes, but is not limited to:

(a) A description of the systems, policies, and procedures the school will use for financial planning, accounting, purchasing, and payroll, including a description of internal controls and methods for ensuring compliance with all financial reporting requirements; roles and responsibilities of adminis-

tration and governing board for school finances; plans and procedures for annual audit of financial and administrative operations; methods for ensuring financial transparency; liability insurance plans with ability to indemnify the school, its board, staff, and teachers against tort claims; completion of a budget form and financial plan workbook; a detailed description of assumptions, estimates, and bases for revenue projections, staffing levels, and costs. This includes start-up and five-year cash flow projections and budgets with clearly stated assumptions.

(b) Financial management capacity. A detailed description of the school's financial management capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing the financial plan which includes, at a minimum, financial management, fund-raising and development, and accounting and internal controls.

(5) School specific performance measures. A detailed description of the school's specific performance measures includes, but is not limited to, the following mission-specific items: Educational goals and targets; organizational goals and targets; nonmandatory assessments or measures for evaluating student learning needs and progression within the school year; training and support school leadership and teachers will receive in analyzing, interpreting, and using performance data to improve student learning.

(6) For existing charter school operators, charter management organizations or educational management organizations, a detailed description of the organization's growth plans and capacity to successfully support and execute that plan.

(7) Conflict of interest. Conflict of interest includes, but is not limited to: Full disclosure of all real or apparent conflicts of interest between reviewers, decision makers, applicants, and any affiliates of these entities.

(8) Background checks. The safety and welfare of the students in Washington's charter schools is of the utmost importance, as is the protection of scarce state resources being entrusted to charter schools. Therefore, application evaluation will include the following background check components:

(a) Each identified or proposed governing board member, and identified or proposed school leadership and management, must complete a background check disclosure form, waiver, and certification which will include disclosure of, at a minimum, criminal background information in accordance with enumerated questions and as aligned with RCW 28A.400.303 and the statutes cited therein. This will also require specific disclosure of financial mismanagement or malfeasance.

(b) The commission may also complete an independent background and/or records check on each identified or proposed governing board member, and identified or proposed school leadership and management.

(c) Individuals will not be permitted to serve on the governing board, administration, or leadership of a charter school if the results of their records check would legally preclude them from working in a school.

(d) Individuals may not be permitted to serve on the governing board, administration, or leadership of a charter school

if they have a history of financial malfeasance or mismanagement.

(9) All of the above criteria will be subject to review for cultural responsiveness.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-070 Renewal process. (1) No later than May 1st, one school year before the expiration of the charter school contract, the charter school must notify the commission in writing of its decision to either:

- (a) Apply for renewal of the contract; or
- (b) Cease operation at the expiration of the contract term.

(2) If the school has decided to cease operation at the expiration of the contract term, a termination protocol shall be implemented.

(3) If the school is requesting renewal under the existing contract, it must submit a renewal application before the final school year begins. The renewal application must be submitted no later than June 1st and must be received by the commission by 5:00 p.m.; if June 1st falls on a weekend, the renewal application must be received by the commission no later than 5:00 p.m. on the Monday following June 1st.

(4) Within ninety days of receiving a renewal application, the commission will issue a written performance report addressing the information outlined in WAC 108-40-080. The performance report will be sent to the school seeking renewal and posted on the commission's web site.

(5) The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-40-090, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.

(6) In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:

- (a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;
- (b) Describe improvements undertaken or planned for the school; and
- (c) Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.

(7) For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing charter contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representations to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter

contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have ten days to submit a written response to the renewal inspection report.

(8) Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-40-100.

(9) Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's web site.

(10) For applications deemed eligible for renewal consideration, commission staff will review renewal applications, the renewal inspection report, and other relevant information, and make a recommendation, based on the renewal criteria, to approve, deny, or conditionally approve the renewal application. This recommendation will be provided to the school and commissioners. This recommendation shall serve as notice of the prospect of and reasons for nonrenewal. Within twenty days of issuance of this recommendation, the school may request an opportunity to respond to the recommendation in accordance with the procedures outlined in WAC 108-40-100; failure to make such a request shall constitute a waiver of the school's right to respond.

(11) The commission will pass a resolution approving, denying, or conditionally approving the renewal application. Renewal may be for a term of up to five years. This term may be shorter depending on the school's performance, demonstrated capacities and particular circumstances.

(12) Upon approval of a school's renewal application, the school must execute a new charter contract within ninety days of the approval decision. The charter contract must include specific conditions that the commission determines are required for necessary improvements to the school; provided, however, if approval of the renewal application is conditional, the renewal conditions must be included in the charter contract.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-090 Renewal decision and presumptions. (1) In making charter contract renewal decisions, the commission will:

(a) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence that forms the basis for its decision. Specific criteria guiding the commission's renewal decisions will be set out in the commission's renewal application guidance.

(2) Schools are presumed to be ineligible for renewal if they have:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management;

(d) Substantially violated any material provision of law from which the charter school is not exempt;

(e) Fallen in the bottom quartile of schools on the state ~~(board's accountability)~~ board of education's Washington achievement index at the time of the renewal application; and

(f) Are subject to an active corrective action plan for the failures or violations listed in (a) through (f) of this subsection.

(3) The presumption of ineligibility can be rebutted if the school demonstrates exceptional circumstances that the authorizer finds justifiable. The school must satisfy this burden in its application and response to the performance report.

(4) A decision to renew, conditionally renew, or nonrenew a school's charter contract will be memorialized in a resolution that sets forth the action taken, the reasons for the decision, and assurances of compliance with the commission's procedural requirements. A report of action, with the resolution attached, must be submitted to the renewal applicant and the state board of education within ten days of the decision.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-100 Procedures associated with possible nonrenewal decision. (1) If a school is notified that it is considered ineligible for renewal, or that nonrenewal is recommended, within twenty days of that notice, the school may request an opportunity to respond and present evidence challenging the determination of ineligibility or recommendation for nonrenewal. This request must be sent to the commission's executive director or designee. Failure to make this request within twenty days acts as a waiver rendering the ineligibility determination or nonrenewal recommendation final.

(2) If a school requests an opportunity to respond, the commission will designate an individual, or individuals, to preside over a recorded public proceeding at which the school may:

(a) Submit a written response explaining why it believes that its charter contract should be renewed;

(b) Submit documents and give testimony supporting the renewal of the charter contract;

(c) Call witnesses on its behalf; and

(d) Be represented by counsel.

(3) The commission may also, through staff or counsel, present documents, witnesses, and/or testimony to support the ineligibility determination or nonrenewal recommendation at the public proceeding.

(4) The presiding officer(s) shall regulate the course of the public proceeding and, in the discretion of the presiding officer(s), may impose reasonable limits on the conduct of the public proceeding including, but not limited to, limita-

tions on the length of time that the school and commission has to present documents and evidence. The presiding officer(s) may issue deadlines and other requirements that the presiding officer(s) deem necessary for the orderly conduct of the proceeding. Unless they conflict with the Charter School((s)) Act and commission's rules, the provisions of chapter 34.05 RCW shall govern these proceedings.

(5) Within thirty days of the public proceeding, the presiding officer(s) shall make a written recommendation to the commission regarding whether the ineligibility or nonrenewal decision should stand or whether it should be altered in some manner. This recommendation will be transmitted to the commission, the school, and posted on the commission's web site.

(6) The commission will, after a reasonable period for deliberation, consider the recommendation of the presiding officer(s), as well as relevant evidence or documentation submitted during the application renewal process, and make a final determination. The commission's final determination shall be in the form of a resolution that, in the case of a nonrenewal, clearly states the reasons for the nonrenewal.

(7) Within ten days of issuing this resolution, the commission will submit a report of action to the school and the state board of education. The resolution will be attached to the report of action and will set forth the action taken, reasons for the decision, and assurances of compliance with the commission's renewal/nonrenewal procedures.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-40-110 Revocation of charter school contract. (1) The commission may revoke a school's charter contract at any time that it determines that the school failed to comply with the Charter Schools Act or:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management; or

(d) Substantially violated any material provision of law from which the charter school is not exempt.

(2) If the commission determines that a school's charter contract should be revoked, the commission will notify the school, in writing, of the determination and the associated reasons. The school may submit a written response that must be received by the commission within thirty days of issuance of the notice.

(3) The commission, or a person designated by the commission, will review the notice, response, and any supporting information and issue a draft resolution to revoke or not revoke the school's charter contract and any conditions that are recommended if the school's contract is not to be revoked. The draft resolution will be sent to the school.

(4) The school may request an opportunity to respond to a draft resolution recommending revocation. This request must be sent to the commission's executive director, or designee, within twenty days of issuance of the draft resolution.

Failure to make this request within twenty days acts as a waiver rendering the draft resolution final.

(5) If a school requests an opportunity to respond, the commission will designate an individual or individuals to preside over a recorded public proceeding at which the school may:

(a) Submit a written response explaining why it believes that its charter contract should not be revoked;

(b) Submit documents and give testimony opposing the revocation of the charter contract;

(c) Call witnesses on its behalf; and

(d) Be represented by counsel.

(6) The commission may also, through staff or counsel, present documents, witnesses and/or testimony to support the revocation at the public proceeding.

(7) The presiding officer(s) shall regulate the course of the public proceeding and, in the discretion of the presiding officer(s), may impose reasonable limits on the conduct of the public proceeding including, but not limited to, limitations on the length of time that the school and commission has to present documents and evidence. The presiding officer(s) may issue deadlines and other requirements that the presiding officer(s) deems necessary for the orderly conduct of the proceeding. Unless they conflict with the Charter School(s) Act, and commission's rules, the provisions of chapter 34.05 RCW shall govern these proceedings.

(8) Within no more than thirty days of the public proceeding, the presiding officer(s) shall make a written recommendation to the commission regarding whether the revocation decision should stand or whether it should be altered in some manner. This recommendation will be transmitted to the commission, the school, and posted on the commission's web site.

(9) The commission will, after a reasonable period for deliberation, consider the recommendation of the presiding officer(s) as well as any other evidence or documentation submitted during the revocation process, and make a final determination. The commission's final determination shall be in the form of a resolution that clearly states the reasons for the revocation or decision not to revoke.

(10) Within ten days of issuing this resolution, the commission will submit a report of action to the school, the superintendent of public instruction, and the state board of education. The resolution will be attached to the report of action and will set forth the action taken, reasons for the decision, and assurances of compliance with the commission's renewal/nonrenewal procedures.

(11) Nothing within these rules prevents the commission from engaging in contingency planning in initiating the termination protocol.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-50-020 Agency description—Contact information—Public records officer. (1) The commission authorizes high-quality (~~(public)~~) charter public schools throughout the state and ensures the highest standards of accountability and oversight for those schools. The commission's central office is located at:

Washington State Charter School Commission
1068 Washington St. S.E.
Olympia, WA 98501

(2) Any person wishing to request access to public records of the commission, or seeking assistance in making such a request should contact the (~~(public records officer of the commission:~~

Public Records Officer
Washington State Charter School Commission
1068 Washington St. S.E.
Olympia, WA 98501
360-725-5511
Colin.pippin-timeo@charterschool.wa.gov) public disclosure officer of the office of superintendent of public instruction:

Office of Superintendent of Public Instruction
Attn: Public Disclosure Officer
Old Capital Building, 600 S. Washington
P.O. Box 47200
Olympia, WA 98504-7200
Phone: 360-725-6372
Fax: 360-753-4201
publicrecordsrequest@k12.wa.us

Information is also available at the commission's web site.

(3) The public (~~(records)~~) disclosure officer will oversee compliance with the act but (~~(another)~~) a commission staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the commission will provide the "fullest assistance" to requestors; create and maintain for use by the public and officials an index to public records of the commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the commission.

AMENDATORY SECTION (Amending WSR 14-12-065, filed 6/2/14, effective 7/3/14)

WAC 108-50-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during customary business hours of the commission, customary office hours are from 8:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The commission is a small state agency with limited staffing. Consistent with other demands, the commission will provide fullest assistance when a request for inspection is made; to avoid inconvenience, a time to inspect the records should be scheduled with the public records officer. Records must be inspected at the commission's office.

(2) **Records index.** An index of public records is available for use by members of the public, including:

- (a) Commission monthly meetings;
- (b) Annual solicitation documents;
- (c) Charter school application documents;
- (d) Evaluation team recommendation reports;

(e) Resolutions by the commission which are filed by resolution number, by year.

The index may be accessed online at the commission's web site.

(3) **Organization of records.** The commission will maintain its records in a reasonably organized manner. The commission will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the commission records from the commission offices. A variety of records is available on the commission web site.

Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the commission shall make the request ~~((in writing on the commission's request form, or by letter, fax, or e-mail addressed to the public records officer and including))~~ by contacting the public disclosure officer at the office of superintendent of public instruction:

Office of Superintendent of Public Instruction
Attn: Public Disclosure Officer
Old Capital Building, 600 S. Washington
P.O. Box 47200
Olympia, WA 98504-7200
Phone: 360-725-6372
Fax: 360-753-4201
publicrecordsrequest@k12.wa.us.

and include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Adequate identification of the public records for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) No fee shall be charged for the inspection of public records. The commission may impose a reasonable charge for providing copies of public records; those charges shall not exceed the amount necessary to reimburse the commission for actual costs incident to such copying. When subject to reasonable charge, no public records will be released until and unless the requestor has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

~~((e) A form is available for use by requestors at the office of the public records officer and online at the commission's web site.))~~

WSR 16-21-082
PROPOSED RULES
BOARD OF INDUSTRIAL
INSURANCE APPEALS

[Filed October 18, 2016, 11:09 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 263-12 WAC, Practice and procedures before the board of industrial insurance appeals.

Hearing Location(s): Board of Industrial Insurance Appeals, Main Conference Room, 2430 Chandler Court S.W., Olympia, WA 98502, on December 1, 2016, at 9:00 a.m.

Date of Intended Adoption: December 2, 2016.

Submit Written Comments to: Brian O. Watkins, P.O. Box 42401, Olympia, WA 98502, e-mail brian.watkins@biaa.wa.gov, fax (855) 586-5611, by November 21, 2016.

Assistance for Persons with Disabilities: Contact Chuck McCullough by November 21, 2016, TTY (360) 753-6823 ext. 1130.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 263-12-01501, this amendment deletes the facsimile page limit, which the agency has determined is no longer needed. It also adds language to codify what has happened in practice; failure of a party to comply with filing requirements may prevent consideration of the communication.

Amendments to WAC 263-12-020, these amendments clarify and codify the agency's current practice regarding individuals permitted to appear and participate in proceedings. An attorney who has been disciplined, suspended, or resigns in lieu of discipline, for any reason must request permission to practice in advance. A process to certify compliance for a nonunion lay representative in an industrial insurance claim appeal is created. The phrase "lay representative" also includes nonattorneys who appear for employers and retrospective rating groups. A description of individuals permitted to represent the department of labor and industries in proceedings has been added. Any party may be represented by a legal intern licensed in compliance with Washington admission to practice rule 9. Finally, employee representatives appearing in Washington Industrial Safety and Health Act (WISHA) appeals may receive compensation.

Amendments to WAC 263-12-059, this amendment allows the agency to waive the appeal-worksite-posting requirement if an employer shows posting of the appeal is impossible or infeasible. A provision allowing for this type of waiver existed in the pre-2014 version of the rules but was inadvertently removed during 2014 rule making. This section is also amended to correct a scrivener's error in the numbering of the provisions in subsection (4).

Amendments to WAC 263-12-095, a typographical error in subsection (2) is corrected. The section addressing a party's failure to provide information sufficient to schedule a hearing is amended to reflect the board's or an industrial appeals judge's discretionary authority.

Amendments to WAC 263-12-116, these amendments support our transition to an electronic appeal process by defining the format for a media (audio or video) exhibit. Formatting changes have been made to improve readability and specific direction. A new subsection is added to address issues arising from recent public records requests in appeals under WISHA, (chapter 49.17 RCW). Parties need to identify, at the time of submission, exhibits that implicate trade secret protection provided by the Uniform Trade Secrets Act

(chapter 19.108 RCW) and possible exemption from disclosure under RCW 42.56.270.

Amendments to WAC 263-12-117, these amendments support our transition to an electronic appeal file process and reflect the statutory limitation on what constitutes the agency's official record. Perpetuation depositions, court reporter transcription certification and exhibits must be filed electronically, through a portal on the agency's web site. Previously, electronic filing of exhibits had been permissive. The electronic deposition format must be searchable, and media (audio or video) exhibits must conform to the MP4 format standard. Video depositions will not be considered because RCW 51.52.100 requires oral testimony to be stenographically reported and transcribed.

Amendments to WAC 263-12-118, this amendment allows nondispositive motions to be heard on a conference notice rather than as formal hearings requiring a hearing notice. Written motions must clearly identify the action requested on the first page of a submission.

Amendments to WAC 263-12-145, this amendment requires a petition for review of a proposed decision and order be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" on the first page of the submission. The remaining sections are renumbered because a new subsection has been added.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 51.52.020.

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

Name of Proponent: Board of industrial insurance appeals, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian O. Watkins, 2430 Chandler Court S.W., Olympia, WA 98502, (360) 753-6823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact or financial issue in the amendments being made or in the new proposed rules. The amendments and new rules are to clarify procedural rules relating to administrative hearings.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not legislative. They relate to procedures related to agency hearings or clarify a rule without changing its effect.

October 18, 2016
Brian O. Watkins
Executive Secretary

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-01501 Communications and filing with the board. (1) **Where to file communications with the board.** Except as provided elsewhere in this section all written communications shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the

appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's web site.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

~~(iv) ((Written communication should not exceed fifteen pages in length, exclusive of the cover page required by this rule.~~

~~(v))~~ The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

~~((v))~~ (v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's web site.

Communication sent by e-mail will not constitute or accomplish filing. Communication filed using the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's web site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution structured settlement agreement.** An application for approval of claim resolution structured settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement agreement as provided on the board's web site. An electronic application for approval of claim resolution structured settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement agreement has been received. An electronic copy of the signed agreement for claim resolution structured settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(6) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-020 Appearances of parties before the board. (1) **Who may appear?** Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by a representative as described in subsections (3) and (4) of this section.

(2) **Who must obtain approval prior to representing a party?** A person who is disbarred, resigns in lieu of discipline, or is presently suspended from the practice of law (~~(for disciplinary reasons)~~) in any jurisdiction, or has previously been denied admission to the bar in any jurisdiction for reasons other than failure to pass a bar examination, shall not represent a party without the prior approval of the board. A written petition for approval shall be filed sixty calendar days prior to any event for which the person seeks to appear as a representative. The board may deny any petition that fails to demonstrate competence, moral character, or fitness.

(3) **Who may represent a party?**

(a) A worker or beneficiary may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative so long as the person does not charge a fee (~~and~~), is not otherwise compensated for the representation except as provided in (a)(iv) of this subsection, and files a declaration or affidavit with the board certifying compliance with this rule. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(iv) A (~~person~~) lay representative employed by the worker's labor union whose duties include handling industrial insurance matters for the union, provided the person files a declaration or affidavit with the board certifying this status. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(v) Any lay representative seeking to represent a worker or beneficiary who has not provided the certification required under (a)(iii) and (iv) of this subsection will be excluded from serving as a worker's or beneficiary's representative.

(b) An employer or retrospective rating group may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative who is an employee of the employer or retrospective rating group.

(iv) A firm that contracts with the employer or retrospective rating group to handle matters pertaining to industrial insurance.

(c) The department of labor and industries may be represented by:

(i) An attorney employed as assistant attorney general or appointed as a special assistant attorney general.

(ii) A paralegal supervised by an assistant attorney general or special assistant attorney general.

(iii) An employee of the department of labor and industries designated by the director, or his or her designee, in a claim resolution structured settlement agreement under RCW 51.04.063.

(d) A licensed legal intern may represent any party consistent with Washington state admission to practice rule 9(c).

(4) Appeals under the Washington Industrial Safety and Health Act.

(a) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(c) A lay representative appearing on behalf of an employee or an employee representative in an appeal under the Washington Industrial Safety and Health Act is not subject to the compensation restrictions of subsection (3) of this section.

(5) May a self-represented party be accompanied by another person? Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures. If the lay person is also a witness to the proceeding, the industrial appeals judge may exclude the lay person from the proceeding as provided by Evidence Rule 615.

(6) Assistance by the industrial appeals judge. Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure to be followed and the issues involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(7) How to make an appearance.

(a) Appearance by employer representative. Within fourteen days of receipt of an order granting appeal, any representative of an employer or retrospective rating group must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(b) Appearances by a worker or beneficiary representative shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(8) Notice to other parties.

(a) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(b) The board will serve all of its notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(9) Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal is subject to approval by the industrial appeals judge or the executive secretary. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(10) Conduct. All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand.

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges.

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the appeal(s).

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board for action consistent with (b) of this subsection.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act; contents of notice of appeal; notice to affected employees; request for stay of abatement pending appeal. (1) **Contents of notice of appeal in WISHA appeals.** In all appeals arising under the Washington Industrial Safety and Health Act, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any.

(b) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or notice of abatement date.

(c) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s). If the employer has no affected employees who are members of a union, the employer shall affirmatively certify that no union employees are affected by the appeal.

(d) The reason why the appealing party considers such order or decision, to be unjust or unlawful.

(e) A statement of facts in full detail in support of each stated reason.

(f) The specific nature and extent of the relief sought.

(g) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.

(h) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.

(i) The signature of the appealing party or the party's representative.

In all appeals where a stay of abatement of alleged violation(s) pending appeal is requested, the notice of appeal must comply with additional requirements set forth in subsection (3) of this section.

(2) Employer duty to notify affected employees.

(a) In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either:

(i) Providing copies of the appeal to each employee member of the employer's safety committee; or

(ii) By posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

(b) The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

(c) The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of issuance of the board's notice of filing of appeal. A certification form is provided on the board's web site.

(d) If notice as required by this subsection is not possible or has not been satisfied, the employer shall notify the board in writing of the reasons for noncompliance or impossibility. If the board, or its designee, determines that it is not possible for the employer to provide the required notice to employees, it will prescribe the terms and conditions of a substitute procedure reasonably calculated to give notice to affected employees, or may waive the affected-employee-notice requirement. If the employer requests a stay of abatement pending appeal, and desires to assert the claim of impossibility of notice to employees, the employer must include its claim of impossibility, together with facts showing impossibility, in its notice of appeal.

(3) Request for a stay of abatement in WISHA appeals.

(a) **How made.** Any request for stay of abatement pending appeal must be included in the notice of appeal. An employer may request a stay of abatement pending appeal by placing "STAY OF ABATEMENT REQUESTED" prominently on the first page of the notice of appeal in bold print. The board will issue a final decision on such requests within forty-five working days of the board's notice of filing of appeal.

(b) Union information.

(i) **Appeals from corrective notice of redetermination.** In appeals where the employer has requested a stay of abatement of the violation(s) alleged in the corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall affirmatively inform the board that no union employees are affected by the appeal.

(ii) **Appeals from citation and notice.** Where an employer files an appeal from a citation and notice and the department of labor and industries chooses to forward the appeal to the board to be treated as an appeal to the board, the employer shall provide the board with the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall inform the board that no union employees are affected by the appeal. The employer shall provide this information to the board within fourteen days of the date of the board's notice of filing of appeal.

(c) **Supporting and opposing documents.**

(i) **Supporting documents.** In appeals where the employer has requested a stay of abatement pursuant to RCW 49.17.140, the employer shall, within fourteen calendar days of the date of the board's notice of filing of appeal, file with the board supporting declarations, affidavits, and documents it wishes the board to consider in deciding the request. The employer must also simultaneously provide supporting documents to the department and any affected employees' safety committee or union representative. Supporting affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(ii) **Opposing documents.** Within twenty-eight calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file with the board any declarations, affidavits, and documents they wish the board to consider in deciding the request. The department must also simultaneously serve these opposing documents on the employer and any affected employees' safety committee or representative. The employees must also simultaneously serve the opposing documents on the employer and the department. Supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(4) **Denial of request to stay abatement.** If any of the following procedural or substantive grounds are present, the board will deny the request for a stay of abatement pending appeal:

(a) The request for stay of abatement is not contained in the employer's notice of appeal as required by RCW 49.17.-140 (4)(a).

(b) The employer fails to include union information as required in subsection (3)(b) of this section.

(c) The employer fails to timely file a certification that its employees have been notified about the appeal and the request for stay of abatement as required in subsection (2) of this section.

~~((e))~~ (d) The employer fails to file supporting documents within fourteen calendar days of the issuance of the board's notice of filing of appeal as required in subsection (3)(c)(i) of this section.

~~((f))~~ (e) The request is moot.

~~((g))~~ (f) The only violation alleged by the department of labor and industries is a general violation.

~~((h))~~ (g) The employer fails to show good cause for a stay of abatement in its supporting documents.

~~((i))~~ (h) The preliminary evidence shows it is more likely than not that a stay would result in death or serious physical harm to a worker.

(5) **Expedited nature of requests to stay abatement/requests to enlarge time.** Requests to stay abatement pending appeal must be decided in accordance with a strict statutory timeline. Oral argument will not be permitted. The board will grant requests to enlarge time to file documents or certifications only after receipt of a written motion with supporting affidavit filed with the board and all other parties before the filing deadline and only upon a showing of good cause.

AMENDATORY SECTION (Amending WSR 00-23-021, filed 11/7/00, effective 12/8/00)

WAC 263-12-095 Conference procedures. (1) **Scheduling information.** If no agreement is reached by the parties as to the final disposition of an appeal, the industrial appeals judge presiding at a settlement conference may direct that the appeal be assigned to an industrial appeals judge for the purpose of scheduling and conducting a hearing in the appeal. Any industrial appeals judge assigned to conduct proceedings in an appeal, or his or her designee may elicit from the parties such information as is necessary and helpful to the orderly scheduling of hearing proceedings and as may aid in expediting the final disposition of the appeal.

(2) **Prehearing matters.** At any proceeding a stipulation of facts may be obtained to show the board's jurisdiction in the matter. In addition, agreement as to the issues of law and fact presented and the simplification or limitation thereof may be obtained. The industrial appeals judge may also determine: (a) The necessity of amendments to the notice of appeal or other pleadings; (b) the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; (c) the admissibility of exhibits; (d)

a stipulation as to all or part of the facts in the case; (e) obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible, the place or places where hearings will be required, the approximate time necessary for the presentation of the evidence of the respective parties, and all other information which may aid in the prompt disposition of the appeal; (f) the limitation of the number of witnesses; (g) the need for interpretive services; (h) exchange of medical and vocational reports and other relevant documents; (i) receive and rule on motions pertaining to ~~((pre-hearing))~~ prehearing discovery. These include motions by a party for a vocational evaluation of a claimant which may be granted upon a showing of surprise which ordinary prudence could not have guarded against or upon an equivalent showing of circumstances constituting good cause and upon notice to all parties of the time, place, manner, conditions, and scope of the evaluation and the person or persons by whom it is to be made, provided that the industrial appeals judge shall impose all conditions necessary to avoid delay and prejudice in the timely completion of the appeal.

(3) **Record of results of conferences.** The results of any conferences shall be stated on the record. The record may be a transcript of the proceeding, a judge's report of proceedings, and/or written interlocutory order. The record shall include, where applicable, agreements concerning issues, admissions, stipulations, witnesses, time and location of hearings, the issues remaining to be determined, and other matters that may expedite the hearing proceedings. The statement of agreement and issues, and rulings of the industrial appeals judge, shall control the subsequent course of the proceedings, subject to modification by the industrial appeals judge or by interlocutory review pursuant to WAC 263-12-115(6).

(4) **Failure to supply information.** If any party fails to supply the information reasonably necessary to schedule the hearing in a case, the board or the industrial appeals judge may suspend setting a hearing pending receipt of the required information, ~~((or may))~~ impose ~~((such))~~ conditions upon the presentation of evidence by the defaulting party as may be deemed appropriate, or take other appropriate action as authorized by these rules and the law.

(5) **Admissibility of matters disclosed at conference.** If no agreement of the parties is reached resolving all issues presented, no offers of settlement, admissions, or statements made by any party shall be admissible at any subsequent proceeding unless they are independently admissible therein.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-116 Exhibits. (1) Whenever possible, exhibits should be submitted on paper 8 1/2" x 11" in size. A larger version may be shown to the judge or witness for purpose of demonstration and a smaller version marked and offered as the exhibit.

(2) Exhibits containing audio, video, or other electronic material may be submitted on a CD, DVD, flash drive, or similar device, subject to the following conditions:

((*) (a) The party seeking to present the audio/video/electronic material at a hearing must provide the appropriate equipment for hearing/viewing the material.

((*) (b) If the party submitting the material for presentation at a hearing does not provide the equipment needed, the material will not be heard or viewed during the hearing, but the exhibit may be marked into evidence and ruling reserved.

(c) A media exhibit must be in MP4 (MPEG-4 Part 14) format or other industry format specified on the BIIA web site.

(3) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that:

(a) Threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics.

(b) Threatens the security of the board's electronic equipment or network. Nonexclusive examples of hazardous exhibits include:

- Biohazards (bodily fluid samples, bloody clothing).
- Used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices).
- Corrosive or toxic substances.
- Controlled substances (prescription drugs).
- Potential airborne contaminants (asbestos, silica).
- Flammable, explosive, or reactive materials.
- Live ammunition, firearms, knives, and other weapons.

(4) Photographs, videotapes, or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristics of hazardous evidence consistent with this rule.

(5) If a party is uncertain whether a proposed exhibit conforms to this rule or is not able to bring the necessary equipment to the hearing, that party must request a conference with the judge at least fourteen days before submitting the exhibit, asking the judge to make a determination of conformity or to provide assistance in making the exhibit accessible at the proceeding.

(6) If an exhibit submitted in an appeal under the Washington Industrial Safety and Health Act (chapter 49.17 RCW) implicates a trade secret as set forth in chapter 19.108 RCW, the employer must bring it to the attention of an industrial appeals judge at the time of submission or within a reasonable time thereafter to permit a ruling on the confidentiality of the information and application of RCW 49.17.200 and WAC 263-12-115(5).

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

- (a) The complexity of the issues raised by the appeal;
- (b) The desirability of having the witness's testimony presented at a hearing;
- (c) The costs incurred by the parties in complying with the ruling; and

(d) The fairness to the parties in complying with the ruling.

(2) **Telephone depositions:** When testimony is taken by perpetuation deposition, it may be taken by telephone if all parties agree. For good cause the industrial appeals judge may permit the parties to take the testimony of a witness by telephone deposition over the objection of a party after weighing the following nonexclusive factors:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives.

(4) The party filing a deposition must submit the steno-graphically reported and transcribed deposition, certification, and exhibits in both a written format ~~((as well as))~~ and an electronic format in accordance with procedures established by the board. The following requirements apply to the submission of depositions:

(a) Video depositions will not be considered as part of the record on appeal;

(b) The electronic deposition must be submitted in searchable PDF format;

(c) Exhibits to the deposition ~~((do not have to be filed electronically but))~~ must be filed electronically as a single attachment separate from the deposition transcript and certification;

(d) A legible ~~((hard))~~ paper copy of all exhibits must accompany the paper ~~((transcription of the))~~ deposition ~~((:))~~ transcript;

(e) Any media exhibit (audio or video) must meet the requirements set forth in WAC 263-12-116; and

(f) If the deposition is not transcribed in a reproducible format or properly submitted it may be excluded from the record.

(5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived.

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition.

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge.

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order.

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-118 Motions. (1) **Definition.** A party's written or oral request for the board to take action on a pending appeal is a "motion." Motions must be in writing unless made during a hearing before an industrial appeals judge. The board recognizes that there are two basic categories of motions:

(a) **Nondispositive motions.** Nondispositive motions include procedural motions, such as motions for a continuance, an extension of time, or to reopen the record; and discovery motions, such as motions *in limine* or motions to compel or request sanctions.

(b) **Dispositive motions.** Dispositive motions ask for a decision on one or more of the issues in an appeal or to dismiss the appeal. Examples of dispositive motions are motions to dismiss or motions for summary judgment. See WAC 263-12-11801.

(2) **Motions made to the executive secretary.** The procedural rules in subsections (3) through (6) of this section do not apply to motions made to the executive secretary for consideration by the three-member board:

(a) Motions for stay of the order on appeal under RCW 51.52.050 (2)(b). (See WAC 263-12-11802.)

(b) Motions to reconsider or vacate final board orders. (See WAC 263-12-156.)

(c) Motions to set reasonable attorneys' fees under RCW 51.52.120. (See WAC 263-12-165.)

(d) Requests for a stay of abatement pending appeal under RCW 49.17.140 (4)(a) in appeals filed under the Washington Industrial Safety and Health Act. (See WAC 263-12-059.)

~~(3) **Written motions ~~((must be filed separately))~~.** ~~((Parties must file motions separately from any pleading or other communication with the board. If a motion is contained in another pleading, the first page must clearly indicate in bold print that a motion is contained therein.))~~ A written motion must identify the action requested on the first page in bold print. See WAC 263-12-01501 ~~((+)(a))~~ for other information about ~~((motions that must be filed with the board at its headquarters in Olympia))~~ communication and filing.~~

(4) **Oral motions.** Any party may bring an oral motion during a hearing, unless prohibited from doing so at the industrial appeals judge's discretion. The industrial appeals judge may provide an opportunity for other parties to respond to any oral motion. The industrial appeals judge may require that an oral motion also be submitted in writing and may provide an opportunity for written response.

(5) **Responses to nondispositive motions.** Any party who opposes a written nondispositive motion may file a written response within five business days after the motion is

served, or may make an oral or written response at such other time as the industrial appeals judge may set.

(6) Argument.

(a) Nondispositive motions. All nondispositive motions will be ruled on without oral argument, unless ~~((oral argument))~~ it is requested by the parties and approved by the industrial appeals judge, or at the discretion of the industrial appeals judge. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" prominently on the first page of the motion or responsive pleading. The time and date for ~~((hearing on the motion))~~ oral argument shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge. Written notice shall be mailed not less than seven calendar days prior to the date set for oral argument, unless waived by the parties.

(b) Dispositive motions. See WAC 263-12-11801.

AMENDATORY SECTION (Amending WSR 00-23-021, filed 11/7/00, effective 12/8/00)

WAC 263-12-145 Petition for review. (1) Time for filing. Within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record, any aggrieved party may file with the board a written petition for review. When a petition for review is filed, the failure of any party not aggrieved by the proposed decision and order to file a petition for review shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) A petition for review must be filed separately. A petition for review must be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" prominently on the first page of the submission.

(3) Extensions of time. The board may extend the time for filing a petition for review upon written request of a party filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record. Such extension of time, if granted, will apply to all parties to the appeal. Further extensions of time beyond any initial extension may be allowed only if (a) an application for further extension is filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record or (b) the board, on its own motion or at the request of a party, acts to further extend the time for filing a petition for review before the prior extended time for filing a petition for review has expired.

~~((3))~~ **(4) Contents.** A petition for review shall set forth in detail the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The board shall, at the

request of any party, provide a copy of the transcript of testimony and other proceedings at the hearing. The requesting party shall sign an ~~((acknowledgement))~~ acknowledgment that receipt of the transcript of proceedings shall constitute compliance by the board with any statute requiring service on the party of a certified copy of the testimony.

~~((4))~~ **(5) Action by board on petition for review.** (a) After receipt of a petition for review, the board shall enter an order within twenty days either: (i) Denying the petition for review, in which case the proposed decision and order shall become the final order of the board, or (ii) granting the petition for review, in which case the board shall within one hundred and eighty days from the date the petition for review was filed issue a final decision and order based upon its review of the record. (b) After twenty days of receipt. If a petition for review is not acted upon by the board it shall be deemed to have been granted. (c) Remands for further hearing.

After review of the record, the board may set aside the proposed decision and order and remand the appeal to the hearing process, with instructions to the industrial appeals judge to whom the appeal is assigned on remand, to dispose of the matter in any manner consistent with chapter 263-12 WAC.

~~((5))~~ **(6) Reply to petition for review.** Any party may, within ten days of receipt of the board's order granting review, submit a reply to the petition for review, a written brief, or a statement of position regarding the matters to which objections were made, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters to which objections were made, within such time and on such terms as may be prescribed.

WSR 16-21-085
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 18, 2016, 12:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-121.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC sections to implement annual adjustments to standards for the Washington basic food program, including WAC 388-450-0185, 388-450-0190, 388-450-0195, and 388-478-0060.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on November 22, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 23, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU

RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., November 22, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 8, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments increase the basic food standard deduction for one to three persons to \$157, increases the maximum shelter deduction to \$517, decreases the standard utility allowance (SUA) to \$411, decreases the limited utility allowance (LUA) to \$319, and decreases the telephone utility allowance (TUA) to \$57. The proposed amendments also increase the maximum gross monthly income and maximum net monthly income limit for household that are not categorically eligible for basic food, and increases the one hundred sixty-five percent federal poverty level standard.

Reasons Supporting Proposal: The proposed amendments adopt basic food standards for federal fiscal year (FY) 2017 in order to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS), per Supplemental Nutrition Assistance Program (SNAP) Administrative Notice 16-38: SNAP - FY 2017 cost-of-living adjustments (COLAS) dated August 12, 2016. The amendments update basic food standards for federal FY 2017 to comply with requirements of the United States Department of Agriculture, FNS (FNS7 C.F.R. § 273.9 (d)(iii)(B), and update the basic food SUA, LUA and TUA used to comply with SNAP 10-6-WA-SUA dated August 15, 2016.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.9. Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, Community Services Division, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. They only impact DSHS clients.

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 13, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to

requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

~~(2)~~ Under these federal laws ~~((allow us to))~~, we subtract ~~((only))~~ the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

~~((+))~~ **(a)** A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	((155)) <u>\$157</u>
2	((155)) <u>\$157</u>
3	((155)) <u>\$157</u>
4	\$ 168
5	\$ 197
6 or more	\$ 226

~~((2))~~ **(b)** Twenty percent of your AU's gross earned income (earned income deduction);

~~((3))~~ **(c)** Your AU's expected monthly dependent care expense needed for an AU member to:

~~((a))~~ **(i)** Keep work, look for work, or accept work;

~~((b))~~ **(ii)** Attend training or education to prepare for employment; or

~~((c))~~ **(iii)** Meet employment and training requirements under chapter 388-444 WAC~~((-))~~;

~~((4))~~ **(d)** Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200~~((-))~~; and

~~((5))~~ **(e)** A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as ~~((an))~~ allowable ~~((cost))~~ shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 ~~((1))~~ (2)(a) through ~~((4))~~ (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of five hundred ~~((four))~~ seventeen dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred ~~((four))~~ seventeen dollars.

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

- (a) Monthly benefits under WAC 388-492-0070 if you receive ~~((WASHCAP))~~ Washington state combined application project (WASHCAP); or
- (b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

- (2) ~~((For basic food, "utilities" include the following:~~
- ~~(a) Heating or cooling fuel;~~
 - ~~(b) Electricity or gas;~~
 - ~~(c) Water;~~
 - ~~(d) Sewer;~~
 - ~~(e) Well installation/maintenance;~~
 - ~~(f) Septic tank installation/maintenance;~~
 - ~~(g) Garbage/trash collection; and~~
 - ~~(h) Telephone service.~~

~~((3)))~~ We use the amounts ~~((below))~~ in this subsection if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs **or** receives more than twenty dollars in low income home energy assistance ~~((Aet (LIHEEA)))~~ program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred ~~((twenty))~~ eleven dollars.

(b) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection ~~((2))~~ (3) of this section, you get a limited utility allowance (LUA) of three hundred ~~((forty))~~ nineteen dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of ~~((sixty-five))~~ fifty-seven dollars.

- (3) "Utility costs" include the following:
- (a) Heating or cooling fuel;
 - (b) Electricity or gas;
 - (c) Water;
 - (d) Sewer;
 - (e) Well installation/maintenance;
 - (f) Septic tank installation/maintenance;
 - (g) Garbage/trash collection; and
 - (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in column B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE ~~((10/1/2015))~~ 10/1/2016

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$ ((1,276)) <u>1,287</u>	\$ ((981)) <u>990</u>	\$ 194	\$ ((1,619)) <u>1,634</u>
2	((1,726)) <u>1,736</u>	((1,328)) <u>1,335</u>	357	((2,191)) <u>2,203</u>
3	((2,177)) <u>2,184</u>	((1,675)) <u>1,680</u>	511	((2,763)) <u>2,772</u>
4	((2,628)) <u>2,633</u>	((2,021)) <u>2,025</u>	649	((3,335)) <u>3,342</u>
5	((3,078)) <u>3,081</u>	((2,368)) <u>2,370</u>	771	((3,907)) <u>3,911</u>

EFFECTIVE ((10/1/2015)) 10/1/2016

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
6	((3,529)) <u>3,530</u>	2,715	925	((4,479)) <u>4,480</u>
7	3,980	3,061	1,022	5,051
8	4,430	3,408	1,169	5,623
9	4,881	3,755	1,315	6,195
10	5,332	4,102	1,461	6,767
Each Additional Member	+451	+347	+146	+572

(2) Exceptions:

((4)) (a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We ((~~do~~)) budget your AU's income to decide the amount of basic food your AU will receive.

((2)) (b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C ((~~only~~)) of subsection (1) of this section.

((3)) (c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

((4)) (d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

Date of Intended Adoption: Not earlier than November 23, 2016.

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 5:00 p.m., November 22, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change is necessary in order to be consistent with federal requirements for LIHEAP under the WASHCAP project renewal.

Reasons Supporting Proposal: Refer to Purpose above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090, 74.04.500, 74.08A.010, 74.08A.903, Food and Nutrition Act of 2008 (P.L. 110-246, 7 U.S.C.) as amended by P.L. 113-79.

Rule is necessary because of federal law, Title 7 C.F.R. Part 273.

Name of Proponent: DSHS, 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. The proposed rule does not impact small businesses or nonprofits. They only impact DSHS clients.

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 14, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-22-076, filed 11/3/14, effective 1/1/15)

WAC 388-400-0047 ((Am I eligible for)) What is the heat and eat program and are you eligible? (1) What is the heat and eat program?

WSR 16-21-086
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 18, 2016, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-143.

Title of Rule and Other Identifying Information: The department is amending WAC 388-400-0047 Am I eligible for the heat and eat program?, the department proposes adding the Washington combined application project (WASH-CAP) population to the heat and eat program to be consistent with federal requirements for the low income energy assistance program (LIHEAP) under the WASHCAP project renewal.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on November 22, 2016, at 10:00 a.m.

(a) The heat and eat program is a special energy assistance program for certain assistance units (~~(receiving)~~) that receive basic food, Washington combined application project (WASHCAP), or the food assistance program for legal immigrants (FAP).

(b) An assistance unit (AU) in heat and eat program receives up to (~~(\$20.01)~~) twenty dollars and one cent in federal low income home energy assistance program (LIHEAP) benefits. This LIHEAP benefit makes the AU eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(2) If you receive WASHCAP, you will get LIHEAP and your AU is eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(3) Is (~~my~~) you assistance unit eligible for heat and eat?

Your AU is eligible for heat and eat if you meet all of the following:

(a) You receive at least (~~(\$1)~~) one dollar in basic food or FAP benefits(~~;~~) prior to any recoupments;

(b) (~~You do not receive WASHCAP;~~

(~~e~~)) You do not receive transitional food assistance (TFA);

(~~(d))~~ (c) You are not eligible for the standard utility allowance (SUA) under WAC 388-450-0195 based on having out of pocket costs for heating or cooling;

(~~(e))~~ (d) You have not received a regular LIHEAP benefit amount of more than twenty dollars in the past twelve months; and

(~~(f))~~ (e) You **do not** receive the maximum allotment for your AU size under WAC 388-478-0060 without using the SUA.

(~~(3))~~ (4) How do (~~(f)~~) you receive heat and eat?

(a) If you are eligible for heat and eat, we deposit the benefit on your EBT card.

(b) The heat and eat benefit is good for twelve months.

(c) After twelve months, we look at your circumstances to see if you are still eligible for heat and eat.

(~~(4))~~ (5) How do (~~(f)~~) you apply for heat and eat?

(a) You do not apply for heat and eat.

(b) We will determine if your AU is eligible to receive heat and eat and automatically provide the benefit to you (~~(the benefit)~~).

dards for the Washington combined application project (WASHCAP). These changes are necessary to ensure that the project remains cost neutral with Supplemental Nutrition Assistance Program (SNAP) benefits provided under the Washington basic food program.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on November 22, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 23, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., November 22, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 8, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As required by the demonstration project waiver with the United States Department of Agriculture Food and Nutrition Service (FNS), the department will review the cost neutrality between WASHCAP and basic food. Based on the findings of this evaluation, the department may amend WAC 388-492-0040 and 388-492-0070 to ensure that WASHCAP benefits are cost neutral to SNAP.

Reasons Supporting Proposal: The United States Department of Agriculture, FNS enforces the provisions of the federal SNAP as enacted in the 2008 Food and Nutrition Act and codified in the Code of Federal Regulations. The department will develop amendments to WASHCAP rules that are consistent with the act, federal regulations, and our approved WASHCAP demonstration project waiver while ensuring cost neutrality of the program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 282.1.

Rule is necessary because of federal law, 7 C.F.R. 273.1(a).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, Community Services Division, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. They only impact DSHS clients.

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 13, 2016
Katherine I. Vasquez
Rules Coordinator

WSR 16-21-087
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 18, 2016, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-072.

Title of Rule and Other Identifying Information: The department is amending WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or basic food benefits? and 388-492-0070 How are my WASHCAP food benefits calculated?, to implement annual adjustments to stan-

AMENDATORY SECTION (Amending WSR 07-12-025, filed 5/29/07, effective 6/29/07)

WAC 388-492-0040 ~~((Can))~~ **May I choose whether I get WASHCAP food benefits or basic food benefits?** You ~~((ean))~~ may choose to have basic food benefits instead of ~~((WASHCAP))~~ Washington state combined application project (WASHCAP) food benefits when one or more of the following apply:

- (1) Your allowable out-of-pocket medical expenses are more than thirty-five dollars a month;
- (2) You chose to have basic food benefits instead of WASHCAP benefits prior to April 25, 2005 and have remained WASHCAP eligible continuously since April 25, 2005; ~~((or))~~
- (3) Your food benefits under basic food would be at least forty dollars more ~~((due to excess shelter costs under WAC 388-450-0190 (1)(a) through (e) or legally obligated child support payments))~~ than what you receive from WASHCAP.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-492-0070 **How are my WASHCAP food benefits calculated?** We calculate your Washington state combined application project (WASHCAP) food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA)~~((s))~~ unless you report a change as described under WAC 388-492-0080. ~~((If you pay:))~~
- (a) If you pay three hundred twenty dollars or more a month for shelter, we use four hundred dollars as your shelter cost~~((; or))~~.
- (b) If you pay less than three hundred twenty dollars a month for shelter, we use two hundred and ~~((ten))~~ thirty-five dollars as your shelter cost~~((; and))~~.
- (c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either subsection (3)(a) or (b) of this section to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
- (6) We figure your WASHCAP food benefits (allotment) by:
 - (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
 - (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
- ~~((or))~~ (7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

WSR 16-21-088

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed October 18, 2016, 1:55 p.m.]

WAC 246-919-435, proposed by the department of health in WSR 16-08-106, appearing in issue 16-08 of the Washington State Register, which was distributed on April 20, 2016, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-21-089

PROPOSED RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed October 18, 2016, 2:40 p.m.]

Supplemental Notice to WSR 16-08-106.

Preproposal statement of inquiry was filed as WSR 14-21-030.

Title of Rule and Other Identifying Information: New WAC 246-919-435 Training in suicide assessment, treatment, and management, for allopathic physicians. This is a supplemental proposal to proposed rules filed as WSR 16-08-106 on April 5, 2016.

Hearing Location(s): Capital Event Center, Educational Service District (ESD) 113, 6005 Tyee Drive S.W., Tumwater, WA 98512, (360) 464-6700, on December 1, 2016, at 8:30 a.m.

Date of Intended Adoption: December 1, 2016.

Submit Written Comments to: Daidria Underwood, P.O. Box 47866, Olympia, WA 98504-7866, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by November 23, 2016.

Assistance for Persons with Disabilities: Contact Daidria Underwood by November 23, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 2315, chapter 71, Laws of 2014, requires allopathic physicians (among other professions) to complete a one-time, six hour training in suicide assessment, treatment, and management. Chapter 249, Laws of 2015 (ESHB 1424) revised the requirement date and the proposed rule incorporates that change as well. The proposed rule also incorporates an allowance in ESHB 1424 for the medical quality assurance commission (commission) to exempt certain licensed physicians from the training. Supplemental: The original proposed rules defined brief or limited patient contact. As a result of public comment the commission decided not to define the term, but to allow physicians to determine whether they have brief or limited patient contact. This change is reflected in proposed rule language as part of this supplemental.

Reasons Supporting Proposal: The proposed rules implement suicide prevention training as required in ESHB 2315 and 1424. Supplemental: Based on public comment, the commission decided not to define brief or limited and now simply states the commission will exempt any licensed physician assistant provided they have brief or limited patient contact, or no patient contact. The supplemental also addresses the situation where a physician is exempt but subsequently has more than brief or limited patient contact; a physician must then complete the training during the first full reporting period after the exemption no longer applies.

Statutory Authority for Adoption: RCW 18.71.017.

Statute Being Implemented: RCW 43.70.442 and 18.71.-080.

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

Name of Proponent: Medical quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Daidria Underwood, 111 Isreal [Israel] Road S.E., Tumwater, WA 98501, (360) 236-2727; Implementation and Enforcement: Melanie de Leon, 111 Isreal [Israel] Road S.E., Tumwater, WA 98501, (360) 236-2755.

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 Daidria Underwood, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, e-mail daidria.underwood@doh.wa.gov.

October 18, 2016
Melanie de Leon
Executive Director

NEW SECTION

WAC 246-919-435 Training in suicide assessment, treatment, and management. (1) A licensed physician, other than a resident holding a limited license issued under RCW 18.71.095(3), must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

(3) Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.

(4) Beginning July 1, 2017, the training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

(5) The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

(6) The commission exempts any licensed physician from the training requirements of this section if the physician has only brief or limited patient contact, or no patient contact.

WSR 16-21-091

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-16—Filed October 18, 2016, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-082.

Title of Rule and Other Identifying Information: Prescription drug benefit disclosures.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA, on November 22, 2016, at 3:00 p.m.

Date of Intended Adoption: November 23, 2016.

Submit Written Comments to: Jim Freeburg, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 22, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 18, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule clarifies the prescription drug benefit disclosure requirements for health carriers to make them easier to understand. The rule also clarifies that drugs covered under the medical benefit are included within the definition of the formulary.

Reasons Supporting Proposal: Additional clarity is needed so that consumers are fully aware of their prescription drug benefits and the rights available to them regarding those benefits.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.510.

Statute Being Implemented: RCW 48.43.510.

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

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

Name of Agency Personnel Responsible for Drafting: Jim Freeburg, P.O. Box 40255, Olympia, WA 98504, (360) 725-7170; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504, (360) 725-7117; and Enforcement: AnnaLisa Gellerman [Gellermann], P.O. Box 40255, Olympia, WA 98504, (360) 725-7037.

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

issuers that must comply with the rule are not small businesses, pursuant to chapter 19.85 RCW. In addition, the requirements embodied in these proposed rules do not represent any significant increase in regulatory standards from that which is currently in place.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule (R 2016-16) primarily eliminates former WAC 284-43-5040 and reincorporates its provisions in WAC 284-43-5170. The new amendments to WAC 284-43-5170 represent nonsubstantive changes and clarifications from those originally found in WAC 284-43-5040. The one other rule change proposed in this rule making is an amendment to WAC 284-43-0160(11). It adds a clarifying requirement that "a formulary must include drugs covered under an enrollee's medical benefit." This seemingly new requirement also is nonsubstantive; it essentially restates the obvious implication found in several related WAC sections, notably WAC 284-43-5642 (6)(f), 284-43-5170(2), 284-43-1020(5), and 284-43-1100(3) (and similar provisions elsewhere).

Because this proposed rule fits under the definition provided in RCW 34.05.328 (5)(b)(iv), it does not require a cost-benefit analysis. A preliminary cost-benefit analysis may be obtained by contacting Jim Freeburg, P.O. Box 40255, Olympia, WA 98504, phone (360) 725-7170, e-mail jimf@oic.wa.gov.

October 18, 2016
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-0160 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or

other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services under the auspices of the applicable health plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of a preauthorization request. Emergency fill only applies to those circumstances where a patient presents at a contracted pharmacy with an immediate therapeutic need for a prescribed medication that requires a prior authorization.

(7) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(8) "Emergency services" has the meaning set forth in RCW 48.43.005.

(9) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(10) "Facility" means an institution providing health care services, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(11) "Formulary" means a listing of drugs used within a health plan. A formulary must include drugs covered under an enrollee's medical benefit.

(12) "Grievance" has the meaning set forth in RCW 48.43.005.

(13) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(14) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(15) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(16) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(17) "Immediate therapeutic needs" means those needs where passage of time without treatment would result in imminent emergency care, hospital admission or might seriously jeopardize the life or health of the patient or others in contact with the patient.

(18) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. §1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. §450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program with funding provided in whole or

part pursuant to 25 U.S.C. §47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. §1603(29).

(19) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(20) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

(21) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(22) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

(23) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(24) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology*, published by the American Medical Association.

(25) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(26) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(27) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(28) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(29) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(30) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(31) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(32) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005(33) comprising from one to fifty eligible employees.

(33) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(34) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

AMENDATORY SECTION (Amending WSR 16-19-086, filed 9/20/16, effective 10/21/16)

WAC 284-43-5170 Prescription drug benefit disclosures. (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit(=) in addition to those required elsewhere in Titles 48 RCW and 284 WAC. The commissioner may disapprove any contract issued on or after January 1, 2018, if the requirements of this subsection are not met.

(a) A clear statement explaining that the health benefit plan(~~(, policy or agreement may cover brand name drugs or medication under the circumstances set forth in WAC [284-43-5080] [284-43-817] or [284-43-5100] [284-43-818], including, if a formulary is part of the benefit design, brand name drugs or other medication not in the formulary))~~ uses the following in its coverage of drugs (as applicable):

(i) Exclusion of certain brand name or other medications from its formulary;

(ii) Therapeutic drug substitution;

(iii) Incentives for use of generic drugs (such as step-therapy protocols);

(iv) Prior authorization requirements;

(v) Mid-plan year formulary changes; or

(vi) Other limits of its prescription drug benefit.

(b) A clear explanation of the substitution process required under WAC 284-43-5080 that the enrollee or their provider must use to seek coverage of a prescription drug or

medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(c) A clear statement explaining that consumers may be eligible to receive an emergency fill for prescription drugs under the circumstances described in WAC 284-170-470. The disclosure must include the process for consumers to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill.

(d) The process for developing coverage standards and formularies, including the principal criteria by which drugs are selected for inclusion, exclusion, restriction or limitation.

(e) The process of changing formularies and coverage standards, including changes in the use of substitute drugs. If the plan has provisions for "grandfathering" certain ongoing prescriptions or other coverage exceptions, these practices must be disclosed.

(f) The disclosure must state whether drugs may move between tiers during a plan year and whether this may affect cost-sharing.

(g) Any medication management, disease management, or other pharmacy-related services reimbursed by the plan in addition to those required under state and federal law in connection with dispensing drugs, such as disease management services for migraine, diabetes, smoking cessation, asthma, or lipid management.

(h) The general categories of drugs excluded from coverage must be disclosed. Such categories may include items such as appetite suppressants, dental prescriptions, cosmetic agents or most over-the-counter medications. This subsection does not require that any particular category of coverage for drugs or pharmacy services should be excluded, reduced, or limited by a health plan.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, at a minimum a carrier must ensure that prior notice of the change will be provided as soon as is practicable, to enrollees who filled a prescription for the drug within the prior three months.

(a) Provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, either electronic mail notice, or written notice by first class mail at the last known address of the enrollee, are acceptable methods of notice.

(b) If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its web site or at another location that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

(4) A carrier must include the following statement in the certificate of coverage issued for a health benefit plan, policy, or agreement that includes a prescription drug benefit, and provide current contact information as prompted below:

YOUR PRESCRIPTION DRUG RIGHTS

You have the right to safe and effective pharmacy services. You also have the right to know what drugs are covered by your plan and the limits that apply. If you have a question or concern about your prescription drug benefits, please contact us (the health carrier) at (health carrier's contact phone number) or visit (health carrier's web site). If you would like to know more about your rights, or if you have concerns about your plan, you may contact the Washington state office of insurance commissioner at 1-800-562-6900 or www.insurance.wa.gov. If you have a concern about the pharmacists or pharmacies serving you, please contact the Washington state department of health at 360-236-4700, www.doh.wa.gov, or HSQACSC@doh.wa.gov.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-43-5040 Coverage for pharmacy services.

WSR 16-21-100
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed October 19, 2016, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-74 [13-04-074].

Title of Rule and Other Identifying Information: Early support for infants and toddlers (ESIT) program.

Hearing Location(s): Department of Early Learning (DEL), Room 203, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 22, 2016, at 10 a.m.

Date of Intended Adoption: December 1, 2016.

Submit Written Comments to: Matt Judge, DEL Rules Coordinator, 1110 Jefferson Street S.E., Olympia, WA 98501, e-mail Rules@del.wa.gov, fax (360) 586-0052, by November 22, 2016.

Assistance for Persons with Disabilities: Contact Matt Judge, DEL rules coordinator, by November 8, 2016, (360) 725-4523.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is the first time rules have been proposed for the ESIT program. The ESIT program operates under federal regulations and federally approved policies and procedures. The purpose of this filing is to provide uniform language and policies that will lead to more clarity for funding sources, administrators, providers and families and support quality service provision.

Reasons Supporting Proposal: These rules are needed to clarify ESIT implementation issues and assure equity in service provision across all programs in Washington state.

Statutory Authority for Adoption: RCW 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathryn Grant-Davis, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-3519.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

October 19, 2016

Ross Hunter

Director

Chapter 170-400 WAC

EARLY SUPPORT FOR INFANTS AND TODDLERS PROGRAM

FOR CONTRACTS STARTING ON OR AFTER THE EFFECTIVE DATE OF THESE RULES, CHAPTER 170-400 WAC APPLIES

NEW SECTION

WAC 170-400-0001 Authority. RCW 43.215.020 establishes the department of early learning as the state lead agency, for Part C of the federal Individuals with Disabilities Education Act, with the responsibility and authority to set and enforce rules for the provision of early intervention services in Washington state. Federal authority for this chapter is 20 U.S.C. Sec. 1431-1444 and the Part C regulations in 34 C.F.R. Part 303, which includes receipt of federal funds for early intervention services.

NEW SECTION

WAC 170-400-0010 Purpose. This chapter, in conjunction with state and federal law and federally approved policies and procedures, establishes the requirements of the statewide early support for infants and toddlers program. This chapter describes the process for administering state and federal early intervention funds, reflects the department's commitment to quality early learning opportunities for infants and toddlers with disabilities and their families, and ensures the implementation of 20 U.S.C. Sec. 1431-1444 and 34 C.F.R. Part 303.

NEW SECTION

WAC 170-400-0020 Applicability. (1) This chapter applies to all early intervention providers, including school districts, involved in early intervention service provision for children receiving services from the early support for infants and toddlers program, whether or not the entity or individual receives state or federal funds.

(2) This chapter does not apply to any child with a disability receiving a free appropriate public education under chapter 392-172A WAC or 34 C.F.R. Part 300, Part B.

NEW SECTION

WAC 170-400-0030 Definitions. "Administrative indirect" means indirect costs such as, general management compensation, joint facility costs, contract administration, fiscal services, and general office supplies that are not allocated to direct services for infants, toddlers and their families.

"Department" means the department of early learning, the Washington state lead agency designated by the governor to receive state and federal funds to administer the early support for infants and toddlers (ESIT) program. These responsibilities include, but are not limited to, coordination of all funding and oversight of state and federal funding allocated to implement early intervention services.

"Department-approved clarification memos" means the ESIT program published guides and policy memos signed by the ESIT administrator and posted on the agency web site.

"Early intervention services (EIS)" means developmental services that include:

- (a) Assistive technology devices and services;
- (b) Audiology services;
- (c) Family training, counseling and home visits;
- (d) Health services;
- (e) Medical services;
- (f) Nursing services;
- (g) Nutrition services;
- (h) Occupational therapy;
- (i) Physical therapy;
- (j) Psychological services;
- (k) Service coordination;
- (l) Signed language and cued language;
- (m) Social work services;
- (n) Special instruction;
- (o) Speech-language pathology;
- (p) Transportation and related costs; and
- (q) Vision services.

"Early support for infants and toddlers (ESIT) program" means the statewide program within the department of early learning that administers all components of the birth to three early intervention system for eligible infants, toddlers and their families.

"EIS provider" means any ESIT-approved organization, public, private, tribal or nonprofit entity, school district, or an individual that provides EIS, whether or not the entity or individual receives funding from the ESIT program.

"Local agreement" means any written agreement required to implement ESIT services.

"Natural environments" means settings that are natural or typical for a same-aged infant or toddler without a disability, including the home or community settings.

"Office of superintendent of public instruction" means the state educational agency responsible for the supervision of public elementary schools and secondary schools, including the implementation of Part B.

"Part B" means special education of children with disabilities under the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 U.S.C. Sec. 1431-1444.

"Part C" means the Individuals with Disabilities Education Act (IDEA), Part C, as amended, 20 U.S.C. Sec. 1431-1444 and 34 C.F.R. Part 303.

"Policies and procedures" means ESIT's federally approved policies and procedures for implementing EIS.

"Potential eligibility" means, based on existing assessment, evaluation, and the team's clinical understanding of the child's developmental status, the child is determined to be potentially eligible for services under Part B prior to the Part B required eligibility evaluation.

"School district" means a local educational agency administering elementary and secondary schools.

"System of payments and fees" means the federally required ESIT policy on families' financial contribution to their child's services.

NEW SECTION

WAC 170-400-0050 Early intervention services (EIS) providers. EIS providers must:

(1) Provide and implement EIS according to state and federal law.

(2) Deliver services at a consistent level of frequency and intensity for a continuous twelve-month period based on child and family need, and not on the availability of providers.

(3) Provide or otherwise arrange for all EIS included in the individualized family service plan. Wait lists and capping of services are prohibited.

(4) Enhance the capacity of the family in facilitating their child's development through natural learning opportunities at home or in community settings where typically developing children live, learn, or play.

NEW SECTION

WAC 170-400-0070 Child find and referral. (1) Early intervention service providers must meet the requirements of state and federal law.

(2) The department and local lead agencies will lead child find efforts and referral activities for the early support for infants and toddlers program. They may consult with state and local partners.

NEW SECTION

WAC 170-400-0100 Natural environments. (1) Early intervention service (EIS) providers must meet the requirements set forth in state and federal law.

(2) EIS must be provided in natural environments to the maximum extent appropriate based on the needs of the child.

(3) EIS may only occur in a setting other than a natural environment if one or more of a child's individualized family services plan (IFSP) outcomes cannot be met by providing EIS in a natural setting, as determined by the parent and the IFSP team.

NEW SECTION**WAC 170-400-0130 System of payments and fees.**

Early intervention service (EIS) providers must follow the system of payments and fees set forth in state and federal law, policies and procedures and department-approved clarification memos.

NEW SECTION

WAC 170-400-0140 Use of funds. (1) Early intervention service (EIS) providers must follow the use of funds guidance set forth in state and federal law.

(2) State and federal funds for the early support for infants and toddlers (ESIT) program may only be expended for ESIT required activities as outlined in state and federal law.

(3) Administrative indirect expenses are limited to no more than ten percent of the total moneys received by an entity providing ESIT components or direct services.

(4) Administrative indirect expenses are limited to no more than five percent of the total moneys received by an entity acting as a pass through for state or federal funding.

(5) Under the department's authority, local ESIT budgets will be monitored and subject to audit for allowable expenditures.

(6) EIS providers must bill all applicable funding sources including public and private insurance and families, prior to using state and federal funds for early intervention services.

(7) Public funds for the ESIT program may not be used for transition activities required under Part B of the Individuals with Disabilities Education Act.

(8) Under Part C, these allowable transition activities may be paid for with early intervention funds. EIS provider participation in:

- (a) The decision of potential eligibility for Part B;
- (b) Transition planning and activities in the IFSP, including:
 - (i) Discussions with, and training of parents, as appropriate, regarding future placements and other matters related to the child's transition;
 - (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting.
- (c) Facilitation and participation in the transition conference;
- (d) Sharing of information, with parental consent; and
- (e) Attending the eligibility and IEP meeting, upon parent's request.

NEW SECTION

WAC 170-400-0150 Contracting and local agreements. Early intervention services providers must comply with contractual provisions from the department, and contracts and local agreements approved by early support for infants and toddler's (ESIT) local lead agencies, in providing ESIT services.

NEW SECTION**WAC 170-400-0160 Data collection and reporting.**

Early intervention service providers must enter required data elements in the early support for infants and toddlers (ESIT) data management system and report on ESIT activities as required by contract or local agreement.

NEW SECTION**WAC 170-400-0170 General supervision, monitoring, and enforcement.**

All early intervention service providers are subject to general supervision, monitoring and enforcement actions through the early support for infants and toddlers program (ESIT) and/or ESIT's local lead agencies set forth in state and federal law, contracts, and local agreements.

WSR 16-21-101**PROPOSED RULES****BUILDING CODE COUNCIL**

[Filed October 19, 2016, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-116.

Title of Rule and Other Identifying Information: Amendment of chapter 51-04 WAC, Policies and procedures for consideration of statewide and local amendments to the state building code.

Hearing Location(s): DES Building, 1st Floor Presentation Room, 1500 Jefferson Street, Olympia, WA 98501, on December 2, 2016, at 11 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Steve Simpson, Chair, State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@des.wa.gov, fax (360) 586-9088, by December 9, 2016.

Assistance for Persons with Disabilities: Contact Tim Nogler by November 18, 2016, (360) 407-9277.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed [changes]clarify the procedures for submitting statewide and local code change proposals to the state building code council, correlates the duties and objectives of the council with chapters 19.27 and 19.27A RCW, updates definitions associated with those activities, expands the ability for individuals to request reconsideration of code amendments, and sets up a new timeline for the code adoption cycle.

1. Throughout chapter 51-04 WAC subsections have been numbered for ease of use.

2. WAC 51-04-010 Declaration of purpose, a sentence was added to subsection (1) stating that one of the objectives of the council is to minimize state amendments to the model codes. Subsection (3) was added to include a statement that the council issues advisory opinions at the request of local officials. Subsection (4) includes revisions to clarify statewide and local amendment procedures, and adds a reference to reconsideration of amendments.

October 14, 2016
Steve K. Simpson
Council Chair

3. WAC 51-04-015 Definitions, "Supplements" is deleted. The International Code Council no longer publishes code supplements as a part of their process.

4. WAC 51-04-020, statewide amendments, the section was reorganized to be more sequential. The code cycle process itself was revised to expand review into the full three year cycle, with the review happening in two parts. The first part is review of the changes and amendments to the International Building Code, International Fire Code, and the Commercial Energy Code. The International Residential Code, International Mechanical Code, Uniform Plumbing Code and Residential Energy Code are reviewed during the second phase.

5. WAC 51-04-025, submittal of statewide amendments, subsection (1) clarifies and reorganizes the criteria for code change proposals. Subsection (2) clarifies the actions of when the submittal forms are not completed. Subsection (5) was added to itemize the documentation necessary for the council's final deliberations.

6. WAC 51-04-030, local government amendments, this section is revised to allow local government representatives to submit proposals before their final passage by the local government, but said amendments must be adopted as reviewed and approved by the council or they must be resubmitted. Any local amendment must be approved by the council before taking effect.

7. WAC 51-04-040 Reconsideration, modified to allow a request for reconsideration from all interested parties, rather than just the original proponent, as long as said party has submitted testimony to the council on the item being requested to be reconsidered.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.035, 19.27.060, and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the following rules.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, 1500 Jefferson Street, P.O. Box 41449, Olympia, WA, (360) 407-9277; and Enforcement: Washington State Building Code Council, 1500 Jefferson Street, P.O. Box 41449, Olympia, WA, (360) 407-9277.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule establishes and clarifies administrative actions and procedures of the state building code council and does not have any fiscal impact to small business. The state building code council is not one of the agencies identified as required to prepare a school district impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not one of the agencies identified as required to prepare an analysis.

AMENDATORY SECTION (Amending WSR 07-15-043, filed 7/13/07, effective 8/13/07)

WAC 51-04-010 Declaration of purpose. The Washington state building code council, hereinafter called the council, is required by chapter 266, Laws of 1988, to adopt and maintain the state building code, hereinafter referred to as the building code, as provided in chapters 19.27, 19.27A, and 70.92 RCW, and the state legislature.

(1) The primary objective of the council is to encourage consistency in the building code throughout the state of Washington and to maintain the building code consistent with the state's interest as provided in RCW 19.27.020. An objective of statewide adoption is to minimize state amendments to the model codes.

The building code shall be as defined in WAC 51-04-015(8).

(2) The council is also required by RCW 19.27.074 to approve or deny all city and county amendments to the building code that apply to single family or multifamily buildings as defined in RCW 19.27.015.

(3) The council may issue opinions relating to the codes at the request of a local official charged with the duty to enforce the enumerated codes as specified in RCW 19.27.031.

(4) The purpose of this chapter is to establish policies and procedures for:

(a) Submittal and council review and consideration of proposed statewide ((and)) amendments to the building code;

(b) Submittal and council review and consideration of proposed city and county amendments ((respectively,)) to the building code;

(c) Reconsideration of council actions; and

(d) Issuing opinions to local officials.

AMENDATORY SECTION (Amending WSR 05-23-104, filed 11/17/05, effective 1/1/06)

WAC 51-04-015 Definitions. (1) (~~"Supplements and accumulative supplements" mean the publications between editions of the model codes and standards which include changes to the current edition of the model codes and standards.~~

~~(2))~~ "Council" means the Washington state building code council.

~~((3))~~ (2) "Emergency statewide amendment" means any proposed statewide amendment, the adoption of which is necessary immediately in order to protect life, safety or health of building occupants; preserve the structural integrity of buildings built to the state building code; to correct errors and omissions; or by the direction of the Washington state legislature or federal legislation. Emergency statewide amendments to the state building code must be adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

~~((4))~~ (3) "Local government amendment" means any amendment to the state building code, as adopted by cities or

counties for implementation and enforcement in their respective jurisdictions.

~~((5))~~ (4) "Local government residential amendment" means any amendment to the state building code, as adopted by cities or counties for implementation and enforcement in their respective jurisdictions, that applies to single and multi-family buildings as defined by RCW 19.27.015.

~~((6))~~ (5) "Model codes" means the codes developed by the model code organizations and adopted by and referenced in chapter 19.27 RCW.

~~((7))~~ (6) "Model code organization(s)" means the national code-promulgating organizations that develop the model codes (as defined herein), such as the International Code Council, International Association of Plumbing and Mechanical Officials, and National Fire Protection Association.

~~((8))~~ (7) "State building code" means the codes adopted by and referenced in chapter 19.27 RCW; the state energy code; and any other codes so designated by the Washington state legislature as adopted and amended by the council.

~~((9))~~ (8) "Statewide amendment" means any amendment to the building code, initiated through council action or by petition to the council from any agency, city or county, or interested individual or organization, that would have the effect of amending the building code for the entire state of Washington. Statewide amendments to the state building code must be adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

~~((10))~~ (9) "State building code update cycle" means that period during which the model code and standards referenced in chapter 19.27 RCW are updated and amended by the council in accordance with the Administrative Procedure Act, chapter 34.05 RCW hereinafter referred to as the "adoption period" and those additional periods when code changes are received for review as proposed amendments to the model codes, hereinafter referred to as "submission periods."

AMENDATORY SECTION (Amending WSR 07-15-043, filed 7/13/07, effective 8/13/07)

WAC 51-04-020 Policies for the consideration of proposed statewide amendments. ~~((Statewide and emergency statewide amendments to the state building code shall be based on one of the following criteria:~~

~~(1) The amendment is needed to address a critical life/safety need.~~

~~(2) The amendment is needed to address a specific state policy or statute.~~

~~(3) The amendment is needed for consistency with state or federal regulations.~~

~~(4) The amendment is needed to address a unique character of the state.~~

~~(5) The amendment corrects errors and omissions.~~

~~Statewide and emergency statewide amendments to the state building code shall conform to the purposes, objectives, and standards prescribed in RCW 19.27.020.~~

~~The council will accept and consider petitions for emergency statewide amendments to the building code at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW.)~~ (1) The council will accept and consider all ~~((other))~~

petitions for statewide amendments in conjunction with the state building code update cycle, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020 as follows:

~~((The state building code council shall publicize the state building code amendment process in January of each year. Proposed state amendments must be received by March 1 to be considered for adoption by December 1. The state building code council shall review all proposed statewide amendments and file for future rule making those proposals approved as submitted or as amended by the council.))~~

(a) For the purpose of review and adoption of new model code editions and statewide amendment submission, the state building code shall be divided into two groups:

(i) Group 1: International Building Code (IBC); International Fire Code (IFC) Washington state energy code (WSEC-C).

(ii) Group 2: International Residential Code (IRC); International Mechanical Code (IMC); Uniform Plumbing Code (UPC); Washington state energy code-residential (WSEC-R).

(b) The adoption period of new model codes commences when new editions of the model codes are available to the public. Within sixty days, the council shall publish a timeline to include a report of significant model code amendments and applicability of existing state amendments, followed by a submission period for new proposed statewide amendments.

(i) The council shall review Group 1 codes and approve a report on significant changes and applicability of existing state amendments. The Group 1 report shall be posted on the council web site and a submission period of at least two months shall be allowed for new proposed statewide amendments.

(ii) Upon completion and posting of the Group 1 report, and provided new editions of Group 2 model codes are available to the public, the council shall review the Group 2 codes and approve a report on significant changes and applicability of existing state amendments. The Group 2 report shall be posted on the council web site and a submission period of at least two months shall be allowed for new proposed statewide amendments

(2) The council shall review proposed new statewide amendments, and approve those meeting the appropriate criteria to file as proposed rules in accordance with chapter 34.05 RCW. The proposed rules filing shall include a small business economic impact statement in accordance with chapter 19.85 RCW.

(3) The council shall conduct at least two public hearings.

(4) The code adoption period shall conclude with formal adoption of the state building code as amended by the council. As required by RCW 19.27.074, all decisions to adopt or amend the state building code shall be made prior to December 1st and shall not take effect before the end of the regular legislative session in the next year.

(5) State amendments as approved by the council shall be submitted to the appropriate model code organization, at the direction of the council, except those adopted for consistency with state statutes or regulation and held for further review during the adoption period of those model codes by

the council. The effective date of any statewide amendments shall be the same as the effective date of the new edition of the model codes, except for emergency amendments adopted in accordance with chapter 34.05 RCW and deemed appropriate by the council.

~~((The adoption period of new model codes commences upon availability of the publication of the new edition of the model codes and concludes with formal adoption of the building code as amended by the council and final review by the state legislature. For the purposes of this section, the publication of supplements shall not be considered a new edition.))~~

(6) The council will consider state amendments to the model codes provided that the proposed amendments shall be limited to address changes in the model codes since the previous edition; or, address existing statewide amendments to the model codes; or, address portions of the state building code other than the model codes. The state building code council shall consider the action of the model code organizations in their consideration of these proposals.

~~((Within sixty days of the receipt of the new edition of the model codes the council shall enter rule making to update the state building code.))~~

AMENDATORY SECTION (Amending WSR 07-15-043, filed 7/13/07, effective 8/13/07)

WAC 51-04-025 Procedure for submittal of proposed statewide amendments. (1) Statewide and emergency statewide amendments to the state building code shall conform to the purposes, objectives, and standards prescribed in RCW 19.27.020.

All proposed statewide amendments shall be submitted in writing to the council, on the form provided by the council. The amendment must address a change in the model codes since a previous edition; or an existing state or local amendment to the model code; or a portion of the state code other than the model code. Statewide and emergency statewide amendments to the state building code shall be based on one of the following criteria:

(a) The amendment is needed to address a critical life/safety need.

(b) The amendment clarifies the intent or application of the code.

(c) The amendment is necessary for consistency with state or federal regulations.

(d) The amendment corrects errors and omissions.

(e) The amendment eliminates an obsolete, conflicting, duplicating or unnecessary regulation.

(2) Petitions for statewide amendments to the building code shall be submitted to the council during the submission period and the adoption period in accordance with WAC 51-04-020. Minimum requirements specified on the form for submittals must be included. Incomplete submittals will be held for thirty days and the proponent will be notified with a request for more information.

(3) Petitions for emergency statewide amendments to the building code may be submitted at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020.

The council may refer a proposed statewide amendment to one of the council standing committees for review and comment prior to council action in accordance with chapter 34.05 RCW.

(4) The council shall ~~((deal with))~~ consider and take action on all proposed statewide amendments within the time frames required by chapter 19.27 RCW, RCW 34.05.330, and all other deadlines established by statute.

(5) The council shall have available for their consideration:

(a) A summary of all issues including research and testimony;

(b) Minority reports from the technical review;

(c) A summary of costs and benefits of code amendments;

(d) Recommendations to revise the final rule;

(e) Options for council action.

AMENDATORY SECTION (Amending WSR 07-15-043, filed 7/13/07, effective 8/13/07)

WAC 51-04-030 Policies for consideration of proposed local government residential amendments. (1) All amendments to the building code, as adopted by cities and counties for implementation and enforcement in their respective jurisdictions, that apply to single and multifamily buildings as defined by RCW 19.27.015, shall be submitted to the council for approval.

(2) The council shall consider and approve or deny all proposed local government residential amendments to the state building code as presented to the council within ninety calendar days of receipt of a proposal, unless alternative scheduling is agreed to by the council and the proposing entity. Where a proposed local government residential amendment is modified upon adoption by the city or county legislative body, it shall be resubmitted to the council. Local government residential amendments shall not be effective until approved by the council and the local governing authority.

(3) All proposed local government residential amendments to the building code that require council approval shall be submitted in writing to the council, ~~((after the city or county legislative body has adopted the amendment and))~~ by the authorized local code or elected official, prior to implementation and enforcement of the amendment by the local jurisdiction. All local amendments submitted for review shall be accompanied by findings of fact ~~((adopted by the governing body of the local jurisdiction))~~ justifying the adoption of the local amendment in accordance with the five criteria noted below in this section.

(4) It is the policy of the council to encourage joint proposals for local government residential amendments from more than one jurisdiction. Local government residential amendments submitted to the council for approval shall be based on:

~~((1))~~ (a) Climatic conditions that are unique to the jurisdiction.

~~((2))~~ (b) Geologic or seismic conditions that are unique to the jurisdiction.

~~((3))~~ (c) Environmental impacts such as noise, dust, etc., that are unique to the jurisdiction.

~~((4))~~ (d) Life, health, or safety conditions that are unique to the local jurisdiction.

~~((5))~~ (e) Other special conditions that are unique to the jurisdiction.

EXCEPTION: Local government residential amendments to administrative provisions (departmental operational procedures) contained within the state building code need not be submitted to the council for review and approval provided that such amendments do not alter the construction requirements of those chapters.

~~((Those portions of the supplement or accumulative supplements))~~ (5) Appendices to the codes that affect single and multifamily residential buildings as defined by RCW 19.27.015 that are not adopted by the council shall be submitted to the council for consideration as local government residential amendments to the building code.

Local government residential amendments shall conform to the limitations provided in RCW 19.27.040.

AMENDATORY SECTION (Amending WSR 16-01-042, filed 12/9/15, effective 1/9/16)

WAC 51-04-040 Reconsideration. (1) When the council approves, denies or modifies a statewide or local amendment to the building code, ~~((the party proposing the amendment))~~ any party with written or oral testimony to the council related to the amendment on the record may file a petition for reconsideration. The petition must be received by the Washington State Building Code Council, 1500 Jefferson Avenue S.E., P.O. Box 41449, Olympia, Washington 98504-1449, within ~~((ten))~~ twenty calendar days of the date of the ~~((denial))~~ council action on the amendment. The petition must give specific reasons for why the council should reconsider the amendment for approval or denial.

(2) Within sixty calendar days of receipt of a timely petition for reconsideration, the council shall in writing:

(a) Grant the petition for reconsideration and ~~((approve))~~ enter rule making to revise the amendment;

(b) Deny the petition for reconsideration, giving reasons for the denial; or

(c) Request additional information and extend the time period for not more than thirty calendar days to either grant or deny the petition for reconsideration.

(3) The council's denial of a proposed statewide or local government amendment, or the council denial of a petition for reconsideration under this section, is subject to judicial review under chapter 34.05 RCW.

WSR 16-21-103

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed October 19, 2016, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-16-008.

Hearing Location(s): Edna Lucille Goodrich Building, 7345 Linderson Way S.W., Tumwater, WA 98501, on November 22, 2016, at 1 p.m.

Date of Intended Adoption: December 20, 2016.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by November 21, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the WAC to reflect the current structure of the department and provide links to monitor updates.

Reasons Supporting Proposal: The structure of the department has changed since this WAC was last updated.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: Clela Steelhammer, governmental.

Name of Agency Personnel Responsible for Drafting: Clela Steelhammer, Department of Corrections Headquarters, Tumwater, (360) 725-8267.

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

A cost-benefit analysis is not required under RCW 34.05.328. No economic impact from this amendment.

October 12, 2016

Richard Morgan
Secretary

AMENDATORY SECTION (Amending WSR 07-12-073, filed 6/5/07, effective 7/6/07)

WAC 137-04-020 Structure of the department. ~~((+))~~ The executive head of the department is the secretary who is appointed by the governor with the consent of the senate, and serves at the pleasure of the governor. The secretary manages the department and is responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons.

(2) The department is organized into three divisions and three subdepartments: The prisons division, the community corrections division, the administrative services division, the communications department, the health services department and the risk management department. Each division is headed by a deputy secretary who reports to the secretary. The responsibilities of each division are:

(a) The prisons division is responsible for the operation of all adult correctional facilities, including the Washington State Penitentiary; the Washington Corrections Center; the Monroe Correctional Complex; the McNeil Island Corrections Center; the Airway Heights Corrections Center; the Clallam Bay Corrections Center; the Stafford Creek Corrections Center; the Washington Corrections Center for Women; the Cedar Creek Corrections Center; the Coyote Ridge Corrections Center; the Larch Corrections Center; the Olympic Corrections Center; the Ahtanum View assisted living facility; the Pine Lodge Corrections Center for Women; the Mission Creek Corrections Center for Women; and such other state correctional institutions, camps or facilities as may here-

after be established. The division includes the correctional industries program.

~~(b) The community corrections division is responsible for the supervision of adult felony offenders within the community, including offenders in the work release program and other community residential programs.~~

~~(c) The administrative services division is responsible for providing a variety of services to the other divisions of the department including financial and management services; information technology; capital planning and development; rules, contracts, budget development and planning and research; and human resources.)~~ (1) The department is a statutorily created agency of the state of Washington. The executive head of the department is the secretary who is appointed by the governor with the consent of the senate, and serves at the pleasure of the governor. The secretary manages the department and is responsible for the administration of adult correctional programs including, but not limited to, the operation of all state correctional institutions or facilities used for the confinement of convicted felons and the supervision of certain offenders in the community. The secretary may create a succession plan to identify individuals to act as the secretary's designee.

(2) Current organizational and contact information can be found on department's public web site at <http://www.doc.wa.gov/about/agency/leadership.htm>.

WSR 16-21-105

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed October 19, 2016, 10:09 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) and 34.05.330(1).

Title of Rule and Other Identifying Information: Washington pulse crops commission, chapter 16-536 WAC. Specifically, WAC 16-536-040 Assessments and collections.

Hearing Location(s): Whitman County Library Center, 102 South Main Street, Colfax, WA 99111, on November 22, 2016, at 9:00 a.m.

Date of Intended Adoption: April 4, 2017.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail wdsarulescomments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., November 22, 2016.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist, (360) 902-1976, by November 15, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to increase the assessment rate on a time-limited basis from one to 1.5 percent of the net receipts at the first point of sale. This increase would be in effect for a period of three years starting July 1, 2017, and ending June 30, 2020, whereupon it will revert back to one percent of the net receipts at the first point of sale.

Reasons Supporting Proposal: This amendment will implement the petition received from the Washington pulse crops commission in accordance with RCW 15.65.050. The board is proposing to increase the assessment rate on a time-limited basis to raise additional funds to support and build on an opportunity created by the UN designation of 2016 as the International Year of Pulses (dry peas, lentils, chickpeas and beans) and join with United States, Canada, Australia, and many other nations to promote pulse crops in a worldwide marketing campaign. In addition, the commission is proposing to join with the United States industry to fund a long-term research legacy in an endowed chair at Washington State University. To participate in these opportunities, the commission is proposing to raise the assessment rate by one-half percent for three years and designate the additional funds to these efforts.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050, chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules will not be adopted unless they are approved by referendum of affected producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington pulse crops commission, governmental.

Name of Agency Personnel Responsible for Drafting: Teresa Norman, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-2043; Implementation and Enforcement: Tim McGreevy, 2780 West Pullman Road, Moscow, ID 83843, (208) 882-3023.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.65.570, the adoption of the final amendments to chapter 16-536 WAC will be determined by referendum vote of affected producers.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA and the Washington pulse crops commission are not listed agencies under RCW 34.05.328 (5)(a)(i).

October 19, 2016
Kirk Robinson
Deputy Director

AMENDATORY SECTION (Amending WSR 16-15-004, filed 7/7/16, effective 8/7/16)

WAC 16-536-040 Assessments and collections. (1) Assessments.

(a) Before July 1, 2017, and after June 30, 2020, the assessment on all varieties of pulse crops subject to this marketing order shall be one percent of the net receipts at the first point of sale and shall be deducted by the first purchaser from the price paid to the grower. Such assessment shall be remitted to the commission board in accordance with procedures adopted by the commission board: Provided, That an assessment on commercial wrinkled pea seed shall not become effective unless approved by a referendum vote of the affected wrinkled pea seed producers.

(b) From July 1, 2017, through June 30, 2020, the assessment on all varieties of pulse crops subject to this marketing order shall be one and one-half percent of the net receipts at the first point of sale and shall be deducted by the first purchaser from the price paid to the grower. On July 1, 2020, the assessment will revert to the terms in (a) of this subsection.

(c) Assessments shall not be payable on any such pulse crops used by the producer thereof on his or her premises for feed, seed and personal consumption.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of this order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of this marketing order, to all persons from whom moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and this order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of it. In the event of failure of such person or persons to pay any due and payable assessment or other such sum, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 16-21-107

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 19, 2016, 10:54 a.m.]

Supplemental Notice to WSR 16-18-078.

Preproposal statement of inquiry was filed as WSR 16-08-058.

Title of Rule and Other Identifying Information: The department is adding new sections to chapter 388-71 WAC, Home and community services and programs, amending chapter 388-106 WAC, Long-term care services, and adding new sections in a new chapter 388-114 WAC, Travel time and work week limitations for individual providers.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://>

www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2), on November 22, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 23, 2016.

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 5:00 p.m., November 22, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 8, 2016, phone (360) 664-6092, TTY (360) 664-6178, e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the *Home Care Association of America, et. al. v. David Weil, et al.* decision by the United States Court of Appeals, United States, for the District of Columbia, the court upheld new United States Department of Labor overtime rules. The new rules may require the department to pay overtime to individual providers (IP) who work more than forty hours per week. In order to ensure the cost-effective use of state funds and to maximize effective use of limited resources, the department is considering the adoption of rules related to the implementation of overtime. The rules may include, but are not limited to, rules that describe: (1) The number of hours the department may approve an IP to work in a work week; (2) when the department may approve an IP to work more than the work week limit; (3) describe DSHS client and IP responsibilities; (4) describe how the department will respond when IPs work more service hours than the work week limit; and (5) how travel time is approved and authorized. These rules are necessary to implement payment of overtime in an effective and cost-effective manner.

For the purpose of clarity, the proposed rules may define terms that are currently used, or will be used, in chapters 388-71 and 388-106 WAC.

The text has been amended from the previous version, and language was added to verify that an IP is not entitled to an administrative hearing regarding the work week limit.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

Rule is necessary because of federal court decision, *Home Care Association of America, et. al v. David Weil*.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2525.

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.

October 17, 2016
Katherine I. Vasquez

Rules Coordinator

NEW SECTION

WAC 388-71-0507 What responsibilities do clients have related to individual provider work week limits? Clients must comply with WAC 388-114-0090.

NEW SECTION

WAC 388-71-0518 What responsibilities do individual providers have related to work week limitation? Individual providers must comply with WAC 388-114-0100.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-1458 How do I create and use my spending plan? (1) You create your spending plan with the assistance of the care consultant using the new freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the care consultant.

(3) You and your care consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month).

(4) The value of those units is deducted from your new freedom budget.

(5) The rest of the funds can be used for other covered goods and services or saved.

~~((a))~~ (6) Once a service month begins, the number of personal care units may not be altered during that month.

~~((b))~~ (7) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

~~((c))~~ (8) Prior to the service month, you may elect to use savings funds to buy additional personal care.

~~((d))~~ (9) You ~~(can)~~ may choose to have your personal care provided by an individual provider (IP) or a home care agency.

(10) Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage.

~~((e))~~ (11) The balance of your individual new freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

~~((f))~~ (12) If you have a change of condition or situation and your new freedom budget increases due to a new assessment or exception to rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

~~((g))~~ (13) You may assign your predetermined personal care units to a different provider during the month of service.

(14) Under chapter 388-114 WAC, individual providers for one or more department clients who work more than forty hours in a work week, are entitled to overtime and the responsibility for paying the extra cost as follows:

(a) If the department approves the individual provider to work more than forty hours per week as described in WAC 388-114-0080, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

(b) If you assign more overtime hours to your individual provider than the department approved, you must pay the extra costs for the unapproved overtime hours and the additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

Chapter 388-114 WAC**TRAVEL TIME AND WORK WEEK LIMITATIONS FOR INDIVIDUAL PROVIDERS**NEW SECTION

WAC 388-114-0010 What is the purpose of this chapter? The purpose of this chapter is to describe:

(1) The number of hours the department may approve an individual provider to work in a work week;

(2) How the department determines work week limitations;

(3) When the department may approve an individual provider to work more than the work week limit;

(4) Client responsibilities regarding work week limits;

(5) Individual provider responsibilities around work week limits;

(6) What happens when a family or household member works more hours than are authorized in the client's plan of care;

(7) What happens when an individual provider works more than the work week limit or submits claims for unauthorized travel time;

(8) How the department approves and authorizes travel time; and

(9) Travel time limitations.

NEW SECTION

WAC 388-114-0020 What definitions apply to this chapter? The following definitions apply to chapter 388-114 WAC:

"Approve" means the department, either in advance or after the fact, has reviewed the circumstances, applied the rules in this chapter, and has authorized the individual provider to work more than forty hours in a work week.

"Family member" includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

"Household member" means the individual provider lives with the client and has a relationship with the client that existed before the client was assessed and approved for department paid personal care services as defined in WAC 388-106-0010.

"Overtime" means the number of hours an individual provider works in a work week that is more than forty hours. When required by law, the overtime wage is one and one half

times the individual provider's regular wage rate. Paid time off does not accrue as overtime pay.

"Service hours" means the time individual providers are paid by the department to provide personal care, relief care, skills acquisition training, or respite services under medicaid state plan and 1915(c) waiver programs, roads to community living, the veterans directed home services program, and programs solely funded by the state. Service hours do not include hours paid for training, travel, or paid time off.

"Travel time" means the direct one way travel time from one worksite to another in the same workday. Direct one way travel is the amount of time it takes to travel the most direct route between two specific worksites on the same day, as verified by using an online mapping tool.

"Worksite" means the location where an individual provider provides authorized care to a department client or attends required training. An individual provider's residence is not a worksite for the purposes of travel time, whether or not the client lives there.

"Work week" begins at 12:00 a.m. Sunday morning and ends at 11:59 p.m. the following Saturday night.

"Work week limit" means the total number of service hours an individual provider may provide in a work week. Travel time and required IP training time hours are not included in the work week limit.

NEW SECTION

WAC 388-114-0040 How many hours may the department approve an individual provider to work in a work week? Subject to the expenditure limitations of RCW 74.39A.270(10), the department may approve an individual provider to work more than a total of forty hours in a work week for one or more of the following reasons:

- (1) The individual provider has a higher work week limit as described under WAC 388-114-0040(2);
- (2) The individual provider has a higher work week limit because the department determined that the additional hours are necessary for the client for one of the reasons listed in WAC 388-114-0080;
- (3) It is allowable travel time as described in WAC 388-114-0130 and WAC 388-114-0140;
- (4) The individual provider attends required training during the work week.

NEW SECTION

WAC 388-114-0030 How does the department determine an individual provider's work week limit? (1) An individual provider's work week limit is forty service hours per week, unless the department approves a higher work week limit as described in this chapter.

(2) Subject to any expenditure limitations required by RCW 74.39A.270(10), if the department paid the individual provider for one hundred and seventy-four or more service hours of work performed in January 2016, the individual provider's work week is calculated by dividing the individual provider's January paid service hours by 4.33 and rounding to the nearest quarter hour.

(3) An individual provider's maximum work week limit cannot exceed sixty-five hours regardless of the number of

service hours the individual provider worked in January 2016 and beginning July 1, 2017, the maximum work week limit cannot exceed sixty service hours.

NEW SECTION

WAC 388-114-0050 What if the service hours the individual provider was paid for in January 2016 does not accurately represent the individual provider's work history in February and March 2016? If the individual provider's service hours paid in January 2016 do not accurately represent the individual provider's work history for the first three months of 2016:

(1) The individual provider may appeal the determination by submitting a request to the client's case manager to review the work week limit calculated under WAC 388-114-0030, but the IP is not entitled to an administrative hearing under chapter 34.05 RCW.

(2) The department will review the work week limit if:

(a) The individual provider was contracted with the department;

(b) The individual provider was employed by a client in January 2016; and

(c) The total monthly service hours the individual provider was paid in January 2016 is less than the total monthly service hours the individual provider was paid in either February or March 2016 and the average in those months was above forty hours.

(3) The department will not review the work week limit of an individual provider who was not contracted with the department or was not employed by a client in January 2016.

(4) The department will evaluate individual provider service hours appeals for review as follows:

(a) Calculate the individual provider's average number of weekly service hours paid in January 2016 by dividing the total January service hours paid by 4.33 which is the average number of weeks in a month;

(b) Calculate the average number of weekly service hours the individual provider was paid for February and March 2016 as follows:

(i) The average weekly service hours for February equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month;

(ii) The average weekly service hours for March equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month; and

(iii) Add the average weekly service hours for February and March 2016 together and divide the total by two to get the average weekly service hours for February and March; and

(c) If the average weekly service hours for January 2016 is less than the average weekly service hours for February and March 2016, the department will use the average weekly service hours for February and March 2016 as the individual provider's weekly service hour limit.

NEW SECTION

WAC 388-114-0070 May an individual provider work more than his or her work week limit? An individual provider with a work week limit of:

- (1) Forty service hours per week may only exceed the work week limit as described in WAC 388-114-0080;
- (2) More than forty service hours has flexibility to work more than his or her work week limit in a given week if:
- Requested by the client to meet a specific need;
 - Doing so would not exceed the client's monthly authorized hours;
 - The total number of service hours worked over forty for each work week in a calendar month does not exceed the amount of overtime the individual provider would receive if he or she worked his or her work week limit every week of the calendar month; and
 - The use of more service hours in a given week will not result in a client going without essential care in other weeks of the month.

NEW SECTION

WAC 388-114-0080 When may the department temporarily increase an individual provider's work week limit allowed in WAC 388-114-0040? (1) In addition to the increased work week limit allowed under WAC 388-114-0040, the department may temporarily increase an individual provider's work week limit if it determines the increase is necessary:

- Due to lack of available providers who are able to adequately meet a client's care needs, as evaluated by the department in its consideration of:
 - The overall availability of providers in the geographic region;
 - Whether the client has complex medical or behavioral needs;
 - Whether the client requires a provider with specific language skills; and
 - The client's good faith efforts and cooperation to manage his or her service hours and locate and select additional providers, which must include:
 - Making schedule adjustments within the work week limits of current providers who are providing your services;
 - Seeking a qualified family or friend to contract as an individual provider;
 - Utilizing the home care referral registry; and
 - Requesting a worker through a home care agency, unless doing so would cost more than paying the individual provider overtime;
- To protect a client's health and safety, as evaluated by the department in its consideration of:
 - Whether the request is to approve service hours the individual provider spent caring for the client because of an emergent condition;
 - The nature and severity of the emergent condition; and
 - Whether the need could have been postponed until another provider could have arrived; or
- To prevent an increased risk that the client will be unable to remain in a home or community based setting, except in cases where there are additional qualified providers available to select and the client has chosen not to select them.

(2) When an increase to an individual provider's work week limit is no longer approved by the department, the individual provider's work week limit will revert to the level described in WAC 388-11-0030.

(3) The department will not approve additional service hours to an individual provider's work week limit that would exceed eighty service hours per week for an individual provider.

(4) The individual provider is not entitled to an administrative hearing under chapter 34.05 RCW regarding the department's decision on whether to approve or continue a temporary increase to the work week limit.

NEW SECTION

WAC 388-114-0090 How does the individual provider work week limit affect the client's responsibilities listed in WAC 388-71-0505? In addition to the responsibilities detailed in WAC 388-71-0505, the client must:

- Manage his or her individual providers' work time to stay within each individual provider's total work week limit described in this chapter and within the total number of monthly authorized hours in the client's plan of care;
- Contact his or her case manager and participate in the search, selection, and hiring of additional providers when necessary to comply with subsection (1) of this section; and
- Choose a different provider when an individual provider is already working for one or more clients and the individual provider would exceed his or her work week limit by working for the client.

NEW SECTION

WAC 388-114-0100 How does the individual provider work week limit affect the individual provider's responsibilities in WAC 388-71-0515? In addition to the responsibilities detailed in WAC 388-71-0515, the individual provider must:

- Communicate and coordinate with each of his or her clients about how many service hours the individual provider is allowed and available to work each week; and
- Not accept assignments or changes in schedules for clients that would require the individual provider to work more than his or her work week limit unless it is to respond to an unexpected health or safety need of the client that cannot be postponed.

NEW SECTION

WAC 388-114-0110 What happens when an individual provider, who is a family member or household member, provides more care or services than authorized in the client's plan of care? The department will not pay an individual provider who is also a family or household member for care hours or services beyond the monthly authorized hours in the client's plan of care.

NEW SECTION

WAC 388-114-0120 What happens if an individual provider works more service hours in a work week than

the individual provider's work week limit or claims unapproved travel or service hours or non-required training time? (1) If an individual provider works more service hours in a work week than the work week limit approved by the department or submits a claim for unapproved travel or service hours or non-required training time, the department may take any one or more of the following actions:

(a) Contact the individual provider to discuss the client's care needs and the individual provider's responsibilities under department rules and the individual provider's contract;

(b) Provide additional technical assistance to the individual provider and the client on how to comply with department rules and the individual provider contract;

(c) Give the individual provider and the client notice that continued failure by the individual provider to comply will result in termination of the individual provider's contract;

(d) Terminate the individual provider's contract and assist the client in finding another individual provider.

(2) Individual providers do not have a right to an administrative hearing under chapter 34.05 RCW to appeal contract terminations under this section.

NEW SECTION

WAC 388-114-0130 How is travel time approved and authorized? (1) Individual providers must provide an estimate of planned travel time and request approval from the department in advance of travel. The reasonableness of the request may be verified by the department using an online mapping tool.

(2) Travel time is calculated based upon the actual time to travel directly between worksites during each work day and is rounded to the nearest fifteen minutes. If more than one trip between worksites is made in a day, direct travel times are added together and rounded to the nearest fifteen minutes once each day.

(3) Regardless of the estimated travel time, individual providers may only bill for actual time spent traveling as calculated in subsection (2) of this section.

(4) If the individual provider has unexpected or unplanned travel time, the individual provider must contact the department to request approval and authorization for payment of the unplanned travel. The department will approve unplanned travel time requests related to client health and safety or due to traffic conditions outside the individual provider's control.

NEW SECTION

WAC 388-114-0140 Are there limitations on travel time? The department will not approve an individual provider to provide care for a client if the department determines, based on an online mapping tool, that the individual provider would regularly travel for more than sixty minutes between worksites or exceed a total of seven hours of travel time per work week.