

WSR 19-09-001
WITHDRAWAL OF PROPOSED RULES
HEALTH CARE AUTHORITY

(By the Code Reviser's Office)
 [Filed April 3, 2019, 12:24 p.m.]

WAC 182-16-3150, proposed by the health care authority in WSR 18-19-088, appearing in issue 18-19 of the Washington State Register, which was distributed on October 3, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 19-09-014
PROPOSED RULES
GREEN RIVER COLLEGE

[Filed April 5, 2019, 3:14 p.m.]

Continuance of WSR 19-08-059.

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

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

Hearing Location(s): On June 19, 2019, at 5:15 p.m., at the AD Board Room, Green River College (GRC).

Date of Intended Adoption: July 18, 2019.

Submit Written Comments to: George Frasier, 12401 S.E. 320th Street, Auburn, WA 98092-3622, email gfrasier@greenriver.edu, fax 253-288-3460, by June 19, 2019.

Assistance for Persons with Disabilities: Contact Phil Denman, phone 253-833-9111 ext. 2300, fax 253-288-3460, email pdenman@greenriver.edu, by June 19, 2019.

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

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

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

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: GRC, public.

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

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 5, 2019
 George Frasier
 Vice President for
 College Advancement

WSR 19-09-018
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed April 8, 2019, 9:40 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 246-282-005 Sanitary control of shellfish minimum performance standards and 246-282-016 Aquaculture, the department of health (department) is amending WAC 246-282-005 which references the 2015 version of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide). The rule making is necessary to update the publication date of the NSSP guide adopted by reference in the rule from 2015 to the most recently adopted 2017 version. The department is also amending WAC 246-282-016 to remove an exemption from the requirements for hatchery operations because the 2017 NSSP guide no longer allows the exemption.

Hearing Location(s): On May 21, 2019, at 1:30 p.m., at the Department of Health, Town Center East 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: May 28, 2019.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by May 21, 2019.

Assistance for Persons with Disabilities: Contact Theresa Phillips, phone 360-236-3147, TTY 360-833-6388 or 711, email theresa.phillips@doh.wa.gov, by May 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will update the reference to the NSSP guide to assure that the most current health and safety requirements are in rule as required by the statute. The United States Food and Drug Administration (FDA) requires all shellfish-producing states to follow the most current version of the NSSP guide in order to place molluscan shellfish into interstate commerce. The rule currently references the 2015 NSSP guide, leaving the current rules out of date. The proposed rule updates the reference to the 2017 version of the NSSP guide. The proposal also removes the exemption for persons con-

ducting aquaculture activities for a hatchery operation or a hatchery only handling seed. This change is necessary to avoid inconsistency with the 2017 NSSP guide which removed the exemption from the 2017 version.

Reasons Supporting Proposal: FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish consistent with the NSSP guide. FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP guide. Therefore, an update of WAC 246-282-005 and 246-282-016 is needed so that Washington state remains compliant with the NSSP guide and the molluscan shellfish products from Washington can continue to be placed into interstate commerce.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3147; Implementation and Enforcement: Lawrence Sullivan, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3333.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: RCW 69.30.030(2) mandates the state board of health to consider the most recent version of the national shellfish sanitation program model ordinance, adopted by the interstate shellfish sanitation conference, when adopting rules. In order to remain compliant with FDA requirements to place molluscan shellfish into interstate commerce, the department must adopt rules that are at-least-as-stringent-as the most recent version of the NSSP guide. The proposed amendments are needed to remain compliant with the 2017 NSSP guide.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-

wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

April 5, 2019

Clark Halvorson

Assistant Secretary

AMENDATORY SECTION (Amending WSR 17-12-047, filed 6/1/17, effective 7/2/17)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish ((~~2015~~)) (2017) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-016 Aquaculture. Any person who conducts an aquaculture operation and is in possession of a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must meet all requirements of this chapter (~~(, except such person is exempt from all requirements of this chapter for the purpose of conducting aquaculture activities limited to the following:~~

(1) A hatchery operation; or

(2) A nursery operation handling only seed that is obtained from a hatchery)).

WSR 19-09-050
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed April 12, 2019, 2:37 p.m.]

April 12, 2019
Wendy Barcus
Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-139.

Title of Rule and Other Identifying Information: WAC 182-513-1363 Evaluating an asset transfer for people applying for or receiving long-term care (LTC) services.

Hearing Location(s): On May 21, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear Conference, Room #107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 22, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 21, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by May 17, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending language to (1) update and clarify WAC language to be consistent with current drafting practices and (2) clarify the presumptions and burdens regarding asset transfers for LTC to be more in line with Social Security Act (SSA) 1917 (42 U.S.C. 1396p). During the course of this review, the agency may identify additional changes that are required in order to improve clarity or update policy.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSA 1917 (42 U.S.C. 1396p(a)).

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: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Stephen Kozak, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1343.

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

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

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

Is exempt under RCW 19.85.025(4).

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

WAC 182-513-1363 Evaluating an asset transfer for ~~((people))~~ clients applying for or receiving long-term care (LTC) services. (1) When determining a ~~((person's))~~ client's eligibility for long-term care (LTC) services, the medicaid agency or ~~((its))~~ the agency's designee evaluates the effect of an asset transfer made within the sixty-month period before the month that the ~~((person))~~ client:

(a) Attained institutional status, or would have attained institutional status but for a period of ineligibility; and

(b) Applied for LTC services.

(2) The agency or ~~((its))~~ the agency's designee evaluates all transfers for recipients of LTC services made ~~((on))~~ during or after the month the recipient attained institutional status.

(3) The agency or ~~((its))~~ the agency's designee establishes a period of ineligibility during which the ~~((person))~~ client is not eligible for LTC services if the ~~((person))~~ client, the ~~((person's))~~ client's spouse, or someone acting on behalf of either:

(a) Transfers an asset within the time period under subsection (1) or (2) of this section; and

(b) Does not receive adequate consideration for the asset, unless the transfer meets one of the conditions in subsection (4)(a) through (g) of this section.

(4) The agency or ~~((its))~~ the agency's designee does not apply a period of ineligibility for uncompensated value if:

(a) The total of all asset transfers in a month does not exceed the ~~((average daily private nursing facility rate in that month))~~ statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later;

(b) The transferred ~~((resource))~~ asset was an excluded resource under WAC 182-513-1350 except a home, unless the transfer of the home meets the conditions under (d) of this subsection;

(c) The asset was transferred for less than fair market value (FMV), and the ~~((person))~~ client can establish one of the following:

(i) An intent to transfer the asset at FMV. ~~((To establish such an intent, the agency or its designee must be provided with convincing evidence of the attempt to dispose the asset for FMV;~~

~~((ii) The transfer was not made to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery. Convincing evidence must be presented regarding the specific purpose of the transfer;))~~ This intent is established by providing convincing evidence to the agency or the agency's designee;

(ii) The asset was transferred exclusively for a purpose other than to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery.

(A) An asset transfer is presumed to be for the purpose of establishing or continuing medicaid eligibility, avoiding estate recovery, or both;

(B) A client can rebut this presumption by providing convincing evidence that the transfer of an asset was exclusively for a purpose other than to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery.

(iii) All assets transferred for less than FMV have been returned to the ~~((person))~~ client or the ~~((person's))~~ client's spouse; or

(iv) ~~((The))~~ Denial of eligibility ~~((would))~~ results in an undue hardship under WAC 182-513-1367~~((;))~~.

(d) The transferred asset was a home, if the home was transferred to the person's:

(i) Spouse;

(ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iii) Child who was under age twenty-one; or

(iv) Child who lived in the home and provided care, but only if:

(A) The child lived in the person's home for at least two years;

(B) The child provided verifiable care to that person during the time period in (d)(iv)(A) of this subsection for at least two years;

(C) The period of care under (d)(iv)(B) of this subsection was immediately before ~~((the))~~ that person's current period of institutional status;

(D) The care was not paid for by medicaid;

(E) The care enabled ~~((the))~~ that person to remain at home; and

(F) The ~~((person provided))~~ physician's documentation verifies that the in-home care was necessary to prevent ~~((the))~~ that person's current period of institutional status; or

(v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person attained institutional status~~((;))~~.

(e) The asset was transferred to the ~~((person's))~~ client's spouse; or to the ~~((person's))~~ client's or their spouse's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer was to a family member before the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer, regardless of consideration received:

(i) The transfer is in exchange for care services the family member provided to the ~~((person))~~ client or their spouse;

(ii) The ~~((person))~~ client or their spouse had a documented need for the care services provided by the family member;

(iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community-based waiver services;

(iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(v) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(vi) The time for which care services are claimed is reasonable based on the kind of services provided; and

(vii) The assets were transferred as the care services were performed, ~~((or))~~ with no more time delay than one cal-

endar month between the provision of the service and the transfer.

(g) The transfer meets the conditions under subsection (5) of this section, and the asset is transferred~~((; or))~~:

(i) To another party for the sole benefit of the ~~((person's))~~ client's spouse;

(ii) From the ~~((person's))~~ client's spouse to another party for the sole benefit of the client's spouse;

(iii) To a trust established for the sole benefit of the ~~((person's))~~ client's or their spouse's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c); or

(iv) To a trust established for the sole benefit of a person who is under age sixty-five who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) An asset transfer or establishment of a trust is for the sole benefit of a person under subsection (4)(g) of this section if the document transferring the asset:

(a) Was made in writing;

(b) Is irrevocable;

(c) States that the ~~((person's))~~ client's spouse, their blind or disabled child, or another disabled person can benefit from the transferred assets; and

(d) States that all assets involved must be spent for the sole benefit of the person over an actuarially sound period, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets the conditions of a trust established under Section 42 U.S.C. 1396p (d)(4)(A) or Section 42 U.S.C. 1396(d)(4)(C) as described under chapter 182-516 WAC.

(6) To calculate the period of ineligibility under subsection (3) of this section:

(a) Add together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Divide the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility~~((;))~~.

(7) The period of ineligibility under subsection (6) of this section begins:

(a) For an LTC services applicant: The date the ~~((person))~~ client would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For an LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous period of ineligibility has ended.

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, pass from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer was to the ~~((person's))~~ client's spouse, from the client's spouse to the client, and it ~~((includes))~~ included the right to receive an income stream, the agency or ~~((its))~~ the agency's designee determines availability of the income stream under WAC 182-513-1330.

WSR 19-09-051

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed April 12, 2019, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-104.

Title of Rule and Other Identifying Information: WAC 182-513-1620 Tailored supports for older adults—Presumptive eligibility (PE).

Hearing Location(s): On May 21, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear Conference Room #107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 22, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 21, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by May 17, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the presumptive eligibility period from twelve to twenty-four months in subsection (7) to align with Title 388 WAC. The agency is also correcting a reference to the medicaid agency in subsection (8) and replacing it with the department of social and health services.

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 98504-2716, 360-725-1408; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

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

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

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

April 12, 2019

Wendy Barcus

Rules Coordinator

(10) If the transferred asset, for which adequate consideration was not received (~~was made to someone other than the person's spouse and~~), included the right to receive a stream of income not generated by ~~(the)~~ a transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy in months of the ~~(person who owned)~~ previous owner of the income. The actuarial life expectancy is based on age of the ~~(person)~~ previous owner in the month the transfer occurs. If the client and their spouse co-owned the asset, the longer actuarial life expectancy is used. This product is the FMV of the asset;

(b) Any consideration received in return for the FMV of the asset under (a) of this subsection is subtracted to calculate the uncompensated value;

~~((b))~~ (c) The ~~(amount)~~ uncompensated value in ~~((a))~~ (b) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

~~((c))~~ (d) The period of ineligibility begins under subsection (7) of this section and ends under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency or ~~(its)~~ the agency's designee divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) Throughout this section, the date of an asset transfer is:

(a) For real property:

(i) The day the deed is signed by the grantor if the deed is recorded; or

(ii) The day the signed deed is delivered to the grantee~~(s)~~.

(b) For all other assets, the day the intentional act or the failure to act resulted in the change of ownership or title.

(13) If a ~~(person)~~ client or ~~(the person's)~~ their spouse disagrees with the determination or application of a period of ineligibility, a hearing may be requested under chapter 182-526 WAC.

(14) Additional statutes that apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1620 Tailored supports for older adults (TSOA)—Presumptive eligibility (PE). (1) A person may be determined presumptively eligible for tailored supports for older adults (TSOA) services upon completion of a prescreening interview.

(2) The prescreening interview may be conducted by either:

(a) The area agency on aging (AAA); or

(b) A home and community services intake case manager or social worker.

(3) To receive services under presumptive eligibility (PE), the person must meet:

(a) Nursing facility level of care under WAC 388-106-0355;

(b) TSOA income limits under WAC 182-513-1635; and

(c) TSOA resource limits under WAC 182-513-1640.

(4) The PE period begins on the date the determination is made and:

(a) Ends on the last day of the month following the month of the PE determination if a full TSOA application is not completed and submitted by that date; or

(b) Continues through the date the final TSOA eligibility determination is made if a full TSOA application is submitted before the last day of the month following the month of the PE determination.

(5) If the person applies and is not determined financially eligible for TSOA, there is no overpayment or liability on the part of the applicant for services received during the PE period.

(6) The medicaid agency or the agency's designee sends written notice as described in WAC 182-518-0010 when PE for TSOA is approved or denied.

(7) A person may receive only one PE period within a ~~((twelve consecutive month))~~ consecutive twenty-four-month period.

(8) If the ~~((agency))~~ department of social and health services establishes a waitlist for TSOA services under WAC 388-106-1975, then PE does not apply.

WSR 19-09-056

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 15, 2019, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-05-091.

Title of Rule and Other Identifying Information: WAC 392-126-004 through 392-126-104, Finance—Shared leave.

Hearing Location(s): On May 22, 2019, at 10:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Wanamaker Room, Olympia, WA 98501. Those planning to testify during the hearing should arrive by 10:00 a.m.

Date of Intended Adoption: May 24, 2019.

Submit Written Comments to: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email thomas.kelly@k12.wa.us, fax 360-664-3683, by May 22, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by May 15, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to amend OSPI's leave sharing rules to align them with the underlying statutes, RCW 41.04.650 through 41.04.665, establish appropriate parameters and procedures for district shared leave programs, and make technical and housekeeping revisions. The proposed rules would also recodify WAC 392-126-004 through 392-126-104 as a standalone WAC chapter and make several housekeeping revisions to improve the clarity of the rules.

Reasons Supporting Proposal: Pursuant to RCW 28A.400.380, every school district board of directors and educational service district superintendent may, in accordance with RCW 41.04.650 through 41.04.665, establish and administer a leave sharing program for their certificated and classified employees. The legislature has periodically amended these statutes. This proposal is necessary to align OSPI's shared leave rules with the current statutes.

Statutory Authority for Adoption: RCW 28A.400.380.

Statute Being Implemented: RCW 41.04.650 through 41.04.665.

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

Name of Agency Personnel Responsible for Drafting: Dierk Meierbachtol, OSPI, 600 Washington Street S.E., [Olympia], WA 98504, 360-725-6004; and Implementation: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6301.

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

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

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

Is exempt under RCW 19.85.030.

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

April 15, 2019

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-136A WAC

FINANCE—SHARED LEAVE

NEW SECTION

WAC 392-136A-010 Authority. The authority for this chapter is RCW 28A.400.380, which authorizes the superintendent of public instruction to adopt rules promulgating standards governing the administration of the shared leave program which permits sharing of leave by qualified school district and educational service district employees.

NEW SECTION

WAC 392-136A-015 Purpose. The purpose of this chapter is to set forth standards establishing appropriate parameters for shared leave programs administered by school districts and educational service districts that are consistent with the provisions of RCW 41.04.650 through 41.04.665 and procedures to ensure that the program does not significantly increase the cost of providing leave.

NEW SECTION

WAC 392-136A-020 Definitions. As used in this chapter the term:

- (1) "Annual leave" means vacation leave that an employee accrues and is maintained in records of a district for employees eligible to accrue annual leave.
- (2) "District" means a school district or an educational service district.
- (3) "Domestic violence" means:
 - (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members;
 - (b) Sexual assault of one family or household member by another family or household member; or
 - (c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.
- (4) "Donated annual leave" means the amount of annual leave donated by a leave donor under the shared leave program.
- (5) "Donated sick leave" means the amount of sick leave donated by a leave donor under the shared leave program.
- (6) "Donated personal holiday" means the amount of personal holiday donated by a leave donor under the shared leave program of an educational service district pursuant to RCW 1.16.050.
- (7) "Employee" means any school district or educational service district employee entitled to use and accrue annual and/or sick leave and for whom accurate leave records are maintained.
- (8) "Employee's relative" means the employee's spouse, child, stepchild, grandchild, grandparent, parent, sibling, or other close relative by blood or marriage.
- (9) "Extraordinary or severe" means serious or extreme and/or life threatening.
- (10) "Family or household members" has the same meaning as set forth in RCW 26.50.010.

(11) "Household members" means persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. The term does not include persons sharing the same house when the living style is primarily that of a dormitory or commune.

(12) "Leave donor" means an employee who has an approved written request for the transfer of annual leave, sick leave, or personal holiday to the shared leave program.

(13) "Leave recipient" means a current employee who has an approved application to receive shared leave.

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

(15) "Personal holiday" means the additional paid holiday per calendar year granted to an educational service district employee pursuant to RCW 1.16.050.

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

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

(18) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(19) "Sick leave" means leave granted to an employee for the purpose of absence from work with pay in the event of illness, injury, and emergencies as authorized in RCW 28A.400.300.

(20) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(21) "State employer" means a state agency, the legislature, an institution of higher education, or a related higher education board.

(22) "Uniformed services" means the armed forces, the Army National Guard, and the Air National Guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time National Guard duty, or state active duty, the commissioned corps of the Public Health Service, the Coast Guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(23) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section.

NEW SECTION

WAC 392-136A-025 Permissibility of shared leave program. Pursuant to RCW 28A.400.380, districts may institute a shared leave program for employees. This chapter shall govern such programs.

NEW SECTION

WAC 392-136A-030 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave if the district has determined the employee meets the following conditions:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault, or stalking;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(g) Needs the time for parental leave; or

(h) Is sick or temporarily disabled because of pregnancy disability.

(2) The condition(s) listed in subsection (1) of this section has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has exhausted or will shortly exhaust leave in accordance with WAC 392-136A-040. If the employee qualifies under subsection (1)(g) or (h) of this section, the employee is not required to deplete all of his or her annual leave or sick leave in accordance with WAC 392-136A-040.

(5) The employee has abided by district policies regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave use if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(7) The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.

NEW SECTION

WAC 392-136A-035 Donation of leave. An employee may donate annual leave, sick leave, or all or part of a personal holiday to another employee or pool for purposes of the state leave sharing program under the following conditions:

(1) **Annual leave.**

(a) The leave donor may donate any amount of accrued annual leave provided the donation does not cause the leave donor's annual leave balance to fall below ten days. For the purpose of this section, annual leave does not accrue if the leave donor receives compensation in lieu of accumulating a balance of annual leave.

(b) Employees may not donate excess annual leave that the leave donor would not be able to take because of an approaching date after which the annual leave cannot be used.

(2) **Sick leave.**

(a) The leave donor must have accrued more than twenty-two days of sick leave.

(b) The leave donor may not donate an amount of sick leave that will result in his or her sick leave account going below twenty-two days.

(3) **Personal holiday.** An educational service district employee may donate part or all of his or her personal holiday to specific individuals or pool.

(4) All donated leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating leave.

NEW SECTION

WAC 392-136A-040 Exhaustion of leave. (1) Employees who qualify for shared leave under WAC 392-136A-030 (1)(a) must first use all of their personal holiday, accrued sick leave, and accrued annual leave before using shared leave.

(2) Employees who qualify for shared leave under WAC 392-136A-030 (1)(b) must first use all of their personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave.

(3) Employees who qualify for shared leave under WAC 392-136A-030 (1)(c) and (d) must first use all personal holiday and annual leave that they have accrued before using shared leave.

(4) Employees who qualify for shared leave under WAC 392-136A-030 (1)(e) or (f) must first use all personal holiday, sick leave, and annual leave before using shared leave.

(5)(a) Educational service district employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) must first use their personal holiday before using shared leave; and

(b) Employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) are not required to deplete all of their accrued annual leave and sick leave and can maintain up to forty hours of annual leave and forty hours of sick leave.

NEW SECTION

WAC 392-136A-045 Maximum amount. The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than five hundred twenty-two days of shared leave during total district employment.

Districts are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

NEW SECTION

WAC 392-136A-050 Repayment of shared leave used. A leave recipient who uses leave that is donated under the state leave sharing program is not required to repay the value of the leave that he or she used.

NEW SECTION

WAC 392-136A-055 Documentation. An employee may be required to submit the following documentation before the district approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 392-136A-030 (1)(a), the district may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(2) For employees seeking shared leave under WAC 392-136A-030 (1)(b), the district may require the employee to submit a copy of the military orders verifying the employee's required service in the uniformed services.

(3) For employees seeking shared leave under WAC 392-136A-030 (1)(c), the district may require proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 392-136A-030 (1)(d), the district may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault or stalking; or

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

of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) For employees seeking shared leave under WAC 392-136A-030 (1)(e) or (f), the district may require the employee provide a veterans affairs benefits summary letter from the U.S. Department of Veterans Affairs and a copy of "DD Form 214" or a letter from the employee's command indicating the employee is a current member of the uniformed services and verifying that:

(a) The employee is attending medical appointments or treatments for a service connected injury or disability including U.S. Department of Veterans Affairs compensation and pension examinations; or

(b) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability including U.S. Department of Veterans Affairs compensation and pension examinations.

(6) For employees seeking shared leave under WAC 392-136A-030 (1)(g), the district may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) For employees seeking shared leave under WAC 392-136A-030 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

NEW SECTION

WAC 392-136A-060 Calculation of shared leave benefit—Proration. Shared leave between employees of the same district shall be calculated as follows:

(1) The leave recipient shall be paid his or her regular rate of pay. Therefore, the value of one hour of shared leave may cover more or less than one hour of the recipient's salary. The dollar value of the leave shall be converted from the donor to the recipient. The leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

(2) In the alternative, the dollar value of the leave donated shall be ignored and the leave shall be calculated on a day donated and day received basis.

NEW SECTION

WAC 392-136A-065 Shared leave benefits—Transfers between districts—Calculations of donated leave amounts. (1) Districts shall have the option, as a matter of board policy, of allowing their employees to share leave with employees of other districts or state employers, or to receive leave from employees of other districts or state employers.

(2) The leave recipient shall be paid his or her regular rate of pay. Therefore, the value of one hour of shared leave may cover more or less than one hour of the recipient's salary.

(3) Leave shared between districts and/or state employers shall be calculated in a format designated by the office of superintendent of public instruction. Donated shared leave shall be converted into the dollar equivalent. Received shared leave shall be converted from the dollar amount received into days to be paid. Shared leave shall be transferred between

districts and/or state employers based on the dollar equivalent computed under this section.

(4) Leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

NEW SECTION

WAC 392-136A-070 Unused shared leave. (1) Any shared leave not used by the leave recipient during each incident or occurrence as determined by the district must be returned to the leave donor(s).

(2) If shared leave has been granted for a leave recipient who suffers from an illness, injury, impairment, or physical mental condition which is of an extraordinary or severe nature, unused shared leave may not be returned to the leave donor until one of the following occurs:

(a) The district receives a statement from the leave recipient's licensed physician or health care practitioner verifying that the illness or injury is resolved; or

(b) The leave recipient is released by his or her licensed physician or health care practitioner to return to the leave recipient's normal schedule; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and his or her licensed physician or health care practitioner has declined, in writing, the leave recipient's request for a statement indicating the leave recipient's condition has been resolved.

(3) The remaining unused shared leave must be returned to the leave donors and reinstated to the respective donors' appropriate leave balances.

(4) Any portion of a personal holiday that is accrued by an educational service district employee, donated as shared leave, and then returned during the same calendar year to the leave donor may be taken by the leave donor.

NEW SECTION

WAC 392-136A-075 Annual conversion of accumulated sick leave. The provisions of this chapter shall not reduce the ability of the employee to convert accumulated sick leave under WAC 392-136A-015.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-126-004 Authority.

WAC 392-126-006 Purpose.

WAC 392-126-009 Definition—Program.

WAC 392-126-015 Definition—Annual leave.

WAC 392-126-020 Definition—Sick leave.

WAC 392-126-022 Definition—Personal holiday.

WAC 392-126-025 Definition—Employee.

WAC 392-126-026 Definition—Service in the uniformed services.

WAC 392-126-027 Definition—Uniformed services.

WAC 392-126-030 Definition—District.

WAC 392-126-032 Definition—Agency.

WAC 392-126-035 Definition—Leave recipient.

WAC 392-126-040 Definition—Leave donor.

WAC 392-126-045 Definition—Donated annual leave.

WAC 392-126-050 Definition—Donated sick leave.

WAC 392-126-053 Definition—Donated personal holiday.

WAC 392-126-055 Definition—Employee's relative.

WAC 392-126-060 Definitions—Household members.

WAC 392-126-065 Definition—Extraordinary or severe.

WAC 392-126-070 Permissibility of shared leave program.

WAC 392-126-075 Eligibility.

WAC 392-126-080 Donation of annual leave.

WAC 392-126-085 Donation of sick leave.

WAC 392-126-087 Donation of personal holiday.

WAC 392-126-090 Maximum amount.

WAC 392-126-092 Repayment of shared leave used.

WAC 392-126-095 Documentation.

WAC 392-126-099 Calculation of shared leave benefit—Proration.

WAC 392-126-101 Shared leave benefits—Transfers between districts—Calculations of donated leave amounts.

WAC 392-126-104 Annual conversion of accumulated sick leave.

WSR 19-09-060

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed April 16, 2019, 9:55 a.m.]

WAC 388-112A-0050, 388-112A-0060, 388-112A-0070, 388-112A-0090, 388-112A-0125, 388-112A-0495, 388-112A-0590, 388-112A-0600, 388-112A-0610, 388-112A-0611, 388-112A-0612, 388-112A-1020, 388-112A-1240, 388-112A-1270 and 388-112A-1285, proposed by the department of social and health services in WSR 18-19-108, appearing in issue 18-20 of the Washington State Register, which was distributed on October 17, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 19-09-061
WITHDRAWAL OF PROPOSED RULES
HEALTH CARE AUTHORITY

(By the Code Reviser's Office)

[Filed April 16, 2019, 9:57 a.m.]

WAC 182-531-1675, proposed by the health care authority in WSR 18-20-123, appearing in issue 18-20 of the Washington State Register, which was distributed on October 17, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 19-09-064
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 16, 2019, 10:59 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amendments to the elevator rules, chapter 296-96 WAC, Safety regulations and fees for all elevators, dumbwaiters, escalators, and other conveyances.

Hearing Location(s): On May 30, 2019, at 9:00 a.m., at the Labor and Industries (L&I) Tukwila Office, 12806 Gateway Drive South, Tukwila, WA 98168; and on May 31, 2019, at 9:00 a.m., at the Davenport Grand Hotel, 333 West Spokane Falls Boulevard, Spokane, WA 99201.

Date of Intended Adoption: July 23, 2019.

Submit Written Comments to: Alicia Curry, L&I, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m., on May 31, 2019.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by May 17, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes to the elevator rules to adopt additional requirements from the 2015 American Society of Mechanical Engineers (ASME) A17.3 safety codes for existing elevators and escalators. These additional requirements include:

- ASME A17.3 requirement 2.7.6 Hoistway Emergency Door Contacts;
- ASME A17.3 requirement 3.3.5 Protection of Platforms Against Fire;
- ASME A17.3 requirement 3.10.7 Operating of Driving Machine;
- ASME A17.3 requirement 3.10.12 System to Monitor and Prevent Automatic Operation of the Elevator with Faulty Door Contact Circuits;
- ASME A17.3 requirement 3.11.3 Firefighter's Service;
- ASME A17.3 requirement 3.9.5 Piston Connections; and

- ASME A17.3 requirement 5.5.3 Adjacent Floor Surfaces.

The proposed rules also provide an extended time frame of two years to come into compliance with ASME A17.3 Requirements 2.7.6, 3.3.5, 3.10.7, 3.9.5, and 5.5.3 or to submit a written plan with a projected time frame for compliance and five years for compliance with ASME A17.3 Requirements 3.10.12 and 3.11.3.

Reasons Supporting Proposal: On June 5, 2018, the department filed proposed rule amendments to the elevator rules (chapter 296-96 WAC) following a formal review of the rules and new safety code requirements from the 2016 edition of ASME and other related codes (WSR 18-12-103). The proposed rules were developed using a technical advisory committee of diverse elevator stakeholder representatives and were reviewed and approved by the elevator safety advisory committee. The proposed rules included adoption of the 2015 ASME A17.3 safety codes for existing elevators and escalators. The ASME A17.3 code contains several provisions already adopted in existing requirements under chapter 296-96 WAC but also some new requirements.

On August 31, 2018, the department adopted only those provisions of ASME A17.3 that were consistent with existing requirements and decided to pursue adoption of the remaining provisions in this separate rule making to address concerns that elevator owners did not understand how the rule changes would affect them. This rule making allows the department to further engage in discussions with building owners and other interested parties on the impacts of adopting the additional requirements from ASME A17.3.

Statutory Authority for Adoption: Chapter 70.87 RCW, Elevators, lifting devices, and moving walks.

Statute Being Implemented: Chapter 70.87 RCW, Elevators, lifting devices, and moving walks.

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: Dotty Stanlaske, Program Manager, Tumwater, Washington, 360-902-6456; Implementation and Enforcement: David Puente, Jr., Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. Under certain circumstances, a rule or rule component is exempt from the economic analysis requirement. These exemption criteria are listed in RCW 34.05.328 (5)(b) including both:

- Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and

- Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

April 16, 2019
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-00675 Amendments to adopted standards. (1) Exclude all references to QEI certification in ASME A17.1/CSA B44 from code adoption.

(2) ASME A17.1/CSA B44, Section 1.2 Purpose and Exceptions amended as follows: The purpose of this code is to provide for the safety of life and limb, and to promote the public welfare. Compliance with these rules shall be achieved by:

(a) Conformance with the requirements in ASME A17.1/CSA B44 as amended by this chapter; or

(b) Conformance with a combination of requirements in ASME A17.1/CSA B44, this chapter, and ASME A17.7/CSA B44.7 with the following ASME A17.7/CSA B44.7 inclusions:

(i) All system or component certifications performed by an Accredited Elevator/Escalator Certification Organization (AECO) under ASME A17.7/CSA B44.7 shall be approved by the department before any such system or component is allowed to be permitted or installed in the state of Washington.

(ii) The applicant shall provide the certificate of certification for the device or system evaluated by an AECO.

(iii) The department has the final authority regarding acceptance of any item in ASME A17.7/CSA B44.7. The department may remove approval if a design has changed or unforeseen or undisclosed information is obtained.

(iv) The department will post the specific ASME A17.7/CSA B44.7 AECO certificate including exceptions agreed upon. At that time the certificate and exceptions become part of the adopted rule in the state of Washington and not subject to a variance process. The installer shall include the certificate and exceptions and all required information on each con-

veyance installed utilizing the ASME A17.7/CSA B44.7 method in the Maintenance Control Program documentation.

(v) The department may charge an additional fee for each item in review based upon the variance fee table.

(c) Additions or modifications to adopted standards and/or this chapter shall require approval from the department.

(3) ASME A17.1/CSA B44, Section 5.8, Marine Elevators. This section only applies to elevators installed on board a marine vessel flying the Washington state flag and under one hundred gross metric tons.

(4) ASME A17.1/CSA B44, Section 5.11, Wind Turbine Elevator is not adopted.

(5) Periodic tests and inspections. Pursuant to ~~((Req:))~~ requirements 8.6.1.7 and 8.11.1.3, the department adopts ASME A17.1/CSA B44, Appendix N for the frequency of periodic tests. Pursuant to RCW 70.87.120 (2)(a) periodic inspections shall be performed annually.

(6) ASME A17.1/CSA B44 requirement 8.11.1.2 is not adopted. The department shall be permitted to witness periodic tests when the department deems necessary.

(7)(a) ASME A17.1-2016/CSA B44-16, 8.6.11.1 Firefighters' Emergency Operation is amended as follows: All elevators provided with firefighters' emergency operation shall be subjected quarterly, by authorized personnel, to Phase I recall by use of the keyed switch, and a minimum of one-floor operation on Phase II. Deficiencies shall be corrected. A record of findings shall be available to elevator personnel and the authority having jurisdiction.

(b) At least once each year, the fire alarm initiating devices associated with elevator recall and shunt trip initiating devices shall be tested to ~~((determine if))~~ ensure they are still properly interfaced with the elevator control.

~~((8) ASME A17.3 requirement 2.7.6 Hoistway Emergency Door Contacts is not adopted.~~

~~(9) ASME A17.3 requirement 3.3.5 Protection of Platforms Against Fire is not adopted.~~

~~(10) ASME A17.3 requirement 3.10.7 Operating of Driving Machine with Hoistway Door Unlocked or Hoistway or Car Door Not in the Closed Position is not adopted.~~

~~(11) ASME A17.3 requirement 3.10.12 System to Monitor and Prevent Automatic Operation of the Elevator with Faulty Door Contact Circuits is not adopted.~~

~~(12) ASME A17.3 requirement 3.11.3 Firefighter's Service is not adopted.~~

~~(13) ASME A17.3 requirement 3.9.5 Piston Connections is not adopted.~~

~~(14) ASME A17.3 requirement 5.5.3 Adjacent Floor Surfaces is not adopted.))~~

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-23000 Compliance time frames. Time frames for compliance with Part D or ASME A17.3 (or combination thereof) as applicable.

(1) These time frames do not apply to maintenance and periodic testing as required by ASME A17.1/CSA B44, Section 8.6.

(2) Where a single unit is required to comply with multiple requirements or a group of units is required to comply with multiple requirements on one or more conveyances, the owner shall ~~((be granted sufficient time in order to comply without penalty.~~

~~(3) The owner shall~~);

(a) Have twenty-four months/two years in which to come into compliance; or

(b) Submit a written plan ~~((and))~~ within twenty-four months indicating the projected time frame ~~((for))~~ in which to comply.

~~((4))~~ (3) Where conveyances are targeted for alterations upon complying with subsection (2)(b) of this section, the owner may delay implementation of the requirements of Part D or ASME A17.3 (or combination thereof) until such time when the alteration is permitted by the department.

(4) The owner shall have a maximum of 60 months/5 years in which to come into compliance with the following:

(a) ASME A17.3 requirement 3.10.12 System to Monitor and Prevent Automatic Operation of the Elevator with Faulty Door Contact Circuits.

(b) Where Firefighters' Emergency Operation is required by ASME A17.3, requirement 3.11.3 (note: ASME A17.3, requirement 3.11.3 only pertains to elevators where Firefighters' Emergency Operation does not comply with the 1987 or later editions of ASME A17.1 or ASME A17.1/CSA B44. There is no requirement to add Firefighter's Emergency Operation (FEO) under ASME A17.3 if the elevator was not provided with FEO during the initial installation).

WSR 19-09-069

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed April 16, 2019, 12:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-070.

Title of Rule and Other Identifying Information: Administration of toll and fee collection, accounts and penalties on Washington state toll facilities.

Hearing Location(s): On May 21, 2019, at 8:30 a.m., at the Washington State Department of Transportation (WSDOT) Headquarters Building, Nisqually Conference Room, 310 Maple Park Avenue S.E., Olympia, WA 98501.

Date of Intended Adoption: May 21, 2019.

Submit Written Comments to: WSDOT Toll Division, 401 Second Avenue South, Suite 300, Seattle, WA 98401-3850, email TollingReferrals@wsdot.wa.gov [TollingReferrals@wsdot.wa.gov], fax 206-464-1189, by May 20, 2019.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email engleka@wsdot.wa.gov, by May 17, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSDOT has statutory authority to administer tolls on designated toll facilities, RCW 47.56.030(1) and 47.56.795. Rules are needed to define customer requirements to use toll facilities and

WSDOT procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational. The proposed rule defines a new customer account type, deletes account options that are no longer used, and updates the order of payment to pending account charges. Edits are proposed throughout the rule to improve clarity and better align the rules to current tolling practices.

Reasons Supporting Proposal: The new toll back office system will provide new options and functionality for toll customers as well as more efficient and accountable toll collection.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5).

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

Name of Proponent: WSDOT, toll division, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Fellows, Seattle, Washington, 206-464-1257; Implementation and Enforcement: Ed Barry, Seattle, Washington, 206-464-1217.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to subsection (5) of RCW 34.05.328, WSDOT is not required to develop a cost-benefit analysis for rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party.

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

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

Aril [April] 12, 2019
Kara Larsen, Director
Risk Management and
Legal Services Division

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-001 Definitions. The following terms and acronyms shall have the meanings set forth as below.

~~("Active account" means an open Good To Go™ toll account with a positive balance sufficient to cover tolls and fees to which may be recorded by the customer service center system.)~~

"Administrative fee" means ~~((the))~~ a fee imposed by WSDOT for toll collection processing and other activities as set forth in chapter 468-270 WAC.

"Administrative hearing" means ~~((an in-person or written))~~ a hearing ~~((before))~~ with an administrative law judge to contest WSDOT's written decision in response to a notice of dispute regarding a notice of civil penalty.

"Administrative law judge (ALJ)" means a judge provided by the office of administrative hearings authorized to conduct administrative hearings.

~~"(Automatic replenishment) Auto Pay"~~ means the addition of money to ~~((an active toll)) an~~ account using a ~~((customers') customer's~~ predesignated payment method ~~((according to the Good To Go!™ terms and conditions.~~

~~"Branded debit card"~~ means a debit card that can be used as a credit card).

"Civil penalty" means the penalty assessed for any unpaid tolls.

~~"Closed account"~~ means a toll account that has been closed.

~~"Commercial account"~~ means a uniquely identifiable type of account for a toll customer who requests more than six Passes for their account.)

"Commission" means the transportation commission appointed by the governor of the state of Washington. The commission is responsible for setting toll rates, fees and ~~((schedules)) appropriate exemptions consistent with RCW 47.56.850.~~

"Customer service center (CSC)" means the place that customers can contact by phone, mail, in person, fax or ~~((the)) internet~~ to open and manage a toll account, and receive services regarding their account and information about state toll facilities.

"Department" means the Washington state department of transportation (WSDOT).

"Department of licensing (DOL)" means the agency that maintains vehicle registration information.

"Dishonored check" means any check returned to WSDOT by a financial institution for any reason, including nonacceptance, nonpayment, nonsufficient funds ~~((€)), stop payment, or missing signature, unless a justifiable stop payment order exists.~~

"Dishonored credit card transaction" means a credit card transaction that is not approved by the entity that issued the credit card.

"Dispute" means a customer's contact with the department, online, by phone or in writing, to dispute a fee, toll bill and/or notice of civil penalty.

~~"Dynamic toll pricing" means ((varying the toll rate charged to toll customers based upon live traffic conditions to maintain specific performance standards of traffic management.~~

~~"Eligible toll facility (toll facility)" means any portion(s) of the state highway system upon which tolling has been specifically identified by the legislature including, but not limited to, transportation corridors; bridges; crossings; interchanges; on-ramps; off-ramps; approaches; bi-state facilities; and interconnections between highways)) toll rates that vary automatically based on the real-time volume and/or performance of traffic in order to maximize the performance of the highway facility being tolled.~~

"Express toll lanes" means one or more highway lanes that can be used by authorized high-occupancy vehicles, and by toll-paying vehicles, where ~~((toll rates are set)) dynamic toll pricing is used~~ to maintain travel speed and reliability.

"Facility" means a toll transportation facility.

"Final order" means the decision provided by the administrative law judge (ALJ) in response to an administrative hearing.

~~"(Flex pass" means the Good To Go!™ Pass used to declare status to qualify as a toll-free carpool as defined by the commission.)~~

"Good To Go!™" means the name of the ~~((department's)) state's~~ toll collection system and is a registered trademark.

"Good To Go!™ account" means an account that is linked to a Pass and/or license plate in order to pay tolls.

"Good To Go!™ customer" means a toll customer who participates in the department's Good To Go!™ tolling program.

~~"(Government agency transponder account" means a uniquely identifiable type of account for a public agency.)~~

"Good To Go!™ Pass (Pass)" means a branded device attached to a toll customer's vehicle that electronically identifies the toll customer's vehicle as it passes through the toll facility.

~~"Hearing request" ((Form" means the form provided with the initial order which outlines the process for an individual to request a hearing to dispute the initial order given by the department in response to a notice of dispute.~~

~~"High occupancy vehicle (HOV)" means a bus, vanpool or a carpool vehicle with minimum occupancy requirements depending upon the posted roadway HOV signage and as further described in WAC 468-510-010 and RCW 46.74.010.~~

~~"High occupancy toll lanes (HOT lanes)" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the lanes in order to maintain travel speed and reliability. HOT lane supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment as defined in RCW 47.56.401 and 47.56.403.~~

~~"Inactive account" means a toll account that has had no toll transaction activity during a predefined period of time as defined by the Good To Go!™ terms and conditions.~~

~~"Initial order" means the written decision provided by the department or its designee in response to a notice of dispute.~~

~~"Insufficient funds account" means a toll account with a balance less than the single toll rate or fee at the time the customer's transaction is processed)) means a request to dispute a Notice of Civil Penalty.~~

"Invoice account" means a restricted account available only to government agencies and other limited cases where the customer is invoiced monthly.

"Nonsufficient funds" means a dishonored check, for any reason, presented to WSDOT in payment of any toll transaction.

"Notice of civil penalty (NOCP)" means the notice that is sent to ~~((notify)) the account holder or registered vehicle owner ((of a toll violation))~~ for failure to pay a toll by the toll payment due date, and for which a civil penalty is assessed.

"Notice of dishonored credit card transaction" means that notice was sent to the account holder or registered vehicle owner that a transaction authorized by a toll customer ((that)) is not honored by the financial institution for any reason except for the existence of a stop payment order.

~~("Notice of dispute" means a customer's contact with the department, by phone or in writing, to dispute a fee and/or notice of civil penalty.)~~

~~"Notice of nonsufficient funds (NSF)" means the notice sent to a toll customer who presented a ((nonsufficient funds)) dishonored check to WSDOT in payment of any toll transaction or fee. ((This notice will be mailed to the toll customer at the address noted on the check returned from the financial institution.~~

~~"Pass (Good To Go!™ Pass)" means the transponder device used on WSDOT toll facilities.~~

~~"Pass toll transaction" means a toll transaction that has been posted in the customer service center system based on a pass number.)~~

"Office of administrative hearings (OAH)" means Washington state office of administrative hearings who provides independent adjudication services for the state's tolling program.

"Pay As You Go" means the account payment option where the account is charged at regular intervals based on use. This option requires the customer to provide a valid debit or credit card and no prepaid balance is necessary.

"Pay By Mail" means the method used to pay a ((photo)) toll when a toll bill is mailed to the vehicle's registered owner. Tolls charged using Pay By Mail are charged the designated Pay By Mail toll rate.

"Pay By Plate" means the optional method used to pay a ((photo)) toll by ((a customer who has a toll account through the use of a photo toll system)) an account holder whose vehicle does not have a Good To Go!™ Pass installed. Tolls charged using Pay By Plate are charged the designated Good To Go!™ toll rate and a Pay By Plate fee.

"Payment transaction" means a record of activity created by the customer service center as a result of a customer payment.

~~("Photo toll" means a charge associated with a particular vehicle that is identified by its license plate and includes Pay By Mail, Pay By Plate and Short Term Account.~~

~~"Photo toll system" means a camera-based imaging system that uses digital video or still image formats to record license plate images of vehicles using toll lanes for the purpose of collecting photo tolls.)~~

"RCW" means the Revised Code of Washington.

~~("Registered toll account" means a toll account that contains customer contact information.~~

~~"Short Term Account" means the method used to pay a photo toll when there is no regular toll account and the customer pays the photo toll no later than three days after the toll transaction.)~~

"State" means the state of Washington.

~~("Statewide tolling program" means the single, integrated tolling operations used by all eligible state toll facilities and includes both toll collection and toll enforcement processes.)~~

"Tacoma Narrows Bridge" means the toll facility located on SR 16 in Pierce County, Washington.

"Toll" means the charge for the use of a state toll facility ((that may be paid by Good To Go!™ Pass, Pay By Plate (or a registered license plate account), Short Term Account, Pay By Mail, or cash (where available).

~~"Toll account (Good To Go!™ toll account)" means an account that is linked to a Pass or license plate, or both, in order to pay a toll by automatic debit).~~

~~"Toll bill (Pay By Mail toll bill)" means a bill that is sent to the account holder or registered owner of a vehicle ((which has incurred a photo toll. A toll bill will state the amount due including photo tolls at the Pay By Mail rate and all associated fees)).~~

~~"Toll collection system (TCS)" means any system that creates a toll transaction and includes both electronic and photo toll collection systems, and cash (where available).~~

~~"Toll customer" means anyone who passes through a Washington state toll transportation facility.~~

~~("Toll enforcement office" means the division within WSDOT responsible for toll enforcement activities associated with the notices of civil penalty (NOCPs) as well as the written disputes and administrative hearings.)~~

~~"Toll enforcement officer" means any person authorized by WSDOT to review and certify notices of civil penalty (NOCP).~~

~~("Toll facility" means a toll transportation facility.)~~

~~"Toll payment due date" means the date when a toll bill must be paid ((to avoid a civil penalty. The toll payment due date is eighty days from the date the vehicle uses the toll facility and incurs the toll charge)).~~

~~"Toll transaction" means a record of activity created by the toll collection system as a result of a vehicle traveling through a tolling point.~~

~~("Toll violation" means the violation of statutes requiring that a toll be paid by the toll payment due date which is eighty days from the toll transaction date.~~

~~"Transponder disabling device (shield)" means an authorized WSDOT device that is used to render inoperative the radio transmission of the vehicle identification code from a transponder to a roadside transponder reader.~~

~~"Transponder (Good To Go!™ Pass)" means a device attached to a toll customer's vehicle that automatically identifies the toll customer's vehicle as it passes through the toll facility.)~~

~~"Unregistered toll account" means a uniquely identifiable type of account that does not contain customer name, address, or vehicle information and requires the use of a pass and manual replenishment.~~

~~"Variable toll pricing" means ((a method of varying a)) toll rate schedule that varies by time of day in order to maximize the performance of the highway facility being tolled.~~

~~"WSDOT" means Washington state department of transportation, any division, section, office, unit or other entity within Washington state department of transportation, and any of the officers or other officials lawfully representing Washington state department of transportation.~~

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-100 What toll payment methods are available on WSDOT toll facilities? The following toll payment methods are available on WSDOT toll facilities:

(1) ~~((**Payment by pass:** This toll payment option uses a *Good To Go!*TM Pass (transponder device) to debit funds from an associated valid toll account.~~

(2) ~~**Photo toll payments:** This payment method uses a photograph of a license plate to assess the toll. The photo toll may be paid by toll account; a Short Term Account; by individual payment online, mail, fax, over the phone or in person at a customer service center; or in response to a Pay By Mail toll bill.)~~ **Good To Go!**TM **account:** This tolling option allows customers to open an account linked to their vehicles that gets charged when toll facilities are used. There are several payment methods available for accounts (as described in WAC 468-305-105).

(2) **Pay By Mail:** This tolling option allows the user to be billed by mail for toll transactions. Tolls paid using this tolling option are charged the Pay By Mail toll rate. This payment method is not yet available on the SR 167 HOT lanes.

(3) **Manual payment:** This ((payment method)) tolling option is available only on the Tacoma Narrows Bridge. It requires payment at a tollbooth using cash, ((a)) credit card, or ((branded)) a debit card that can be processed as a credit card (does not require a PIN). This option ((also)) requires ((you)) the vehicle to stop ((your vehicle)) at the tollbooth facility to pay. Tolls paid using this tolling option are charged the cash toll rate.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-105 What can I do to arrange for toll payment before I use a toll facility? ((+)) Prior to using a toll facility, you can open a ((toll account either)) *Good To Go!*TM account online, in person ((at a customer service center)) or over the phone.

((2)) When you set up your account or anytime while the account is still open you can select from the following types of accounts:

(a) *Good To Go!*TM Pass account – One or more *Good To Go!*TM Passes can be connected to a toll account. When a pass is detected by sensors on a toll facility and there are sufficient funds in your account to cover the toll, the account will be debited. This type of account can be used on all toll facilities; is quick, simple and offers you the lowest rate.

(b) Pay By Plate account – One or more license plates can be connected to a toll account. When those plates are photographed using a toll facility and there are sufficient funds in your account to cover the toll, the account will be debited. There may be facilities where you cannot use this type of account. Charges associated with this type of account are lower than Pay By Mail charges but more than *Good To Go!*TM Pass account charges.

(c) Short Term Account – If you plan on using a toll facility a limited number of times, within a twenty-day time period, or up to seventy-two hours after use, you can set up a Short Term Account. Short Term Accounts only last twenty days and funds cannot be added after the initial amount is used. Short Term Accounts require you to identify the license plate(s) that you want tied to the account.

(3) All pass and Pay By Plate accounts can be set up to be replenished automatically or manually. The account will

remain in place unless closed by the account holder or by WSDOT for lack of sufficient funds or lack of activity. Accounts set up online must be registered for automatic replenishment.

(4) A vehicle can only be connected to one account at any one time.) One or more vehicles can be on an account. Details on how to open a *Good To Go!*TM account and the options available are covered in WAC 468-305-300.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-125 Is there a way for me to pay the toll after I drive on a toll facility before I get a ((toll)) Pay By Mail bill? ((If you use a toll facility and do not have an account, tolls may be paid by opening an account or, if you have insufficient funds in your account to cover the toll, tolls can be paid by calling the customer service center within seventy-two hours of using the toll facility. A Short Term Account can also be opened up to seventy-two hours after using a toll facility.)) Yes. If you use a toll facility without a *Good To Go!*TM account and want to pay before receiving a Pay By Mail bill, you can open an account online or by phone within seventy-two hours to pay that toll or walk into any customer service center to pay in person.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-131 What happens when I use a toll facility but do not have an account or I have insufficient funds in my account? (1) If ((a vehicle)) you use((s)) a toll facility without an account, or ((there are insufficient funds in the account)) if your account cannot be charged for any reason, a Pay By Mail toll charge will be assessed and a toll bill issued.

(2) ((A toll bill may contain one or more toll charges.

(3) Toll)) If an account address is not available, Pay By Mail bills will be sent to the address ((where)) of the ((vehicle is)) vehicle's registered owner. It is the registered owner's responsibility to update their registration address with the department of licensing.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-133 What should I do once I receive a ((toll)) Pay By Mail bill in the mail? Toll charges must be paid or disputed within eighty days of using the toll facility. ((A first toll)) Pay By Mail bills will be mailed to the registered owner of the vehicle if no account holder address is available. If there are toll charges not paid by the due date of the ((toll)) bill ((will receive a second toll)), the subsequent bill ((and)) will be assessed a ((five dollar)) reprocessing fee ((one fee per toll bill)) at a rate set by the commission. If a reprocessing fee is assessed, this fee must also be paid within eighty days of using the toll facility. Toll charges can be paid online, by mail, in person ((at a customer service center,)) or by ((telephone)) phone.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-150 What can I do once I received a notice of civil penalty? (1) You can pay the notice of civil penalty. ~~((2))~~ Payment can be made ~~((to the customer service center))~~ with cash, check, certified check, credit, debit card, or by money order. Payments can be made online, in person, by mail, or telephone.

~~((3))~~ (2) You may dispute the notice of civil penalty according to the dispute instructions available online, or using the form provided with the notice.

~~((4))~~ (3) Failure to timely pay the total amount due or dispute the notice shall automatically result in liability for the amount set out in the notice, and a hold may be placed on the vehicle registration renewal. Unpaid amounts may also be transferred to a collection agency.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-160 What can I do if I want to pay the tolls but dispute a fee or civil penalty? ~~((4))~~ Registered owners wishing to dispute a fee or civil penalty ~~((must contact the customer service center or submit a dispute form.~~

~~(2) Dispute forms are included with the notice of civil penalty and are available online. Dispute forms must include a full written statement explaining the reasons for disputing the fee or civil penalty, including any verifiable documents supporting the dispute. The department may waive fees and civil penalties upon the first customer request to do so by applying an education program))~~ may follow the dispute instructions available online, or use the form provided with the notice.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-210 What is required for a qualified vehicle to claim an exemption? (1) In order to establish a vehicle's exemption approved by the commission, you may be required to meet the following procedures:

(a) Establish that the vehicle(s) is eligible for exemption by submitting a ~~((certification of exemption eligibility; and review and monitor toll usage as requested by WSDOT;))~~ toll exemption application with related documentation as specified on the application; and

(b) Establish and maintain a *Good To Go!*TM ~~((toll))~~ non-revenue account in good standing and equip the qualified vehicle with a pass~~((; and~~

~~((; and~~ (c) Equip the vehicle with identification signage).

(2) In rare cases specific exempt toll transactions may have charges reversed. To claim exemptions for specific exempt toll transactions debited from a toll account, the registered owner or its authorized representative must submit a written request which:

(a) Includes the *Good To Go!*TM toll account number or the toll bill number;

(b) Identifies the date and time of the transaction(s) for which a credit is being sought;

(c) Includes a signed statement that the qualified vehicle's use of the road met the exemption requirements; and

(d) Submit the written request within eighty days of the toll transaction date. The department may then issue a credit to the toll account.

~~(3) ((To claim exemption from specific toll transactions where the registered owner receives a Pay By Mail toll bill, the registered owner or its authorized representative must submit a written request which:~~

~~(a) Includes the toll bill number;~~

~~(b) Identifies the date and time of the toll transaction(s) for which a credit or waiver is being sought;~~

~~(c) Includes a signed statement that the qualified vehicle's use of the road met the exemption requirements; and~~

~~(d) Submit the written request within eighty days of the toll transaction date. The department may then waive the toll.~~

~~(4))~~ Failure to submit a certification of vehicle(s) exemption eligibility or timely submit a written request for toll transaction credit will result in a waiver of the ability to claim a toll exemption.

AMENDATORY SECTION (Amending WSR 11-07-039, filed 3/14/11, effective 12/3/11)

WAC 468-305-220 How are rental car transactions processed? ~~((When a vehicle registered to a rental agency uses a toll facility without making the proper payment, the rental agency will receive notification of the))~~ Rental agencies should establish rental accounts through the customer service center. Rental agencies will receive a monthly statement of toll charges detailing the tolling activities of their rental vehicles. The statement will include toll charge, time, date, location and amount due. The rental agency may elect to pay WSDOT directly for the tolls and seek reimbursement from the renter or they may provide WSDOT with the information regarding the ~~((rentee))~~ renter and rental vehicle as required under RCW 46.63.160(10) within thirty days of the notice mailing. WSDOT may then issue a toll bill to the ~~((rentee))~~ renter. If the rental agency fails to timely provide the requested information it may be held liable for the toll charges. To facilitate toll operations and collections, the department may use and allow various processes for toll transactions associated with rental agency vehicles.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-300 How can I open a *Good To Go!*TM toll account? ~~((1) To open a toll account, you must choose an account type and complete the account application.~~

~~(2) Prepay at least the minimum fund balance into the account. If you have any outstanding balances, they must be resolved prior to opening an account;~~

~~(3) Purchase and install a *Good To Go!*TM Pass (transponder device) for pass transactions; and~~

~~(4) Register your vehicle license plate(s) for Pay By Plate transactions.~~

~~(5))~~ (1) A customer can open a *Good To Go!*TM account online, in person, or over the phone. One or more vehicles can be connected or associated with an account. The ~~((*Good To Go!*TM customer contract contains a full explanation of~~

the)) *Good To Go!*TM terms and conditions ((associated with the WSDOT)) contains a full explanation of the *Good To Go!*TM toll collection program.

(2) With a *Good To Go!*TM account, a customer can select from the following payment options:

(a) **Pay As You Go.** This account option allows the customer to be automatically charged at regular intervals after toll facilities are used. This option requires a valid debit or credit card to open.

(b) **Prepaid.** This account option allows the customer to prepay an amount to their account which will be charged as toll facilities are used. This option does not require a valid debit or credit card but requires a minimum prepaid amount to open. A valid debit or credit card or automated clearing-house (ACH) can be used to automatically add funds to the account when the balance reaches a customer set minimum. Alternatively, a prepaid account can be replenished manually in person, online, or by phone.

(c) **Unregistered account.** This option allows a customer to open an account without any personal or vehicle information. The customer must use a *Good To Go!*TM Pass to be identified. Unregistered accounts must manually replenish and cannot use Auto Pay features.

(d) **Invoiced.** This account option is for restricted cases such as government agencies and other limited circumstances.

(e) **Rental vehicle.** This account option is for rental vehicle companies. Rental agencies can use these accounts to transfer liability to their customers within thirty days of billing, consistent with RCW 46.63.160(10).

(f) **Nonrevenue.** This account option is for entities such as public and private transit, law enforcement, fire departments, and other emergency vehicles that are exempt from tolls according to enacted law. It is the account owner's responsibility to maintain a registry with WSDOT of current fleet vehicles for exemption.

(3) With a *Good To Go!*TM account, a customer can select from the following options for vehicle identification:

(a) ***Good To Go!*TM Pass.** This vehicle identification option requires a *Good To Go!*TM Pass that is installed in a vehicle and is readable by the toll facility's electronic toll system. This vehicle identification method is the lowest cost option for the customer and WSDOT.

(b) **Pay By Plate.** This vehicle identification option allows a vehicle to be identified by its license plate registration through the photo toll system. A Pay By Plate fee is added to each toll. This option is not available on facilities without photo tolling such as the SR 167 HOT lanes. Each license plate can only be associated with one account, although one account can have multiple license plates or vehicles.

AMENDATORY SECTION (Amending WSR 11-07-039, filed 3/14/11, effective 12/3/11)

WAC 468-305-315 How do I ((replenish)) add funds to my prepaid account? ((You may replenish your account either manually or have it replenished automatically.)) Prepaid accounts require periodic addition of funds, which can be done either automatically or manually.

(1) ~~((Automatic account replenishment))~~ **Auto Pay.** A customer who has a ((registered toll)) prepaid account may choose to ((have that account replenished)) add funds automatically ((by using an electronic check (ACH) from your bank account, credit card, or branded debit card and according to the following requirements:

(a) **Electronic check (ACH).** You must designate a bank account (electronic check) to be used for replenishment as well as the replenishment range to be used. The replenishment amount will remain within your authorized range, but will never go below the WSDOT established minimum replenishment amount. You must also complete the electronic check—ACH Authorization Form.

(b) **Credit card or branded debit card.** You must designate a credit card or branded debit card to be used for replenishment, and designate the payment amount to be used.

The automatic replenishment amount can be raised by the customer but cannot be lowered online. The customer can call a customer service representative to lower the replenishment amount but it cannot be lowered below the WSDOT established minimum replenishment amount. The automatic replenishment)). The customer must provide a valid debit or credit card or provide ACH (automated clearing house) information. Auto Pay is not available on unregistered accounts.

(2) **Manual account replenishment.** ((If you choose to manually replenish your account, you are responsible for monitoring your account balance and making deposits as needed to maintain a positive balance sufficient to cover toll charges.)) A customer can opt to manually replenish a prepaid account. Manual replenishment can be done online, in person, or by phone. The customer is responsible to monitor the account and make necessary replenishments in order to avoid additional fees or penalties that may incur for insufficient funds.

AMENDATORY SECTION (Amending WSR 11-07-039, filed 3/14/11, effective 12/3/11)

WAC 468-305-316 What happens if ((my payment does not go through when opening or replenishing an account)) the transaction is unsuccessful during automatic payment? ((1) **Opening an account.** If your payment cannot be processed (if the initial payment failed during account establishment), the account will not be opened unless another form of payment is tendered and cleared. If the payment was not submitted in person (the ACH or bank card payments received by mail or fax), the CSC will attempt to notify the customer within three days to provide another form of payment.

(2) **Replenishing an account.** If your payment cannot be processed to automatically replenish your account, the CSC shall attempt to resubmit the payment request a second time. If your payment does not go through and your account goes negative, you may receive a toll bill(s) for any toll transactions that occur while your account was negative.)) If a customer transaction cannot be processed during automatic payment, the CSC will attempt to resubmit the payment request a second time. If a failure of payment results in unpaid tolls, the customer may receive a Pay By Mail bill(s) for current tolls

and any continued use of toll facilities, with tolls charged at the higher Pay By Mail rate.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-320 What are the various statuses that my account could be in? (1) A ~~((toH))~~ *Good To Go!*TM account may be designated with one of the following statuses:

(a) ~~((Proposed. An account is in this status prior to becoming active.~~

~~((b))~~ **Active.** An account is considered active if it is ~~((funded and))~~ eligible to receive toll transactions.

~~((e))~~ ~~((b))~~ **Closed.** An account may be closed upon a customer's ~~((written))~~ request ~~((or by the customer service center if there is a lack of sufficient funds or after twenty-four months of inactivity. Any remaining balance will be refunded to the customer.~~

~~((d))~~ **Suspended.** An account may be suspended for up to twenty-four months at the request of the customer. Transactions and payments cannot post to a suspended toll account), or by *Good To Go!*TM for lack of activity extending beyond two years.

(2) ~~((The CSC will not allow a customer to close an account with a negative balance and reopen a new account. The CSC will notify the customer of the amount due, in writing, when an attempt is made to close an account with a negative balance. Unpaid balances on a toll account may be forwarded to a collections agency.~~

~~((3))~~ If an account is ~~((suspended,))~~ closed or has insufficient funds to cover a toll transaction, the customer will receive a Pay By Mail toll bill for any transactions that do not post to the account.

~~((4))~~ (3) If funds are available on ~~((the))~~ a prepaid account at the time of closure, the customer will be refunded the balance, minus any outstanding tolls and fees.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-330 How can I get a refund if I close my *Good To Go!*TM account? When you close your toll account, you may request a refund by mail, online, by phone or in person if you have a registered toll account. ~~((Account closure forms may be obtained online, in person or by calling the customer service center.))~~ Any outstanding fees or tolls will be deducted from the account balance prior to issuing an account refund. Refunds shall be issued within fifteen days from receipt of ~~((the completed))~~ account closure ~~((form))~~. Refunds shall be made in the form of the original payment, when possible. For example, if deposit was made by credit card, the refund would be credited to the same credit card.

For accounts that cannot be refunded electronically, the customer will be issued a check by WSDOT to the account's last recorded mailing address. Refunds will not be issued to unregistered pass accounts.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-340 In what order will my payment be applied to what I owe in toll charges? ~~((The CSC will apply each customer payment in the following order:~~

~~((1) Any outstanding nonsufficient funds fees or dishonored check fees.~~

~~((2) Payment shall be applied to the oldest outstanding unpaid toll transaction based on transaction posting date and time, unless otherwise directed by customer.~~

~~((3) For each toll transaction, payment will be applied first to the administrative fees then to the toll transaction amount.))~~ Unless specified by the customer, the system will automatically apply each customer payment in the following order:

(1) Tolls, oldest to newest, regardless of any associated fees or penalties;

(2) Any pass purchase for which the purchase was invalidated due to returned payment;

(3) Any outstanding returned check fees;

(4) Any outstanding civil penalty;

(5) Any outstanding late fees;

(6) Any outstanding Pay By Plate fees; and

(7) Any outstanding administrative fees.

AMENDATORY SECTION (Amending WSR 11-07-039, filed 3/14/11, effective 12/3/11)

WAC 468-305-400 What forms of payment will be accepted by the customer service center? (1) Credit card. The CSC will accept and process the following types of credit cards as a customer's method of payment:

(a) MasterCard;

(b) VISA;

(c) American Express;

(d) Discover;

(e) Branded debit cards.

(2) Debit card. The CSC will accept and process debit cards. Debit cards that require a pin for processing will be accepted only for in-person transactions.

(3) Check. The CSC will accept the following forms of checks (in U.S. currency) as a customer's method of payment:

(a) Personal first-party check (no third-party checks will be accepted);

(b) Business check;

(c) Electronic check (automatic clearing house - ACH);

(d) Money order;

(e) Cashier's check;

(f) Traveler's check;

(g) Bank or teller's check;

(h) Government check (warrant);

(i) Voucher or similar draft guaranteed by a U.S. bank.

(4) Cash. The CSC will accept cash in the form of U.S. coin or currency.

(5) Electronic benefits transfer. The CSC will accept and process electronic benefits transfer (EBT) at walk-in CSC locations.

(6) Inter agency payment. The CSC will accept and process inter/intra agency payment (IAP) for accounts flagged as a state agency.

(7) Electronic check (ACH).

(a) The CSC will accept direct payment from your bank account via electronic check (also known as automatic clearing house - ACH) at the walk-in centers, mobile units, online, via phone, mail and fax. Foreign banks will not be accepted.

(b) ACH payments will require either a signed authorization or electronic signature authorization from the customer. The authorization can also be verbal for payments by phone.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-526 What happens once my dispute is received? Timely submitted disputes will be reviewed consistent with the Administrative Procedure Act. Brief adjudicative proceedings described in RCW 34.05.482 through 34.05.494 and a written decision will be provided.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-527 What happens if I disagree with the outcome of my ((dispute)) hearing? You can appeal the ((initial order by submitting a request for an in-person or written hearing. Information on how to appeal the initial order and a Hearing Request Form will be included with the decision.

If you are requesting a written hearing, you must include all documents and evidence you want to be considered with your request)) final order made by the administrative law judge through superior court as specified in chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-528 What happens if I request ((an in-person)) a hearing? Once you request a hearing, you will receive a notice of hearing which will contain the date and time of your ((hearing)) tele-hearing and phone number to call. The registered owner of the vehicle, or designated agent, must attend the hearing. If you cannot ((appear)) attend on the date scheduled, you must notify the ((customer service center in writing at least twenty-four hours)) office of administrative hearings (OAH) by phone anytime up until fifteen minutes before the scheduled hearing date and time to request a new date. ((Only one such rescheduling is permitted.)) If you do not appear at a scheduled hearing without notification, you will be liable to pay the tolls, fees, and penalties.

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-529 How will I be notified of the hearing decision? An administrative law judge will issue a final order stating whether the registered owner is liable for tolls, fees, and/or civil penalties. Orders issued as the result of a ((written)) hearing will be sent to the address provided in the request for ((written)) a hearing. ((Orders issued as the result of an in-person hearing will be issued following the conclusion of the hearing. For customers with verifiable mitigating

circumstances, the final order is sent to the address provided in the hearing request. For all other in-person hearings, the final order is provided to the customer in writing immediately following the hearing.))

AMENDATORY SECTION (Amending WSR 11-07-039, filed 3/14/11, effective 12/3/11)

WAC 468-305-540 What information about my toll charges is available prior to the administrative hearing or submission of a written dispute? The registered owner may request a copy of the evidence package ((which will include the NOCPs, toll bills and other customer information at issue in)) for the administrative hearing or written dispute. ((Discovery, as described in superior court civil rules 26 through 36, is not available.))

AMENDATORY SECTION (Amending WSR 11-07-039, filed 3/14/11, effective 12/3/11)

WAC 468-305-570 When is payment due if I am found ((to have committed the toll violation)) liable for the NOCP? If you ((have been issued a final order finding the toll violation was committed)) are found liable, your payment ((of the NOCP)) is due within ten days of ((issuance)) the order. If you do not pay the ((violation)) amount due a hold will be placed on your vehicle registration and the unpaid penalty ((will)) may be transferred to a collections agency ((to collect payment)).

AMENDATORY SECTION (Amending WSR 15-24-123, filed 12/2/15, effective 1/2/16)

WAC 468-305-580 How do I ((find out if)) release a hold ((has been placed)) on my vehicle registration renewal? You can check with the department of licensing to find out if there is a hold on your vehicle registration renewal. To release the hold, you must pay your civil penalty ((to either the WSDOT toll enforcement office or,)) Payments may be made to the customer service center via phone, mail or internet. If the matter has been referred to a collection agency, payment should be directed to the collection agency.

WSR 19-09-070

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed April 16, 2019, 1:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-04-100.

Title of Rule and Other Identifying Information: The rule would create chapter 468-17 WAC, Small and veteran-owned business enforceable goals program.

Hearing Location(s): On May 24, 2019, at 9:30 a.m., at the Transportation Building, Nisqually Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: May 24, 2019.

Submit Written Comments to: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504-7314, email BayneJ@wsdot.wa.gov, fax 360-705-6801, 360-705-7084, by May 1, 2019.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email Engleka@wsdot.wa.gov, by May 1, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose and anticipated effects is to increase Washington state department of transportation (WSDOT) contracting opportunities for small and veteran-owned businesses. Currently, contracting opportunities are encouraged through voluntary means. The proposal would provide contracting opportunities through enforceable goals for small and veteran-owned businesses.

Reasons Supporting Proposal: Governor Inslee has published Results Washington Goals to increase contracting opportunities for minority, small, veteran, and women's business enterprises to contract with Washington state government. WSDOT is seeking to create a small and veteran-owned business enforceable goals program to increase minority, small, veteran, and women's business enterprise through race and gender neutral measures. The measures include ensuring that only eligible firms receive credit for and participate in the small and veteran-owned business enforceable goals program. As well as, augmenting the pool of qualified and competitive companies performing work on WSDOT projects, thereby increasing competition for contracts and reducing the cost of projects and creating new opportunities for firms to participate in Washington state transportation projects.

Statutory Authority for Adoption: RCW 39.04.155, 43.19.727, 47.01.101, and 47.28.030.

Statute Being Implemented: RCW 47.28.030.

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

Name of Proponent: Jackie Bayne, Policy Manager, WSDOT Office of Equal Opportunity, Baynej@wsdot.wa.gov or 360-705-7084, governmental.

Name of Agency Personnel Responsible for Drafting: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504, 360-705-7084; **Implementation and Enforcement:** Earl Key, 310 Maple Park Avenue S.E., Olympia, WA 98504, 360-705-7091.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504-7314, phone 360-705-7084, fax 360-705-6801, TTY 711, email BayneJ@wsdot.wa.gov.

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

Is exempt under RCW 19.85.025(5).

Explanation of exemptions: The cost-benefit analysis under RCW 34.05.328 satisfies the requirements of the Regulatory Fairness Act.

SMALL AND VETERAN-OWNED BUSINESS ENFORCEABLE GOALS PROGRAM COST-BENEFIT ANALYSIS

1. Introduction: RCW 47.28.030 provides that WSDOT may adopt rules to enable a larger number of small businesses and veteran contractors to compete for department contracts.

1.1. Purpose: Under the direction of the governor, WSDOT has voluntary minority, small, veteran, and women's business enterprise (MVSWE [MSVWBE]) spending goals. WSDOT has been unable to meet the goals for minority business enterprises (MBE), veteran-owned businesses (VOB), and women business enterprises (WBE). To rectify the disparities in its spending, WSDOT's proposed rule of chapter 468-17 WAC would allow it to enact enforceable goals for small business enterprises (SBE) and VOBs. Although WSDOT has been meeting its SBE goals, WSDOT must enact race and gender neutral measures (i.e., SBE goal) before enacting race and gender conscious goals. The policy purpose is that enforceable SBE and VOB goals will increase WSDOT's diverse spend and meet the MSVWBE goals set by the governor.

1.2. Background: Under the results Washington strategic framework established in 2017 by Governor Inslee, WSDOT is expected to increase its diverse spend to:

- Minority-owned businesses: 10%
- Women-owned businesses: 6%
- Veteran-owned businesses: 5%
- Small businesses enterprises: 5%

WSDOT has been unable to meet the targets for MBEs, WBEs, and VOBs. Currently, WSDOT's ability to address this is constrained by Initiative-200. However, as outlined by AGO opinion 2017 No. 2, WSDOT can enact race and gender conscious goals, such as enforceable goals for VOBs and SBEs. If those race and gender neutral enforceable goals fail to address the under-utilization of MBEs and WBEs, then WSDOT can enact enforceable race and gender conscious goals. The proposed rules follow that first step of enacting race and gender neutral goals as outlined by the attorney general's opinion.

1.3. Scope: The proposed rule will apply to all WSDOT state-funded projects including consultant services and construction.

2. Assumptions, Constraints, and Conditions: Assumptions made in this cost-benefit analysis include the following:

- The implementation of enforceable VOB and SBE goals on state-funded projects would be comparable to the system already in place for federal-funded projects;
- Recurring costs to maintaining enforceable VOB and SBE goals will likely be negligible as the infrastructure is already in place as WSDOT already sets enforceable goals on federal-funded projects.

3. Description of Current v. Proposed: This chapter describes the current system that WSDOT already has in place versus the new system that is being proposed.

3.1. Current System: WSDOT currently sets voluntary MSVWBE goals on all state-funded projects. The voluntary goals are based on the amounts set by the governor. Enforceable goals are set for federal-funded projects. Although the

proposed rules will have no effect on federal-funded projects, the existence of the enforceable goals on federal projects can serve as a comparison to what costs and benefits WSDOT can expect from enacting enforceable VOB and SBE goals on state-funded projects.

3.2. Proposed System: Under the proposed rules, WSDOT would be able to set enforceable VOB and SBE goals on state-funded projects. This proposed change would be comparable to what already is done for the enforceable goals set in federal-funded projects. Prime contractors would be expected to meet set VOB and SBE goals or show that good faith efforts to meet the goal were made. The amount of diverse spend has been shown to increase when enforceable goals are set on projects. By enacting enforceable VOB and SBE goals, WSDOT would likely increase the amount of spend with small businesses and veteran-owned businesses.

4. Cost Analysis: The chapter presents the costs for the development and operation for the proposed VOB and SBE enforceable goals. This section will calculate all costs to develop an estimate of the total costs.

4.1. Development Costs: Development costs are likely to be not significant in cost. WSDOT already has enforceable spending goals for federal-funded projects. Using the framework already established for federal-funded projects to set enforceable SBE and VOB goals will keep development costs to a minimum level.

4.2. Operational Costs: The primary costs of enacting enforceable goals would be most likely to come from any increased project costs. A potential source of increased project costs could be the result of enforceable goals increasing demand for VOB and SBE subcontractors. As a result of the increase in demand, VOB and SBE subcontractors could potentially raise their prices for primes to hire them as subcontractors. The prime contractors would then pass the extra costs off to WSDOT by raising the average amount of their bids. This in theory would increase the costs of WSDOT projects.

The best way to determine whether this scenario holds merit is to compare the costs of one hundred percent state-funded projects to one hundred percent federal-funded projects. Federal-funded projects have enforceable goals. If the theory that enforceable goals increase projects due to increased subcontractor demand is true, then one hundred percent federal-funded projects should cost significantly more than one hundred percent state-funded projects. A potential confound is that federal-funded projects have buy American and environmental requirements that state-funded projects do not. Those additional requirements could potentially confound the analysis. There is no way to separate the project costs from the costs resulting from the federal buy American and environmental conditions. Costs for federal projects could [be] due to the buy American and environmental regulations, not enforceable goals. However, this analysis is focused on whether enforceable goals will impact state project costs. Federal-funded projects having a significant probability of costing more would in fact prove the hypothesis.

A sample of state- and federal-funded projects were exported from WSDOT's office of equal opportunity's diversity management and compliance system. The sample was

cleaned by removing outlier contracts greater than [than] \$10 million. A quarter of projects were then randomly selected to determine whether the difference between the sample means were significant.

An F-test was used to determine whether the variances of the two samples were equal. The F value was equal to 1.88 which was larger than the one-tail F critical value of 1.67. Because the F value is larger than the F critical value, we can assume the variances of the two populations are unequal.

F-Test Two-Sample for Variances		
	Federal	State
Mean	1950791	1216715
Variance	4.6E+12	2.45E+12
Observations	52	40
df	51	39
F	1.879721	
P(F<=f) one-tail	0.021263	
F Critical one-tail	1.66513	

Based on the F-test results, a t-Stat assuming unequal variances could be used to determine whether the difference between the sample means were significant. The test yielded a t stat value of 1.90 which was less than the two-tail t critical value of 1.99. Based on those results, the null hypothesis that the samples are significantly different from each other cannot be rejected. Rather it appears that the presence of enforceable goals had no significant effect between the sample means. Even with the potentially confounding variables of the buy American and environmental requirements, the federal-funded sample does not significantly differ from the state-funded sample. Had the federal-funded project had a significant chance of being more expensive, additional analysis to attempt to eliminate the potentially confounding variables would be necessary to determine whether the expense was due to enforceable goals or the buy American and environmental regulations. Fortunately, that is unnecessary as the presence [of] enforceable goals with the buy American and environmental regulations do not have impact [on] the sample's lack of significance.

t-Test: Two-Sample Assuming Unequal Variances		
	Federal	State
Mean	1950791	1216715
Variance	4.6E+12	2.45E+12
Observations	52	40
Hypothesized Mean Difference	0	
df	90	
t Stat	1.897913	
P(T<=t) one-tail	0.030456	
t Critical one-tail	1.661961	
P(T<=t) two-tail	0.060913	
t Critical two-tail	1.986675	

Since enforceable goals do not have a significant chance of increasing project costs, we can make an assumption that adding enforceable VOB and SBE enforceable goals is unlikely to result in any extra costs to WSDOT.

4.3. Project Cost Analysis: Based on the negligible development costs and the evidence that enforceable goals do not have significant effect on project costs, the total cost for enacting enforceable goals for VOB and SBE can be estimated to be approximately close to zero.

5. Benefit Analysis: This chapter describes benefits that can be assigned to enacting enforceable VOB and SBE goals on state-funded projects.

5.1. Tangible Benefits: A tangible benefit would result if the enforceable goals were likely to lower project costs. However, as described in the section on costs, the presence of or lack thereof [of] enforceable goals does not appear to have a significant effect on project costs. Since project costs are likely to remain unimpacted, there is no discernible tangible benefit to enacting enforceable VOB and SBE goals.

5.2. Intangible Benefits: The majority of benefits from enacting enforceable VOB and SBE goals is likely to [be] intangible benefits. Intangible benefits are benefits where the values are too difficult or impossible to quantify into dollars. In the table below are some likely intangible benefits to enacting enforceable VOB and SBE goals.

Intangible Benefits	Alternative 1	Status Quo
Increased probability of increasing VOB and SBE spend amounts.	+	-
Following the steps outline[d] by the AGO's opinion.	+	-
Possibility of race and gender neutral methods nullifying the need to move to race and gender conscious goals.	+	-
Increase in the supply of VOBs and SBEs to meet the increased demand resulting from enforceable goals.	+	-
Demonstration of WSDOT's commitment to remedying systemic forms of discrimination.	+	-

5.3. Summary of Benefits: Overall, the tangible benefits for enacting enforceable VOB and SBE goals is likely to be zero to minimal. However, there are many intangible benefits to enacting enforceable VOB and SBE goals. WSDOT has been unable to meet diverse spending goals for veteran, minority, and women's business enterprises. Past performance has shown that diverse spend in federal projects is higher than the voluntary goals set in state-funded projects. Enforceable VOB goals will increase diverse spend with veteran-owned businesses. Before enforceable MBE and WBE goals can be enacted, WSDOT must first enact enforceable race and gender neutral goals. The proposed rules can be considered race and gender neutral. Having VOB and SBE enforceable goals will provide WSDOT the flexibility it needs to move on to enforceable race and gender conscious goals in the event that disparities in procurement remain. In conclusion, the amount of intangible benefits more than make up for the minimal tangible benefits likely to result from using enforceable VOB and SBE goals.

6. Cost and Benefit Comparison: This section compares the costs and benefits for the project. The purpose of this comparison is to identify if tangible and intangible benefits outweigh the total cost of enacting enforceable VOB and SBE goals on WSDOT projects.

6.1. Results of Tangible Benefits Comparison: Since the costs and tangible benefits are likely to be zero to minimal, there is unlikely to be a significant net or negative gain.

Benefit and Cost Comparison	Alternative 1	Status Quo
Total Tangible Benefits	\$0 to minimal	\$0 to minimal
Total Costs	\$0 to minimal	\$0 to minimal
Difference Between Costs and Benefits	\$0 to minimal	\$0 to minimal

6.2. Results of Intangible Benefits Comparison: There are no intangible benefits to maintaining the status quo. In contract [contrast], there are five clear intangible benefits to enacting enforceable VOB and SBE goals.

Description	Alternative 1	Status Quo
Intangible Benefits	5	0

6.3. Conclusion: Based on the amount of intangible benefits and the negligible costs associated with this proposed rule change, WSDOT can expect a net gain. Enforceable goals had no significant association with increased project costs. The infrastructure is already in place to enact enforceable VOB and SBE goals. The multiple intangible benefits are of significant value to WSDOT and the residents of Washington state.

March 14, 2019
Kara Larsen, Director
Risk Management and
Legal Services Division

Chapter 468-17 WAC

**SMALL AND VETERAN-OWNED BUSINESS
ENFORCEABLE GOALS PROGRAM**

PART ONE

PURPOSE AND AUTHORITY

NEW SECTION

WAC 468-17-010 Authority. RCW 47.28.030 provides that the Washington state department of transportation (WSDOT) may adopt rules to enable a larger number of small businesses and veteran contractors to compete for department contracts.

NEW SECTION

WAC 468-17-020 Purpose. (1) The small and veteran-owned business enforceable goals program increases contracting opportunities for small and veteran-owned businesses with WSDOT in a race and gender-neutral fashion. The measures described in this chapter:

(a) Ensure that only eligible firms receive credit for and participate in the small and veteran-owned business enforceable goals program;

(b) Augment the pool of qualified and competitive companies performing work on WSDOT projects, thereby:

- (i) Increasing competition for contracts;
- (ii) Reducing the cost of public works projects;
- (iii) Expanding the pool of talented and qualified consultants bidding on consultant agreements; and
- (iv) Creating new opportunities for firms to participate in Washington state transportation projects.

(2) Increased participation by and opportunities for small and veteran-owned businesses, which shall be indicated by:

- (a) New WSDOT subcontracts and subcontractors;
- (b) New private sector contracts;
- (c) Increased bonding;
- (d) Increased gross receipts;
- (e) Increased bidding; and
- (f) Decreased disparity.

The secretary of transportation may, at his/her discretion, implement or suspend implementation of a small and veteran-owned business enforceable goals program based upon marketplace conditions.

PART TWO

GENERAL REQUIREMENTS

NEW SECTION

WAC 468-17-030 Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Award" means the formal decision by the department to accept a bid and the intent to enter into a contract with the bidder.

(2) "Commercially useful function" means the activity conducted by a firm responsible for the execution of the work of the contract and that is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Additional requirements are discussed in WAC 468-17-060.

(3) "Condition of award (COA)" means that a prime contractor or consultant, on a design-bid-build or consultant agreement, commits to subcontracting with a small business enterprise (SBE) or veteran-owned business (VOB). On design-build or general contractor/construction manager contracts, all SBEs and VOBs in the quarterly small and veteran business plans are considered COA firms.

(4) "Consultant agreement" means a contract entered into by a public body for architectural and engineering services (performed pursuant to chapter 39.80 RCW) with another party, i.e., an independent individual or firm, in which the other party agrees to perform a service, render an opinion, or recommendations according to the consultant's

methods and without being subject to the control of the public body except as to the result of the work.

(5) "Contract goal" means a percentage of the contract award amount the prime contractor or prime consultant must meet with small, mini, micro and veteran-owned businesses in order to receive award of the contract:

(a) For design-bid-build contracts, the contract goal is a percentage of the prime contractor's total bid plus any executed change orders;

(b) For design-build and consulting agreements, the contract goal is a percentage of the original contract amount plus any executed change orders or supplements;

(c) For general contractor/construction manager contracts, the contract goal is a percentage of the maximum allowable contract cost (MACC) plus any executed change orders or supplements.

(6) "Department" means the Washington state department of transportation (WSDOT).

(7) "Design-bid-build (DBB) contract" means a contract between a public body and another party in which the public body contracts separately with a designer and a contractor for the design and construction of a facility, portion of the facility, or other item specified in the contract. Designers and contractors bear no contractual obligation to one another under a DBB contract.

(8) "Design-build (DB) contract" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(9) "General contractor/construction manager (GC/CM)" means a contract between a public body and another party in which the party agrees to both build and manage the construction of the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(10) "Good faith efforts (GFE)" means efforts to achieve a goal or other requirement of this chapter which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. GFE is not necessary when a contract goal has been met.

(11) "Mini-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than three million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "mini-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "mini-business" on the Washington electronic business service (WEBS).

(12) "Micro-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "micro-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "micro-business" on the WEBS.

(13) "Quarterly small and veteran business plans" means documents design-builders are required to submit which outline the strategies the organization will be utilizing to meet the established contract goals.

(14) "Small business enterprise (SBE)" means an in-state business that:

(a) Is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is certified with the office of minority and women's business enterprises (OMWBE) as a DBE, MBE, WBE or SBE under chapter 39.19 RCW; or is self-certified as a "small business enterprise (SBE)" through the Washington state department of enterprise services and is listed as a SBE on the WEBS.

(15) "Tiered participation" means the amount of additional contract goal credit the prime contractor or prime consultant may receive for using SBE and VOBs of different designations, as detailed in WAC 468-17-080.

(16) "Veteran-owned businesses (VOB)" means a business certified by the Washington state department of veterans affairs, pursuant to RCW 43.60A.190.

NEW SECTION

WAC 468-17-040 Application of chapter. The small and veteran-owned business enforceable goals program authorized under this chapter is limited to:

(1) Heavy construction public works contracts with a minimum engineer's or preliminary estimate of two hundred fifty thousand dollars and above.

(2) Consultant agreements with a minimum preliminary estimate of two hundred fifty thousand dollars and above.

NEW SECTION

WAC 468-17-050 Condition of award goals. On solely state-funded projects, the small and veteran business goals for participation of small and veteran-owned enterprises shall be as directed by the department or other state agencies conducting disparity studies. Presently these goals are set as follows:

(1) Veteran business goal of five percent; and

(2) Small business goal of five percent.

NEW SECTION

WAC 468-17-060 Commercially useful function. Under the enforceable goals program, commercially useful function (CUF) restrictions apply to all SBEs, mini-businesses, micro-businesses and VOBs. These businesses must perform a CUF in order for their participation to be counted against any condition of award goal. A business performs a

CUF when it is both responsible for the execution of the work of the contract and it meets its responsibility under the contract by actually performing, managing, and supervising the work involved. If any materials or supplies are needed to perform the contract, the business must negotiate price, determine quality and quantity, order the material, install (if applicable), and pay for those materials or supplies itself.

Additional considerations when making a determination on a CUF are as follows:

(1) A SBE, VOB, micro-business or mini-business does not perform a CUF if its role is limited to that of an extra participant in a transaction or contract or it is involved in a project for the purposes of creating a semblance of SBE, VOB, micro-business or mini-business participation.

(2) Other relevant factors that may be considered when evaluating whether a SBE, VOB, micro-business or mini-business is performing a CUF include industry practices, the amount of work subcontracted and whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing.

(3) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and executing material changes in the configuration of those goods or materials; or

(b) Secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(4) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained;

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(d) The firm does not take ownership of the product.

PART THREE

RACE AND GENDER NEUTRAL MEASURES

NEW SECTION

WAC 468-17-070 Mandatory small and veterans' business program. Small business enterprises and veteran-owned businesses intending to benefit from the small and veteran-owned business enforceable goals program must attain a SBE certification from OMWBE, a VOB certification from the Washington department of veteran's affairs, or be self-certified as a SBE, mini-business, or micro-business through the WEBS.

NEW SECTION

WAC 468-17-080 Tiered participation in state goals. (1) When WSDOT has determined tiered participation will be available on a contract, a prime contractor, design-builder, general contractor/construction manager or consultant may

meet the small and veteran business goals by using any combination of qualified contractors or consultants (i.e., VOB or small business contractors including SBEs, mini-businesses and micro-businesses). Prime contractors may receive a multiplied credit for utilizing businesses that fall into certain categories. The categories and respective multipliers are as follows:

(a) Category A. SBEs, mini-businesses, micro-businesses and VOBs that have not worked with WSDOT in the past five years may be credited at four times the actual dollars paid.

(b) Category B. A micro-business not eligible for credit as defined in category A may be credited at three times the actual dollars paid.

(c) Category C. A mini-business not eligible for credit as defined in category A or B may be credited at two times the actual dollars paid.

(d) Category D. SBEs and VOBs that are not eligible for a credit as defined in categories A, B or C will be credited at the actual dollars paid with no additional multiplier.

(2) Prime and subcontractors are responsible for verifying their eligibility for tiered credit participation. Eligible firms submitting multiple quotes as categories A, B, C, and D firms, on multiple projects with bids due on the same week, shall be regarded as such on all projects that receive awards from quotes entered on that week.

NEW SECTION

WAC 468-17-090 Small and veteran business plans.

(1) Prime contractors, design-builders, general contractors/construction managers and consultants must submit a small and veterans' business plan that specifies how the contractor will meet SBE and VOB participation goals, prior to the award of any contract. The small and veteran business plan for design-bid-build and consultant contracts must list all of the SBEs, VOBs, mini-businesses and micro-businesses that will participate in the contract; a description of the work that each SBE, VOB, micro-business or mini-business will perform; the dollar amount of the participation of each SBE, VOB, micro-business or mini-business; the contractor's written commitment to use the SBE, VOB, micro-business or mini-business submitted; and written confirmation from each SBE or VOB firm that it is participating in the contract in the kind and amount of work provided in the inclusion plan. The small and veteran business plan for design-build and general contractor/construction manager contracts must list in detail the contractor's means and methods that it will use to meet the goal and a commitment by the contractor to attempt to meet the goal. If the total SBE and VOB participation in the small and veteran business plan does not meet the condition of award goal, then the contractor must also submit evidence of good faith efforts (GFEs) to meet the contract goal. A contractor may be awarded a project only after WSDOT has approved its small and veteran business plan or confirmed its GFEs. Revisions of small and veteran business plans may be necessary prior to plan approvals.

(2) Quarterly small and veteran business plans are required for design-build and general contractor/construction manager projects. The first quarterly small and veteran busi-

ness plan shall be submitted prior to contract award and must be approved by the department prior to contract execution. Subsequent small and veteran business plans must include information, as applicable, regarding:

(a) Small and veteran business goal attainment;

(b) A list all of the SBEs, VOBs, mini-businesses or micro-businesses that have been contracted to date;

(c) A description of the work that each SBE, VOB, micro-business or mini-business will perform;

(d) The dollar amount of the participation of each SBE, VOB, micro-business or mini-business;

(e) The contractor's written commitment to use the SBE, VOB, micro-business or mini-business submitted;

(f) Written confirmation from each SBE, VOB, micro-business or mini-business firm that it is participating in the contract in the kind and amount of work provided in the small and veteran business plan;

(g) Corrective actions necessary to meet the established goals;

(h) Outreach strategies;

(i) Innovative approaches to secure goal(s); and

(j) Other evidence of GFEs to meet the contract goal.

NEW SECTION

WAC 468-17-100 Good faith efforts. The efforts employed by the prime contractor, design-builder, or consultant should be commercially reasonable and should demonstrate that they are actively and aggressively trying to fulfill the established small and veteran business goals. Mere pro forma efforts are not commensurate with good faith efforts. Actions that may be considered as part of good faith efforts to achieve small and veteran business goals include, but are not limited to:

(1) Identification of interested small and veteran-owned firms that have the capability to perform the work of the contract;

(2) Providing reasonable time for SBE, VOB, mini-businesses and micro-businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(3) Apportioning contract work items into economically feasible units to facilitate SBE, VOB, micro-business or mini-business participation and where possible, establishing flexible time frames for performance to encourage participation;

(4) Effectively using the services of available veteran and small business community organizations, contractors' groups, local and state support offices, and other organizations in the recruitment and placement of targeted firms;

(5) Adequately researching interested subcontractors and their capabilities before rejecting their proposals;

(6) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from SBE, VOB, micro-business or mini-business, even if other quotes are less expensive.

NEW SECTION**WAC 468-17-110 Overhead reimbursement.**

WSDOT shall reimburse each prime contractor or consultant five percent of the actual amount that the prime contractor or consultant paid to SBEs, VOBs, micro-businesses or mini-businesses and that is counted toward the goal. This overhead reimbursement is available only on construction projects, is to be based on actual dollars paid, excludes multiplier credits, and may not exceed one hundred thousand dollars for any prime contractor or consultant in a single calendar year. Overhead reimbursement payments will be made only after a contractor has fulfilled its small and veteran business goals. Reimbursement payments will not be paid to contractors for partial completion of aforementioned goals. No contractor may receive an overhead reimbursement if it meets the contract goal using work performed with its own forces.

NEW SECTION**WAC 468-17-120 Sanctions.** (1) Upon completion of a project, a prime contractor performance report will display a contractor's goal attainment or GFE. Failure to meet the goal or provide an acceptable GFE may lead to the following sanctions:

- (a) Suspension of a contractor's prequalification; or
 - (b) Liquidated damages as defined under RCW 62A.2-718.
- (2) Failure to secure WSDOT approval on quarterly small and veteran business plans for design-build projects may also subject a prime contractor or consultant to fines, penalties, or sanctions, including:
- (a) Suspension of a contractor's prequalification; or
 - (b) Liquidated damages as defined under RCW 62A.2-718.

NEW SECTION

WAC 468-17-130 Severability. If any provision of these regulations, or their application to any person or circumstance, is held invalid, the remainder of the regulations or the application of their provision to other persons or circumstances shall not be affected.

NEW SECTION

WAC 468-17-140 Effective date. Reserved.

WSR 19-09-072
PROPOSED RULES
SECRETARY OF STATE
 [Filed April 16, 2019, 2:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-060.

Title of Rule and Other Identifying Information: Updates to the rules used by the address confidentiality program (ACP).

Hearing Location(s): On May 21, 2019, at 1:30 p.m., at the Secretary of State, Main Office Conference Room, First Floor, Legislative Building, Sid Snyder Way, Olympia.

Date of Intended Adoption: May 22, 2019.

Submit Written Comments to: ACP, P.O. [Box] 40220, Olympia, WA 98504, email ACPRules@sos.wa.gov, fax 360-586-5629, by May 20, 2019.

Assistance for Persons with Disabilities: Contact ACP, P.O. [Box] 40220, Olympia, WA 98504, email ACPRules@sos.wa.gov, fax 360-586-5629, by May 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to update definitions and processes for ACP.

Reasons Supporting Proposal: The existing rules are in many cases over ten years old and need updating to allow modernization of processes.

Statutory Authority for Adoption: RCW 40.24.090, 40.24.030.

Statute Being Implemented: Chapter 40.24 RCW.

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

Name of Proponent: Office of the secretary of state ACP, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: ACP, Olympia, 360-902-4151.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

April 16, 2019

Mark Neary

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-840-005 Definitions. For the purposes of this chapter:

(1) "Actual residential address" means any physical locations where the participant resides, works, or attends school, for which the participant is requesting confidentiality.

(2) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.

(3) "Agency" means ~~((an office))~~ every elected or appointed state or local public office, public officer, or official, department, division, bureau, board, commission, committee, council, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial

branch of the state; or any city, county, city and county, town, special district, school district, local improvement district, or other statutory unit of state or local government or any functional subdivision of that agency, or any other kind of municipal, quasi-municipal, or public corporation.

(4) "Applicant" means an adult person, a parent or guardian acting on behalf of a minor, if the minor resides with the applicant, or a guardian acting on behalf of an incapacitated person as defined in RCW 11.88.010.

(5) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advocacy, counseling, referral, or shelter services to victims of sexual assault, domestic violence, trafficking, or stalking who has been designated by the respective agency, and has been accepted by the secretary of state to assist individuals with threat assessment, safety planning, determining whether the program's services can help keep the victim safe, and the completion and submission of the ACP application.

~~((5))~~ (6) "Authorization card" means the official card issued by the secretary of state to a participant, which must state the participant's name, date of birth, substitute address, certification expiration date, and signature of the program participant.

(7) "Authorization card application form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.

~~((6))~~ (8) "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

~~((7))~~ (9) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual residential address the agency is incapable of fulfilling its statutory duties and obligations.

~~((8))~~ (10) "Certification" means that the secretary of state has determined that the eligible person meets the requirements for entering into or continuing in the program.

(11) "Change of identity" means that the program participant has changed the participant's name and Social Security number in an attempt to sever all connections to a previous name.

(12) "Criminal justice participant" means a criminal justice employee as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020 (2)(b)(iii) or (iv), and any family members residing with them.

(13) "Domestic violence" means an act as defined in RCW 10.99.020, including a threat of such acts, committed against an individual in a domestic situation, regardless of whether these acts of threats have been reported to law enforcement officers.

(14) "Mail" means first class letters and flats delivered via the United States Postal Service, including priority, express, certified, and registered mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate they are sent by a government agency.

(15) "Mailing address" means the residential street address to which the secretary of state must forward a participant's mail, except in those cases where the United States Postal Service provides no delivery service to the residential address.

(16) "Minor child" means an individual who has not attained the age of eighteen, residing with or under the guardianship of an adult applicant or program participant.

(17) "Participant mail box (PMB)" means the specific identifier assigned by the secretary of state to a program participant for use in sorting mail and confirming program participation in accordance with subsection (10) of this section.

(18) "Program participant" means an individual accepted as certified for the program under RCW 40.24.030.

(19) "Protected records marriage" means a program participant who has applied for and qualified for protected marriage records, as provided under WAC 434-840-200 and 434-840-310.

(20) "Protected records voter" means a program participant who has applied and qualified for confidential voter registration, as provided under RCW 40.24.060, WAC 434-840-100, and 434-840-310.

~~((9) "Record")~~ (21) "Public record" means any (information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

~~(10) "Substitute mailing address" means the mailing address designated by the secretary of state which shall not be the program participant's residential address as documented on her or his application for program participation))~~ paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any state or local governmental agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

(22) "Sexual assault" means an act as defined in RCW 70.125.030 and includes an attempt to commit such acts against an individual, regardless of whether these acts, attempts, or threats have been reported to law enforcement officers.

(23) "Stalking" means an act as defined in RCW 9A.46.-110 and includes threats of such acts committed against an individual, regardless of whether these acts or threats have been reported to law enforcement officers.

(24) "Substitute address" means an address designated by the secretary, including the identification number that is used by a participant to receive mail, instead of providing their actual residence address.

(25) "Trafficking" means an act as defined in RCW 9A.40.100 or an act recognized as a severe form of trafficking under 22 U.S.C. Sec. 7102(8) as it existed on June 12, 2008, or such subsequent date as may be provided by the secretary of state by rule, consistent with the purposes of this subsection, regardless of whether the act has been reported to law enforcement.

AMENDATORY SECTION (Amending WSR 08-23-094, filed 11/19/08, effective 12/20/08)

WAC 434-840-010 Application (~~and certification~~) process. (1) ~~The ((program applicant shall provide all the information required on the certification application and date and sign the form. An applicant shall specify any)) secretary of state shall certify an eligible person as a program participant when the secretary of state receives an application that contains:~~

~~(a) The full legal name and date of birth of the applicant(s);~~

~~(b) A listing of all minor children residing at the residential address, each minor child's full legal name, and each minor child's date of birth, and each minor child's relationship to the applicant;~~

~~(c) A listing of all adults residing at the residential address requesting participation, each adult's full legal name, date of birth, and relationship to the applicant;~~

~~(d) The Washington state residential addresses, work, and school addresses, if any, for which confidentiality is requested((. The standard application form shall also include the application preparation date, and the signature of the application assistant as provided in RCW 40.24.080.~~

~~(2) An individual who has filed a properly completed application shall be certified as a program participant and issued a program participant authorization card. The authorization card shall include the program participant's name, authorization code, substitute mailing address, certification expiration date, and applicant's signature.~~

~~(3) A properly completed application shall be effective on the day it is received by the address confidentiality program.~~

~~(4) The term of a program participant's certification shall be four years following the effective date of her or his application unless the certification is withdrawn or invalidated before that date));~~

~~(e) The telephone number of the applicant(s);~~

~~(f) The address to which mail should be sent, this may be the same as the residential address;~~

~~(g) A sworn statement, under penalty of perjury, by the applicant, that the applicant has good reason to believe either:~~

~~(i) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking, and that the applicant fears for their safety or the safety of their children, or the safety of any minor children or incapacitated person on whose behalf the application is made; or~~

~~(ii) That the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020.~~

~~(h) The state of Washington personnel number, if the applicant or any of the persons covered by the application is a Washington state employee;~~

~~(i) The applicant's signature;~~

~~(j) The date on which the applicant signed the application;~~

~~(k) The signature, printed name, and phone number of the application assistant designated by the secretary of state under RCW 40.24.080 who assisted in preparation of the application;~~

(l) A completed checklist of understanding, signed and dated by the applicant designating the secretary of state as legal agent for purposes of service of process and for the purpose of receipt of mail.

(m) Signed authorization card form for each member of household.

(2) The application must be completed and signed in the presence of an application assistant;

(3) The application assistant shall submit completed applications and any additional materials to the secretary of state using first class mail; and

(4) If the completed application does not meet the requirements of this part, the secretary of state shall contact the applicant to obtain missing information. The applicant shall be certified only if the missing information is provided.

NEW SECTION

WAC 434-840-015 Certification of participants. (1)

The secretary of state shall certify an eligible person, minor children, and adults residing at the residential address for whom a properly completed application or renewal is filed as a program participant.

(2) Upon certification of the applicant, the secretary of state shall issue, and mail, an address confidentiality program participant authorization card to the applicant's mailing address with instructions on how to use the address confidentiality program card. For participants under age eighteen, the card must be signed by the adult responsible for the participant. The authorization card shall include the program participant's name, authorization code, substitute mailing address, certification expiration date, and applicant's signature.

(3) A properly completed application shall be effective on the day it is received by the address confidentiality program.

(4) The term of a program participant's certification shall be four years following the effective date of her or his application unless the certification is withdrawn or invalidated before that date.

(5) At the time of certification, the secretary of state will send a voter registration application to the applicant accompanied by information related to participating in voting as a protected records voter.

(6) Secretary of state staff members must first verify the identity of an application assistant, program applicant, or program participant prior to any discussion of any data related to any applicant or participant or their certification.

NEW SECTION

WAC 434-840-017 Substitute address. (1)

Program participants may use the substitute address provided by the secretary of state when interacting with any state or local agency on all forms or applications that require an address. This is done by providing the substitute address and presenting the authorization card and PMB authorization number to the agency.

(2) Every state or local government agency, or office, shall accept the substitute address issued by the secretary of state as the only address for all program participants when the participant provides the address and authorization card and

authorization number. Program participants are not required to respond to any question regarding the details or circumstances of the person's inclusion in the program. The public agency may contact the secretary of state to verify program participation and for additional program information.

(3) Program participants are solely responsible for requesting the use of a substitute address by any agency as the participant's address for use in interaction with each agency or office.

(4) The secretary of state is the agent for receipt of all mail sent to program participants at the substitute address.

(5) All first class mail specifically addressed to the program participant at the substitute address must be forwarded at least every second business day to each participant's mailing address, using "return service requested" designation on the envelope. The secretary of state is not required to forward mail that is not specifically addressed to the participant.

(6) The secretary of state may hold a participant's mail for up to three business days upon request of the participant. The hold may be up to three weeks if the participant's request is written and signed and provides a contact telephone number for the hold period. The secretary of state must compare the signature on the hold request with that on file for the participant prior to holding the mail. In the absence of a specific hold date from the participant, the hold date is the date of receipt by the secretary of state.

(7) For services delivered to an actual physical address or tied to residency in a particular jurisdiction, the state or local agency must request only the smallest portion of the actual address needed to provide service, in addition to the substitute address.

(a) In cases in which all or part of the actual address has been disclosed pursuant to this section, the substitute address must be used by the agency as the address of the program participant for all public data or purposes that the actual address is not required.

(b) The secretary of state, upon request of the agency, shall suggest measures that assist in protecting the actual address and the participant's name against disclosure in any way. Measures may include, but are not limited to, assigning a pseudonym to the participant, keeping the actual address in the participant's paper file at an agency (not in an electronic system), and making the records password protected and limiting record access to a small pool of staff.

AMENDATORY SECTION (Amending WSR 05-13-059, filed 6/9/05, effective 7/10/05)

WAC 434-840-020 Exercise of program participant's privileges. (1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) Program participants are solely responsible for requesting the use of a substitute address.

(3) A program participant shall show ~~((her or his))~~ their authorization card to the agency official creating a new record and request address confidentiality through the use of

the substitute mailing address as it appears on the authorization card, in lieu of ~~((her or his))~~ their actual location.

~~((3))~~ (4) The agency official creating a new record may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant. The agency official may call the program to verify an individual's current participation status in the program.

~~((4))~~ (5) An agency shall accept the substitute ~~((mailing))~~ address unless the agency has received a written exemption from the secretary of state pursuant to RCW 40.24.050 and WAC 434-840-070.

(6) For services delivered to an actual address or tied to residency in a particular jurisdiction, the state or local agency must request only the smallest portion of the actual address needed to provide services, in addition to the substitute address.

(7) In cases in which all or part of the actual address has been disclosed pursuant to this section, the substitute address must be used by the agency as the address of the program participant for all public data or purposes that the actual address is not required.

(8) The secretary of state, upon request of the agency, shall suggest measures that assist in protecting the actual address and the participant's name against disclosure in any way.

NEW SECTION

WAC 434-840-025 Attaining age of majority. When a participant reaches the age of eighteen, the secretary of state shall inform the participant of options related to continued participation in the address confidentiality program. These options include leaving the program, applying for continuation in the program, and reapplying on their own behalf.

(1) In anticipation of the participant's eighteenth birthday, the secretary of state shall send an application packet via first class mail to the participant's substitute address. The packet must include instructions on actions to be taken by age eighteen. The packet must include notice that if the participant does not respond within thirty days they will be removed from the program, they must return their authorization card, and mail forwarding will stop. If thirty days passes without contact from the participant, the secretary of state shall mail a final notice that the participant's certification will be canceled if the participant fails to submit the certification of continuance within ten days.

(2) The packet shall include the application form, checklist of understanding, authorization card form, and information about voter registration. The secretary of state must offer the participant the opportunity to register to vote as a protected records voter.

(3) The secretary of state shall renew the certification of a participant upon receipt of a completed application form and checklist of understanding. If the form is for continuance of participation, it does not require the signature of an application assistant. Responsibility for changes in information and renewal belong to the participant once the participant reaches age eighteen.

(4) A participant who reaches age eighteen and changes residence may reapply through an application assistant, or withdraw.

(5) Program participants that have reached age eighteen who have withdrawn, or allowed certification to expire, may reapply on their own behalf by contacting an application assistant.

NEW SECTION

WAC 434-840-027 Updating participant information. (1) Participants and applicants shall send signed, written notification of any change in mailing or actual address, telephone number, legal name, or permanent contact data to the secretary of state.

(2) In order to add minor children to the residence of a program participant, the participant must send a signed written notification to the secretary of state. The notification must clearly state the relationship to the participant, the child's date of birth, and that the participant is responsible for the minor children. The secretary of state must certify the minor children as participants and issue program authorization cards to each minor child.

(3) If a participant changes their legal name, they must send a signed written notification to the secretary of state accompanied by a copy of the court order or other formal document indicating the legal name change. At the same time the participant must return their authorization card or a signed statement documenting the loss of the authorization card. The secretary of state shall verify the change, by signature comparison, and send a new authorization card with the participant's new legal name within two business days of receiving the notice.

(4) Prior to making any change in participant information, the secretary of state must compare the signature on the original application, or other documents on file, and conclude that the signatures are the same.

(5) On or before the effective date of a change in identity, a program participant must withdraw from the program. The participant may apply for recertification in the address confidentiality program under their new identity.

AMENDATORY SECTION (Amending WSR 05-13-059, filed 6/9/05, effective 7/10/05)

WAC 434-840-030 Certification renewal. (1) At least thirty days prior to the expiration of a certification, the secretary of state shall inform a program participant, of the option of renewing certification in the program by sending a renewal form to the participant's mailing address. The notice must provide instructions on actions the participant must take upon expiration of certification, if the participant chooses to leave the program. These include return of the authorization card, notifying senders of the former participant's actual address and notifying that the substitute address is no longer valid for the former participant. Ten days prior to expiration of certification, the secretary of state must mail a second notice to the participant unless the participant has responded with a renewal or communication indicating intent to withdraw from the program.

(2) Information about voter registration should be provided to the participant as part of the notification process.

(3) A program participant may renew her or his program certification by first class mail filing with the address confidentiality program: (a) ~~((Her or his))~~ The participant's current authorization card; (b) a properly completed renewal application and checklist of understanding forms; and (c) a new authorization card form ~~((The program participant shall provide all the information required on the renewal application form and date and sign the form))~~ with signature.

~~((2))~~ (4) If the completed renewal does not meet the requirements of this part, the secretary of state shall contact the participant or applicant to obtain the missing information.

(5) The address confidentiality program shall: (a) Certify a program participant, who has filed a properly completed renewal application form, to participate in the program for an additional four year term unless the certification is withdrawn or invalidated before that date; (b) issue to the program participant a new authorization card which includes the program participant's name, authorization code, substitute mailing address, certification expiration date, and signature.

(6) A properly completed renewal, postmarked on or before the expiration date, is effective on the day it is reviewed and certified by the secretary of state.

NEW SECTION

WAC 434-840-035 Certification cancellation. (1) The address confidentiality program shall terminate a participant's certification and invalidate that participant's authorization card if:

(a) The participant's certification term has expired and renewal of certification is not completed;

(b) The address confidentiality program has determined that false information was used in the application process; or

(c) The participant fails to respond to the program's request for verification of the participant's residential address.

(2) The address confidentiality program may terminate a participant's certification and invalidate that participant's authorization card if:

(a) The participant no longer resides at the residential address on file, and has not provided at least two days prior notice in writing of a change of address;

(b) Any first class or certified mailing, or service of process document forwarded by the program is returned as non-deliverable, refused, or unclaimed; or

(c) The participant obtains a legal change of identity.

(3) The address confidentiality program shall send written notification of the pending termination to the participant's last known mailing or residential address. The participant shall have ten business days in which to appeal the termination under procedures developed by the secretary of state.

(4) After the secretary of state has provided notice as required in subsection (3) of this section the participant's certification is considered to be in pending status. While in this status, the secretary of state must hold the participant's mail without forwarding to the participant. Pending status ends after ten business days, or upon the participant's compliance with this section, whichever occurs first. This does not pre-

vent the secretary of state from forwarding correspondence marked "service of process."

(5) If the participant's pending cancellation status expires, the secretary of state must cancel the certification of the program participant.

(6) The address confidentiality program shall notify authorized election officials and authorized Washington state department of health personnel if the participant is registered to vote or has a protected records marriage license when a participant's authorization has been terminated from the program. The authorized elections and health department personnel shall transmit to the address confidentiality program all appropriate administrative records pertaining to the participant.

(7) If the certification of a participant is canceled, mail addressed to the program participant must be returned to sender.

AMENDATORY SECTION (Amending WSR 05-13-059, filed 6/9/05, effective 7/10/05)

WAC 434-840-040 Certification withdrawal, invalidation, expiration, and termination. (1) A program participant or applicant may withdraw from program participation by submitting to the address confidentiality program: Written notification of withdrawal and ~~((her or his))~~ the names of any minor children who are being withdrawn and their current authorization ((card)) card(s).

(2) The program participant or applicant may include an effective date on which the participant or applicant would like the withdrawal to be effective. In absence of a specific date, certification shall be terminated on the date of receipt of this notification. If the program participant requests cancellation but does not return ((her or his)) their current authorization card and/or does not submit written notification of the request, the secretary of state may, at his/her discretion, cancel program participation based solely on the verbal request.

~~((2) The address confidentiality program shall terminate a program participant's certification and invalidate her or his authorization card if: (a) The program participant's certification term has expired and certification renewal has not been completed; (b) the address confidentiality program has determined that false information was used in the application process; or (c) the program participant fails to respond to the program's request for verification of the participant's residential address.~~

~~(3) The address confidentiality program may terminate a program participant's certification and invalidate her or his authorization card if: (a) The program participant no longer resides at the residential address on file, and has not provided at least two days' prior notice in writing of a change of address; (b) first class mail, certified mail, or a service of process document forwarded to the program participant by the address confidentiality program is returned as nondeliverable, refused, or unclaimed; or (c) the program participant obtains a legal change of identity.~~

~~(4) The address confidentiality program shall send written notification of the termination to the participant's last known mailing or residential address. The program participant shall have five business days in which to appeal the ter-~~

~~mination under procedures developed by the secretary of state.~~

~~(5) The address confidentiality program shall notify the appropriate authorized personnel when a participant has been terminated from the program. The authorized personnel shall transmit to the address confidentiality program all appropriate administrative records pertaining to the participant. The transmitting agency is no longer responsible for maintaining record confidentiality for a terminated program participant under chapter 40.24 RCW.) (3) It is the responsibility of the program participant to notify all persons of a new mailing address at which the participant can be contacted.~~

~~(4) The program participant may request continued mail forwarding up to thirty days immediately following the date on which withdrawal is effective and may provide an address on record. The secretary of state may only forward mail to addresses within the United States.~~

~~(5) Mail received at the designated address for the participant other than mail designated as "Do Not Forward," "Return Service Requested," "Service of Process" or similarly designated, must be forwarded to the program participant for thirty days after the effective date of withdrawal unless the participant or applicant has designated a shorter period. After thirty days mail must be returned to sender.~~

~~(6) A program participant whose certification is withdrawn may reapply or have an application assistant reapply on the program participant's behalf.~~

AMENDATORY SECTION (Amending WSR 08-23-094, filed 11/19/08, effective 12/20/08)

WAC 434-840-310 Protected records voter status. An address confidentiality program participant who is eligible to vote may register to vote as a protected records voter.

(1) A program participant ~~((shall))~~ may apply for protected records voter status by appearing in person before the appropriate county authorized personnel or requesting ~~((an))~~ a protected records voter registration application from the address confidentiality program. ~~((The program participant shall: (a) Cancel any previously existing voter registration; and (b) provide all the information required on the protected records voter registration application.))~~ In order to register as a protected records voter, the applicant must be an address confidentiality program participant, provide their participant authorization number, and provide all of the information required for voter registration under RCW 29A.08.010 and 29A.08.107.

(2) The program participant shall disclose ~~((to the authorized personnel))~~ the actual address of her or his residence on the protected records voter application only for the purpose of determining the proper precinct, and taxing districts.

(3) Upon receipt of a protected records voter application, the county election official must confirm with program staff that the applicant is a program participant and confirm that the information required by RCW 29A.08.010 and 29A.08.107 is included on the form.

(a) If the voter registration applicant is not a program participant, the voter registration application may be processed in the same manner as all voter registration applications.

(b) If the information required by RCW 29A.08.010 and 29A.08.107 is not included, the county election office must seek the missing information, using the address confidentiality program substitute mailing address for communication to the protected records voter applicant.

(4) Upon receipt of a properly filled out form, the county election official shall:

(a) Cancel all previously existing voter registration records for the participant;

(b) Process the application as a protected records voter; and

(c) Provide the registrant with information related to voting participation as a protected records voter.

WSR 19-09-073
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 16, 2019, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-04-104.

Title of Rule and Other Identifying Information: Chapter 392-400 WAC, Student discipline.

Hearing Location(s): On May 28, 2019, at 3:30 p.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501. Those planning to testify during the hearing should arrive by 3:30 p.m.

Date of Intended Adoption: May 31, 2019.

Submit Written Comments to: Dierk Meierbachtol, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email Dierk.Meierbachtol@k12.wa.us, fax 360-753-4201, by May 28, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by May 21, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to repeal expiring sections of chapter 392-400 WAC before the commencement of the 2019-20 school year and make some minor housekeeping revisions to a handful of provisions that are set to go into effect July 1, 2019. The rule making would also repeal WAC 392-400-226 (pertaining to harassment, intimidation, and bullying). That section will be recodified in a standalone WAC chapter when these rules are adopted.

Reasons Supporting Proposal: On July 30, 2018, OSPI adopted rules that comprehensively revised chapter 392-400 WAC, which provides rules governing how a public school district may administer student discipline. Several sections of the chapter are effective, as amended, for the 2018-19 school year only. This proposed rule making would repeal those expiring sections so as to ensure the rules are properly and consistently implemented. In addition, the proposed rules

would make housekeeping changes to the rules to improve their clarity and internal consistency.

Statutory Authority for Adoption: RCW 28A.600.015, 28A.600.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Dierk Meierbachtol, OSPI, 600 Washington Street S.E., [Olympia], WA 98501, 360-725-6004.

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

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

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

Is exempt under RCW 19.85.030.

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

April 16, 2019

Chris P. S. Reykdal
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-400-115 Completing academic requirements. A school district may not:

(1) Suspend the provision of educational services to a student in response to behavioral violations; or

(2) Administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-430 Suspensions and expulsions—General conditions and limitations. A school district may administer suspensions and expulsions for behavioral violations, subject to the following requirements:

(1) **Parent involvement.** A school district must:

(a) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations; and

(b) Must make every reasonable attempt to involve the student and parents in the resolution of behavioral violations.

(2) **Considerations.** Before administering any suspension or expulsion, a school district must consider the student's individual circumstances and the nature and circumstances of the behavioral violation to determine whether the suspension or expulsion, and the length of the exclusion, is warranted.

(3) ~~((Completing academic requirements. A school district may not:~~

~~(a) Suspend the provision of educational services to a student in response to behavioral violations; or~~

~~(b) Administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements.~~

~~(4))~~ **Opportunity to receive educational services.** A school district must provide an opportunity for students to receive educational services during a suspension or expulsion under WAC 392-400-610.

~~((5))~~ **(4) Reporting.** The principal or designee must report all suspensions and expulsions, and the behavioral violation that led to each suspension or expulsion, to the school district superintendent or designee within twenty-four hours after the administration of the suspension or expulsion.

~~((6))~~ **(5) Reentry.** After suspending or expelling a student, a school district must:

(a) Make reasonable efforts to return the student to the student's regular educational setting as soon as possible.

(b) Allow the student to petition for readmission at any time.

~~((7))~~ **(6) Absences and tardiness.** A school district may not suspend or expel a student from school for absences or tardiness.

~~((8))~~ **(7) Access to school district property.** When administering a suspension or expulsion, a school district may deny a student admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the district.

~~((9))~~ **(8) End date.**

(a) An expulsion or suspension of a student may not be for an indefinite period of time and must have an end date.

(b) If a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion, unless:

(i) The school district superintendent or designee grants a petition to extend a student's expulsion under WAC 392-400-480;

(ii) The student is excluded from the student's regular educational setting in accordance with WAC 392-400-810; or

(iii) The student is otherwise precluded under law from returning to the student's regular educational setting.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-440 Long-term suspensions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering a long-term suspension, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on long-term suspensions.** A school district may only administer a long-term suspension:

(a) For behavioral violations under RCW 28A.600.015 (6)(a) through (d); and

(b) After the school district has determined that, if the student returned to school before completing a long-term suspension:

(i) The student would pose an imminent danger to students or school personnel; or

(ii) The student would pose an imminent threat of material and substantial disruption of the educational process.

(3) **Length of exclusion.**

(a) A long-term suspension may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred.

(4) **Grade-level limitations.** Except for a violation of WAC 392-400-820, a school district may not administer a long-term suspension for any student in kindergarten through fourth grade.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-445 Expulsions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering an expulsion, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on expulsions.** A school district may only administer an expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6)(a) through (d); and

(b) After the school district has determined that if the student returned to school before completing an expulsion, the student would pose an imminent danger to students or school personnel.

(3) **Length of exclusion.** An expulsion may not exceed the length of an academic term, unless the principal or designee petitions the school district superintendent for extension of an expulsion under WAC 392-400-480, and the petition is granted.

(4) **Grade-level limitations.** Except for violations of WAC 392-400-820, a school district may not administer an expulsion for any student in kindergarten through fourth grade.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-465 Suspensions and expulsions—Appeal. (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal a suspension or expulsion. Appeal time limits must be no less than five school business days from the date the school district provides the written notice under WAC 392-400-455.

(3) **Short-term and in-school suspensions.**

(a) **Appeal.** The superintendent or designee must provide the student and parents the opportunity to share the student's perspective and explanation regarding the behavioral violation orally or in writing.

(b) **Appeal decision.** The superintendent or designee must deliver a written appeal decision to the student and parents in person, by mail, or by email within two school business days after receiving the appeal. The written decision must include:

- (i) The decision to affirm, reverse, or modify the suspension;
- (ii) The duration and conditions of the suspension, including the dates on which the suspension will begin and end;
- (iii) The educational services the school district will offer to the student during the suspension under WAC 392-400-610; and
- (iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request.

(4) Long-term suspensions and expulsions.

(a) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

- (i) The time, date, and location of the appeal hearing;
- (ii) The name(s) of the official(s) presiding over the appeal;
- (iii) The student's and parents' rights to inspect the student's education records under (e) of this subsection;
- (iv) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under (e) of this subsection;
- (v) The student's and parents' rights under (f) of this subsection; and
- (vi) Whether the school district will offer to hold a reengagement meeting under WAC 392-400-710 before the appeal hearing.

(b) **Reengagement.** Before the appeal hearing, the student, parents, and school district may agree to hold a reengagement meeting and develop a reengagement plan under WAC 392-400-710. The student, parents, and school district may mutually agree to postpone the appeal hearing while participating in the reengagement process.

(c) **Appeal hearing.** The school district must hold an appeal hearing within three school business days from the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student or parents.

(d) **Presiding officials.** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to suspend or expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(e) Evidence and witnesses.

(i) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later

than the end of the school business day before the appeal hearing.

(ii) Upon request, the student and parents may review the student's education records. The district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(iii) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(A) The district made a reasonable effort to produce the witness; and

(B) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(f) **Student and parent rights.** During the appeal hearing, the student and parents have the right to:

- (i) Be represented by legal counsel;
- (ii) Question witnesses;
- (iii) Share the student's perspective and provide explanation regarding the behavioral violation; and
- (iv) Introduce relevant documentary, physical, or testimonial evidence.

(g) **Recording of hearing.** The appeal hearing must be recorded by (~~manual, electronic~~) analog, digital, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(h) **Appeal decision.** The presiding official(s) must base the decision solely on the evidence presented at the hearing. The presiding official(s) must provide a written decision to the student and parents in person, by mail, or by email within three school business days after the appeal hearing. The written decision must include:

- (i) The findings of fact;
- (ii) A determination whether:
 - (A) The student's behavior violated the school district's discipline policy adopted under WAC 392-400-110;
 - (B) The behavioral violation reasonably warrants the suspension or expulsion and the length of the suspension or expulsion; and
 - (C) The suspension or expulsion is affirmed, reversed, or modified;

(iii) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request; and

(v) Notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710 and the contact information for the person who will coordinate scheduling of the reengagement meeting.

(5) **Language assistance.** The school district must ensure that the notice, appeal proceedings, and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(6) **Pending appeal.** If the student or parents request an appeal under this section, the school district may temporarily continue to administer the suspension or expulsion during the appeal period subject to the following requirements:

(a) The school district may temporarily continue to administer the suspension or expulsion for no more than ten consecutive school days from the initial hearing under WAC 392-400-450 or until the appeal is decided, whichever is earlier;

(b) Any days that the student is temporarily suspended or expelled before the appeal is decided must be applied to the term of the student's suspension or expulsion and may not extend the term of the student's suspension or expulsion;

(c) If the student who is temporarily suspended or expelled returns to school before the appeal is decided under this section, the school district must provide the student an opportunity to make up assignments and tests missed during the suspension or expulsion upon the student's return.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-510 Emergency expulsions—Conditions and limitations. A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

(1) **Sufficient cause.** The school district must have sufficient cause to believe that the student's presence poses:

(a) An immediate and continuing danger to other students or school personnel; or

(b) An immediate and continuing threat of material and substantial disruption of the educational process.

(2) **Determination of immediate and continuing threat of disruption.** For purposes of this section, an immediate and continuing threat of material and substantial disruption of the educational process means:

(a) The student's behavior results in an extreme disruption of the educational process that creates a substantial barrier to learning for other students across the school day; and

(b) School personnel have exhausted reasonable attempts at administering other forms of discipline to support the student in meeting behavioral expectations.

(3) **Time limit.** An emergency expulsion may not exceed ten consecutive school days. An emergency expulsion must end or be converted to another form of discipline within ten school days from the start of the emergency expulsion.

(4) **Conversion.** If a school district converts an emergency expulsion to a suspension or expulsion, the district must:

(a) Apply any days that the student was emergency expelled before the conversion to the total length of the suspension or expulsion; and

(b) Provide the student and parents notice and due process under WAC ((392-400-455)) 392-400-430 through 392-400-480.

(5) **Reporting.** All emergency expulsions, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be reported to the district superintendent or designee within twenty-four hours after the start of the emergency expulsion.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-525 Emergency expulsions—Appeal.

(1) **Requesting an appeal.** A student or the parents may appeal an emergency expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency expulsion. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency expulsion.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

(a) The time, date, and location of the appeal hearing;

(b) The name(s) of the official(s) presiding over the appeal;

(c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;

(d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and

(e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(i) The district made a reasonable effort to produce the witness; and

(ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

(a) Be represented by legal counsel;

(b) Question witnesses;

(c) Share the student's perspective and provide explanation regarding the events that led to the emergency expulsion; and

(d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by ~~((manual, electronic))~~ **analog, digital,** or other type of recording device. The school district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

(a) The findings of fact;

(b) A determination whether the student's presence continues to pose:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(c) Whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC ~~((392-400-455))~~ 392-400-430 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

WAC 392-400-530 Emergency expulsions—Review and reconsideration. (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency expulsion, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency expulsion, the decision to emergency expel the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district's decision that the student's presence posed:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(b) If the emergency expulsion has not yet ended or been converted, whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC ~~((392-400-455))~~ 392-400-430 through 392-400-480.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-400-023 Definitions.

WAC 392-400-225 School district rules defining misconduct—Distribution of rules.

WAC 392-400-226 School district rules defining harassment, intimidation and bullying prevention policies and procedures—Distribution of rules.

- WAC 392-400-230 Persons authorized to impose discipline, suspension, or expulsion upon students.
- WAC 392-400-233 Absences, tardiness, and school meals.
- WAC 392-400-235 Discipline—Conditions and limitations.
- WAC 392-400-240 Discipline—Grievance procedure.
- WAC 392-400-245 Short-term suspension—Conditions and limitations.
- WAC 392-400-250 Short-term suspension—Prior conference required—Notice to parent.
- WAC 392-400-255 Short-term suspension—Grievance procedure.
- WAC 392-400-260 Long-term suspension—Conditions and limitations.
- WAC 392-400-265 Long-term suspension—Notice of hearing—Waiver of hearing.
- WAC 392-400-270 Long-term suspension—Prehearing and hearing process.
- WAC 392-400-275 Expulsion—Conditions and limitations.
- WAC 392-400-280 Expulsion—Notice of hearing—Waiver of hearing.
- WAC 392-400-285 Expulsion—Prehearing and hearing process.
- WAC 392-400-295 Emergency expulsion—Limitations.
- WAC 392-400-300 Emergency expulsion—Notice of hearing—Waiver of hearing right.
- WAC 392-400-305 Emergency expulsion—Prehearing and hearing process.
- WAC 392-400-310 Appeals—Long-term suspension and expulsion.
- WAC 392-400-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures.
- WAC 392-400-317 Appeals—Discipline and short-term suspension grievances.
- WAC 392-400-320 School board or disciplinary appeal council decisions.
- WAC 392-400-410 Appeal for extension of an expulsion.

WSR 19-09-076**PROPOSED RULES****DEPARTMENT OF****CHILDREN, YOUTH, AND FAMILIES**

[Filed April 17, 2019, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-018.

Title of Rule and Other Identifying Information: Working connections and seasonal child care subsidy programs: New WAC 110-15-0024 Categorical eligibility and 110-15-0278 Consumer program violation; amending WAC 110-15-0015 Determining family size, 110-15-0034 Provider's responsibilities, 110-15-0090 Minimum copayment, 110-15-0120 When notice of payment changes is not required, 110-15-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 110-15-0205 Daily child care rates—Licensed or certified family home child care providers, 110-15-0210 Tiered reimbursement and quality improvement awards, 110-15-0240 Child care subsidy rates—In-home/relative providers, 110-15-0249 Nonstandard hours bonus, 110-15-0266 Payment discrepancies—Generally, 110-15-0267 Payment discrepancies—Provider underpayments, 110-15-0275 Payment discrepancies—Providers, 110-15-0277 Provider program violations and suspected fraud, 110-15-3566 Subsidized child care providers' responsibilities, 110-15-3850 Payment discrepancies generally and 110-15-3857 Program violations and suspected fraud; and repealing WAC 110-15-0130 In-home/relative providers—Eligibility and 110-15-0279 Program violation sanctions.

Hearing Location(s): On May 21, 2019, at 1:00, at 1110 Jefferson Street S.E., 1st Floor, Baker Conference Room, Olympia, Washington.

Date of Intended Adoption: May 31, 2019.

Submit Written Comments to: Department of Children, Youth, and Families (DCYF), Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at <https://del.wa.gov/PolicyProposalComment/Detail.aspx>, by May 21, 2019.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7903 [7956], fax 360-902-7903, email dcyfrulescoordinator@dcyf.wa.gov, by May 14, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For the working connections and seasonal child care programs: (1) Establish conditions under which certain children and families may receive program benefits regardless of meeting eligibility threshold. (2) Implement 2019-2021 collective bargaining agreements negotiated between the state of Washington and represented family home child cares. (3) Increase centers' rates. (4) Clarify program violations and enforcement process. (5) Clarify that notice of payment changes is not required when DCYF determines that enrolled children are exposed to a serious health or safety risk that impacts the provider's license or approval to participate in the subsidy program. (6) Clarify when a family may be eligible for the minimum copayment. (7) Clarify what is necessary for income verification and deadlines for receiving requested information. (8) Clarify that DCYF is solely responsible for service delivery of the working connections and seasonal child care programs. (9) Make housekeeping updates necessary after the decodification of chapter 43.215 RCW and Title 170 WAC and recodification to chapter 43.216 RCW and Title 110 WAC.

April 17, 2019

Brenda Villarreal
Rules Coordinator

Reasons Supporting Proposal: (1) New proposed WAC 110-15-0024 is necessary to comply with section 1, chapter 9, Laws of 2017, which authorizes categorical eligibility to child welfare program participants. (2) Rule changes are necessary to implement family home child care providers' collective bargaining agreements for 2019-2021. (3) The federal child care development fund requires states to maintain the level of subsidy needed to ensure that providers can afford the cost of fully implementing high quality care and that all families have equal access to child care. The proposed increase in center rates responds to a corrective action directing DCYF to improve equal access for all families. The proposed increase will bring all center rates to at or above the 45th percentile for early achievers level 2 based on the 2018 market rate survey. (4) DCYF responded to licensed providers' concerns about current rules by negotiating with those providers proposed new WAC 110-15-0278, amended WAC 110-15-0277, and repealed WAC 110-15-0279. (5) Generally, the proposed rules clarify program policies that are frequently the subjects to [of] participants' questions. The proposed rules are intended to alleviate those questions by improving the rules' clarity and readability. Finally, the proposed rules implement chapter 52, Laws of 2018, which transfers the department of social and health [service]'s duties to DCYF effective July 1, 2019.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.135 through 43.216.143, and chapter 52, Laws of 2018.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, Olympia, Washington, 360-688-0911; Implementation and Enforcement: DCYF, statewide.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rules primarily impact individuals. The proposals that do impact small businesses (child care providers) do not impose new requirements with a cost. They are limited to clarifying time limits for responding to request[s] for records to support invoices and time limits for correcting underpayments and overpayments.

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

WAC 110-15-0015 Determining family size. (1) ((~~DSHS~~)) DCYF determines a consumer's family size as follows:

(a) For a single parent, including a minor parent living independently, ((~~DSHS~~)) DCYF counts the consumer and the consumer's children;

(b) For unmarried parents who have at least one mutual child, ((~~DSHS~~)) DCYF counts both parents and all of their children living in the household;

(c) Unmarried parents who have no mutual children are counted as separate WCCC ((~~families~~)) households, the unmarried parents and their respective children living in the household;

(d) For married parents, ((~~DSHS~~)) DCYF counts both parents and all of their children living in the household;

(e) For parents who are undocumented aliens as defined in WAC 388-424-0001, ((~~DSHS~~)) DCYF counts the parents and children, documented and undocumented, and all other family rules in this section apply. Children needing care must meet citizenship requirements described in WAC ((~~170-290-0005~~)) 110-15-0005;

(f) For a legal guardian verified by a legal or court document, adult sibling or step-sibling, nephew, niece, aunt, uncle, grandparent, any of these relatives with the prefix "great," such as a "great-nephew," or an in loco parentis custodian who is not related to the child as described in WAC ((~~170-290-0005, DSHS~~)) 110-15-0005, DCYF counts only the children and only the children's income is counted;

(g) For a parent who is out of the household because of employer requirements, such as training or military service, and expected to return to the household, ((~~DSHS~~)) DCYF counts the consumer, the absent parent, and the children;

(h) For a parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household, ((~~DSHS~~)) DCYF counts the consumer, the absent parent, and the children. WAC ((~~170-290-0020~~)) 110-15-0020 and all other family and household rules in this section apply;

(i) For a parent who is out of the country and waiting for legal reentry in to the United States, ((~~DSHS~~)) DCYF counts only the consumer and children residing in the United States and all other family and household rules in this section apply;

(j) An incarcerated parent is not part of the household count for determining income and eligibility. ((~~DSHS~~)) DCYF counts the remaining household members using all other family rules in this section; and

(k) For a parent incarcerated at a Washington state correctional facility whose child lives with them at the facility, ((~~DSHS~~)) DCYF counts the parent and child as their own household.

(2) ((~~In addition to family members described in subsection (1)(a) through (k) of this section, siblings of the child~~))

needing care, unless they are parents themselves, who meet the following criteria are counted by DSHS as part of the family for WCCC eligibility:

(a) ~~Eighteen-year-old siblings who are enrolled in high school or a general equivalency diploma (GED) program until turning nineteen or completing high school/GED, whichever comes first; and~~

(b) ~~Siblings up to twenty-one years of age who are participating in an approved program through a school district's special education department under RCW 28A.155.020.)~~
When the household consists of the consumer's own child and another child identified in subsection (1)(f) of this section, the household may be combined into one household or kept as distinct households for the benefit of the consumer.

NEW SECTION

WAC 110-15-0024 Categorical eligibility for families receiving child protective, child welfare, or family assessment response services. (1) Families with children who have received child protective services as defined and used by chapters 26.44 and 74.13 RCW, child welfare services as defined and used by chapter 74.13 RCW, or services through a family assessment response, as defined and used by chapter 26.44 RCW in the six months previous to application or reapplication for working connections child care (WCCC) benefits are eligible for WCCC benefits for a twelve-month period if, in addition the:

(a) Consumer is a Washington resident;

(b) Family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(c) Child or children are residing with a biological parent or guardian.

(2) Families eligible for WCCC under this section will:

(a) Have no copayment;

(b) Be authorized for full-time child care regardless of participation in an approved activity; and

(c) Be eligible to have benefits paid only to a licensed, certified, or contracted child care provider that meets the requirements in WAC 110-15-0125.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-15-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, 110-300A, 110-300B, and 110-305 WAC.

(2) In-home/relative child care providers must comply with the requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(3) In-home/relative child care providers must not submit an invoice for more than six children for the same hours of care.

(4) All child care providers must use DCYF's electronic attendance recordkeeping system or a DCYF-approved elec-

tronic attendance recordkeeping system as required by WAC 110-15-0126. Providers must limit attendance system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(a) Providers using DCYF's electronic recordkeeping system must submit monthly attendance records prior to claiming payment. Providers using a DCYF-approved electronic recordkeeping system must finalize attendance records prior to claiming payment.

(b) Providers must not edit attendance records after making a claim for payment.

(5) All child care providers must complete and maintain accurate daily attendance records. If requested by DCYF or DSHS, the provider must provide to the requesting agency the following records:

(a) Attendance records must be provided to DCYF or DSHS within twenty-eight calendar days of the date of a written request from either department.

(b) Pursuant to WAC 110-15-0268, the attendance records delivered to DCYF or DSHS may be used to determine whether a provider overpayment has been made and may result in the establishment of an overpayment and in an immediate suspension of the provider's subsidy payment.

(6) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF or DSHS, the provider must provide the following receipts for billed field trip/quality enhancement fees:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within twenty-eight days of the date of a written request from either department.

(7) All child care providers must collect copayments directly from the consumer or the consumer's third-party payor, and report to DCYF if the consumer has not paid a copayment to the provider within the previous sixty days.

(8) All child care providers must follow the billing procedures required by DCYF.

(9) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month; however, in the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

(b) ~~((Submit))~~ Claim an invoice for payment later than ~~((one calendar year))~~ six months after the ~~((actual date))~~ month of service, or the date of the invoice, whichever is later; or

(c) Charge consumers the difference between the provider's customary rate and the maximum allowed state rate.

(10) Licensed and certified providers must not charge consumers for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Days for which the child is scheduled and authorized for care but absent;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

(11) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ten days of any suspension, revocation, or changes to their license.

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

WAC 110-15-0090 Minimum copayment. (1) The consumer is eligible for the minimum copayment (~~(is paid)~~) when:

(a) The consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines;

(b) The consumer is a minor parent and receives TANF;
or

(c) The consumer is a minor parent and is part of the consumer's parent's or consumer's relative's TANF assistance unit.

(2) ~~((First application. The consumer pays the minimum copayment at first application for WCCC when benefits are paid. The consumer pays the minimum copayment:~~

(a) Beginning in the month that DSHS pays for WCCC child care services; and

(b) The first full calendar month thereafter.

(3) ~~Reapplication. The consumer pays the minimum copayment at reapplication for WCCC after a break of at least thirty days in the consumer's approved activities. The consumer pays the minimum copayment:~~

(a) Beginning in the month that DSHS pays for WCCC services; and

(b) The first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) Receives TANF; or

(b) Is part of the parent's or relative's TANF assistance unit.

~~(5) DSHS))~~ The consumer is eligible for the minimum copayment beginning the first month that DCYF pays for WCCC child care services and the first full calendar month thereafter for:

(a) A consumer's first approved application; and

(b) A consumer's approved application following a break of at least one calendar month of eligibility.

(3) If the consumer meets the conditions described in subsection (2) of this section, the consumer pays the minimum copayment beginning the first month that DCYF pays for WCCC child care services and the first full calendar month thereafter, even if the consumer's copayment for later months calculated under the provisions of WAC 110-15-0075 exceeds the cost of care.

(4) DCYF does not prorate the copayment.

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

WAC 110-15-0120 When notice of payment changes is not required. ~~((DSHS))~~ DCYF does not give a consumer written notice of changes to WCCC eligibility or provider payments when:

(1) The consumer tells ~~((DSHS))~~ DCYF that he or she no longer wants WCCC; ~~((or))~~

(2) The consumer has not informed ~~((DSHS))~~ DCYF of his or her new mailing address; or

(3) DCYF has determined that children have been exposed to a serious health or safety risk.

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

WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and ~~((DEL))~~ DCYF contracted seasonal day camps. (1) **Base rate.** ~~((DSHS))~~ DCYF pays the lesser of the following to a licensed or certified child care center or ~~((DEL))~~ DCYF contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		(Infants (One month—11 mos.))	Toddlers (12—29 mos.)	Preschool (30 mos.—6 yrs not attending kindergarten or school)	School-age (5—12 yrs attending kin- dergarten or school)
Region 1	Full Day	\$34.03	\$28.62	\$27.03	\$25.46
	Half Day	\$17.02	\$14.31	\$13.52	\$12.73
Spokane County	Full Day	\$34.81	\$29.28	\$27.67	\$26.05
	Half Day	\$17.41	\$14.64	\$13.84	\$13.03
Region 2	Full Day	\$34.39	\$28.68	\$26.61	\$23.53
	Half Day	\$17.20	\$14.34	\$13.31	\$11.77
Region 3	Full Day	\$45.50	\$37.93	\$32.78	\$31.82
	Half Day	\$22.75	\$18.97	\$16.39	\$15.91
Region 4	Full Day	\$52.94	\$44.20	\$37.10	\$33.41
	Half Day	\$26.47	\$22.10	\$18.55	\$16.71

		((Infants (One month—11 mos.)	Toddlers (12—29 mos.)	Preschool (30 mos.—6 yrs not attending kindergarten or school)	School-age (5—12 yrs attending kin- dergarten or school)
Region 5	Full-Day	\$38.82	\$33.41	\$29.40	\$26.12
	Half-Day	\$19.41	\$16.71	\$14.70	\$13.06
Region 6	Full-Day	\$38.18	\$32.78	\$28.62	\$28.01
	Half-Day	\$19.09	\$16.39	\$14.31	\$14.01

(Chart effective 09/01/17))

		<u>Infants (One month - 11 mos.)</u>	<u>Toddlers (12 - 29 mos.)</u>	<u>Preschool (30 mos. - 6 yrs not attending kindergarten or school)</u>	<u>School-age (5 - 12 yrs attending kin- dergarten or school)</u>
<u>Region 1</u>	<u>Full-Day</u>	<u>\$35.29</u>	<u>\$32.44</u>	<u>\$30.53</u>	<u>\$20.41</u>
	<u>Half-Day</u>	<u>\$17.65</u>	<u>\$16.22</u>	<u>\$15.26</u>	<u>\$14.71</u>
<u>Spokane County</u>	<u>Full-Day</u>	<u>\$45.45</u>	<u>\$38.77</u>	<u>\$35.65</u>	<u>\$26.05</u>
	<u>Half-Day</u>	<u>\$22.73</u>	<u>\$19.39</u>	<u>\$17.83</u>	<u>\$13.03</u>
<u>Region 2</u>	<u>Full-Day</u>	<u>\$39.44</u>	<u>\$31.62</u>	<u>\$30.44</u>	<u>\$23.53</u>
	<u>Half-Day</u>	<u>\$19.72</u>	<u>\$15.81</u>	<u>\$15.22</u>	<u>\$11.77</u>
<u>Region 3</u>	<u>Full-Day</u>	<u>\$57.84</u>	<u>\$49.47</u>	<u>\$42.34</u>	<u>\$31.82</u>
	<u>Half-Day</u>	<u>\$28.92</u>	<u>\$24.73</u>	<u>\$21.17</u>	<u>\$15.91</u>
<u>Region 4</u>	<u>Full-Day</u>	<u>\$68.98</u>	<u>\$59.59</u>	<u>\$55.57</u>	<u>\$33.41</u>
	<u>Half-Day</u>	<u>\$34.49</u>	<u>\$29.80</u>	<u>\$27.79</u>	<u>\$16.71</u>
<u>Region 5</u>	<u>Full-Day</u>	<u>\$48.86</u>	<u>\$40.33</u>	<u>\$35.47</u>	<u>\$26.12</u>
	<u>Half-Day</u>	<u>\$24.43</u>	<u>\$20.16</u>	<u>\$17.74</u>	<u>\$13.06</u>
<u>Region 6</u>	<u>Full-Day</u>	<u>\$46.39</u>	<u>\$39.22</u>	<u>\$35.29</u>	<u>\$28.01</u>
	<u>Half-Day</u>	<u>\$23.20</u>	<u>\$19.61</u>	<u>\$17.65</u>	<u>\$14.01</u>

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC ~~((170-295-0010 and 170-295-0050))~~ 110-300A-0010 and 110-300A-0050 allows providers to care for children from one month up to and including the ~~((day before))~~ end of their eligibility period after their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has ~~((reached))~~ exceeded the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison. WAC 110-300A-0010 and 110-300A-0050 are superseded by WAC 110-300-0005 and 110-300-0356, respectively, effective August 1, 2019.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception ~~((and))~~. The child must meet the special needs requirement according to WAC ((170-290-0220)) 110-15-0220 when thirteen or older at application or reapplication.

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

WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** ~~((DSHS))~~ DCYF pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table((:

		<u>Infants (Birth—11 mos.)</u>	<u>Enhanced Toddlers (12—17 mos.)</u>	<u>Toddlers (18—29 mos.)</u>	<u>Preschool (30 mos.—6 yrs not attending kindergarten or school)</u>	<u>School-age (5—12 yrs attending kindergarten or school)</u>
Region 1	Full-Day	\$29.62	\$29.62	\$25.76	\$23.78	\$21.14
	Half-Day	\$14.81	\$14.81	\$12.88	\$11.89	\$10.57

		Infants (Birth—11 mos.)	Enhanced Toddlers (12—17 mos.)	Toddlers (18—29 mos.)	Preschool (30 mos.—6 yrs not attending kindergarten- or school)	School-age (5—12 yrs attending kindergarten or school)
Spokane- County	Full-Day	\$30.32	\$30.32	\$26.36	\$24.32	\$21.60
	Half-Day	\$15.16	\$15.16	\$13.18	\$12.16	\$10.80
Region 2	Full-Day	\$30.66	\$30.66	\$26.66	\$24.44	\$22.46
	Half-Day	\$15.33	\$15.33	\$13.33	\$12.22	\$11.23
Region 3	Full-Day	\$41.98	\$41.98	\$35.54	\$35.54	\$28.80
	Half-Day	\$20.99	\$20.99	\$17.77	\$17.77	\$14.40
Region 4	Full-Day	\$53.30	\$53.30	\$44.42	\$39.98	\$31.68
	Half-Day	\$26.65	\$26.65	\$22.21	\$19.99	\$15.84
Region 5	Full-Day	\$36.34	\$36.34	\$31.60	\$26.66	\$22.46
	Half-Day	\$18.17	\$18.17	\$15.80	\$13.33	\$11.23
Region 6	Full-Day	\$32.68	\$32.68	\$28.42	\$26.66	\$25.10
	Half-Day	\$16.34	\$16.34	\$14.21	\$13.33	\$12.55

(Chart effective until ratification of the 2017-19 collective bargaining agreement with SEIU 925, or July 1, 2017, whichever occurs later.)

		Infants (Birth—11 mos.)	Enhanced Toddlers (12—17 mos.)	Toddlers (18—29 mos.)	Preschool (30 mos.—6 yrs not attending kindergarten- or school)	School-age (5—12 yrs attending kindergarten or school)
Region 1	Full-Day	\$30.21	\$30.21	\$26.28	\$24.26	\$21.56
	Half-Day	\$15.11	\$15.11	\$13.14	\$12.13	\$10.78
Spokane- County	Full-Day	\$30.93	\$30.93	\$26.89	\$24.81	\$22.03
	Half-Day	\$15.47	\$15.47	\$13.45	\$12.41	\$11.02
Region 2	Full-Day	\$31.27	\$31.27	\$27.19	\$24.93	\$22.91
	Half-Day	\$15.64	\$15.64	\$13.60	\$12.47	\$11.46
Region 3	Full-Day	\$42.82	\$42.82	\$36.25	\$36.25	\$29.38
	Half-Day	\$21.41	\$21.41	\$18.13	\$18.13	\$14.69
Region 4	Full-Day	\$54.37	\$54.37	\$45.31	\$40.78	\$32.31
	Half-Day	\$27.19	\$27.19	\$22.66	\$20.39	\$16.16
Region 5	Full-Day	\$37.07	\$37.07	\$32.23	\$27.19	\$22.91
	Half-Day	\$18.54	\$18.54	\$16.12	\$13.60	\$11.46
Region 6	Full-Day	\$33.33	\$33.33	\$28.99	\$27.19	\$25.60
	Half-Day	\$16.67	\$16.67	\$14.50	\$13.60	\$12.80

(Chart effective upon ratification of the 2017-19 collective bargaining agreement with SEIU 925, or July 1, 2017, whichever occurs later.)) effective upon ratification of the 2019-21 collective bargaining agreement with SEIU 925, or July 1, 2019, whichever occurs later:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$31.25	\$31.25	\$26.79	\$25.89	\$22.32
	Half-Day	\$15.63	\$15.63	\$13.39	\$12.95	\$11.16
Spokane County	Full-Day	\$32.59	\$32.59	\$27.86	\$26.79	\$26.79
	Half-Day	\$16.29	\$16.29	\$13.84	\$13.39	\$13.39
Region 2	Full-Day	\$32.14	\$32.14	\$29.46	\$26.79	\$25.00
	Half-Day	\$16.07	\$16.07	\$14.73	\$13.39	\$12.50

		<u>Infants</u> (Birth - 11 mos.)	<u>Enhanced</u> <u>Toddlers</u> (12 - 17 mos.)	<u>Toddlers</u> (18 - 29 mos.)	<u>Preschool</u> (30 mos. - 6 yrs not attending kindergarten or school)	<u>School-age</u> (5 - 12 yrs attending kindergarten or school)
<u>Region 3</u>	<u>Full-Day</u>	\$42.86	\$42.86	\$37.50	\$36.25	\$29.38
	<u>Half-Day</u>	\$21.43	\$21.43	\$18.75	\$18.13	\$14.69
<u>Region 4</u>	<u>Full-Day</u>	\$54.37	\$54.37	\$48.70	\$41.07	\$32.31
	<u>Half-Day</u>	\$27.19	\$27.19	\$24.35	\$20.54	\$16.16
<u>Region 5</u>	<u>Full-Day</u>	\$37.07	\$37.07	\$34.90	\$31.25	\$26.79
	<u>Half-Day</u>	\$18.54	\$18.54	\$17.45	\$15.63	\$13.39
<u>Region 6</u>	<u>Full-Day</u>	\$33.93	\$33.93	\$31.25	\$28.41	\$25.89
	<u>Half-Day</u>	\$16.96	\$16.96	\$15.63	\$14.20	\$12.95

(c) The maximum child care subsidy daily rate for that child as listed in the following table beginning July 1, 2020:

		<u>Infants</u> (Birth - 11 mos.)	<u>Enhanced</u> <u>Toddlers</u> (12 - 17 mos.)	<u>Toddlers</u> (18 - 29 mos.)	<u>Preschool</u> (30 mos. - 6 yrs not attending kindergarten or school)	<u>School-age</u> (5 - 12 yrs attending kindergarten or school)
<u>Region 1</u>	<u>Full-Day</u>	\$33.13	\$33.13	\$28.39	\$27.45	\$23.66
	<u>Half-Day</u>	\$16.56	\$16.56	\$14.20	\$13.72	\$11.83
<u>Spokane</u> <u>County</u>	<u>Full-Day</u>	\$34.54	\$34.54	\$29.34	\$28.39	\$28.39
	<u>Half-Day</u>	\$17.27	\$17.27	\$14.67	\$14.20	\$14.20
<u>Region 2</u>	<u>Full-Day</u>	\$34.07	\$34.07	\$31.23	\$28.39	\$26.50
	<u>Half-Day</u>	\$17.04	\$17.04	\$15.62	\$14.20	\$13.25
<u>Region 3</u>	<u>Full-Day</u>	\$45.43	\$45.43	\$39.75	\$38.43	\$31.14
	<u>Half-Day</u>	\$22.71	\$22.71	\$19.88	\$19.21	\$15.57
<u>Region 4</u>	<u>Full-Day</u>	\$57.63	\$57.63	\$51.62	\$43.54	\$34.25
	<u>Half-Day</u>	\$28.82	\$28.82	\$25.81	\$21.77	\$17.13
<u>Region 5</u>	<u>Full-Day</u>	\$39.29	\$39.29	\$37.00	\$33.13	\$28.39
	<u>Half-Day</u>	\$19.65	\$19.65	\$18.50	\$16.56	\$14.20
<u>Region 6</u>	<u>Full-Day</u>	\$35.96	\$35.96	\$33.13	\$30.11	\$27.45
	<u>Half-Day</u>	\$17.98	\$17.98	\$16.56	\$15.06	\$13.72

(2) The half-day rate is increased for family home providers in all regions and for all ages to a partial-day rate that is seventy-five percent of the full-day rate when:

(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session shall begin at any time after 12:00 a.m. and end before 12:00 p.m. An afternoon session shall begin at any time after 12:00 p.m. and end before 12:00 a.m.:

(b) The family home provider is not entitled to payment at the full-day rate; and

(c) In no event shall a child care provider be entitled to two partial-day rates totaling one hundred fifty percent of the daily rate.

This subsection becomes effective upon ratification of the 2019-21 collective bargaining agreement with SEIU 925, or July 1, 2019, whichever occurs later.

(3) The family home child care WAC ((170-296A-0010 and 170-296A-5550)) 110-300B-0010 and 110-300B-5550 allow((s)) providers to care for children from birth up to and including the ((day before)) end of their eligibility period after their thirteenth birthday. WAC 110-300B-0010 and

110-300B-5550 are superseded by WAC 110-300-0005 and 110-300-0355, respectively, effective August 1, 2019.

((3)) (4) If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC ((170-296A-0050 and 170-296A-5625 and the)) 110-300B-0050 and 110-300B-5625. A child who is thirteen years of age or older at application must meet the special needs requirement according to WAC ((170-290-0220.

(4) DSHS)) 110-15-0220. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section and the five through twelve year age range column is used for comparison. WAC 110-300B-0050 and 110-300B-5625 are superseded by WAC 110-300-0300 and 110-300-0355, respectively, effective August 1, 2019.

(5) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection ((5)) (6) of this section). ((Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS))

(6) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

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

WAC 110-15-0210 Tiered reimbursement and quality improvement awards. (1) ~~((Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.))~~ Providers receiving payment under the WCCC program will receive a tiered reimbursement as outlined in the "Early Achievers Operating Guidelines."

(2) Quality improvement awards, as described by chapter ~~((43-215))~~ 43.216 RCW, are reserved for early achievers participating providers offering programs to an enrollment population consisting of at least five percent of ~~((non-school age))~~ children receiving a state subsidy.

(a) Qualifying state subsidy programs include working connections child care (WCCC), seasonal child care (SCC), ~~((children's administration (CA)))~~ DCYF child welfare child care programs, homeless child care program (HCCP), ECLIPSE and ~~((medicare))~~ medicaid child care programs. Other qualifying programs may include those supported by municipalities, colleges or universities, local school districts, or federally recognized tribal organizations.

(i) Participants providing homeless child care program, ECLIPSE, or medicaid services must present ~~((DEL))~~ DCYF with information indicating that services were provided under these programs.

(ii) Participants providing subsidized child care supported by municipalities, colleges or universities, local school districts, or federally recognized tribal organizations must present ~~((DEL))~~ DCYF with information indicating that services were provided under these programs.

(b) Percent subsidy calculations are derived from a monthly average of the number of children receiving ~~((state))~~ qualifying subsidy divided by the monthly average licensed capacity of a specific provider over a twelve-month period.

(i) The twelve-month period utilized for the above calculation will include the twelve months prior to the formal release of a facility's early achievers rating.

(ii) Facilities must have provided care at least one day in a given month for that month to be utilized in the above calculation.

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

WAC 110-15-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, ~~((DSHS))~~ DCYF pays

the lesser of the following to an eligible in-home/relative provider for child care:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy rate of two dollars and ~~((forty-seven))~~ fifty-five cents per hour ~~((for the))~~ per child ~~((who needs the greatest number of hours of care and two dollars and forty-four cents per hour for the care of each additional child in the family. Beginning July 1, 2017, or upon ratification of the 2017-19 collective bargaining agreement with SEIU 925, whichever occurs later, the maximum child care subsidy rate and the rate for each additional child in the family increase to two dollars and fifty cents per hour)).~~ Beginning July 1, 2020, the maximum child care subsidy rate is two dollars and sixty-five cents per hour per child.

(2) ~~((DSHS))~~ DCYF may pay above the maximum hourly rate for children who have special needs ~~((under WAC 170-290-0235))~~ pursuant to WAC 110-15-0235.

(3) ~~((DSHS))~~ DCYF makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, ~~((DSHS))~~ DCYF pays the employer's share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
 - (b) Federal Unemployment Taxes (FUTA); and
 - (c) State unemployment taxes (SUTA).
- (5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, ~~((DSHS))~~ DCYF refunds all withheld taxes to the provider.

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

WAC 110-15-0249 Nonstandard hours bonus. (1) A consumer's provider may receive a nonstandard hours bonus (NSHB) payment ~~((of seventy-five dollars))~~ per child per month for care provided if:

- (a) The provider is licensed or certified;
- (b) The provider provides at least thirty hours of non-standard hours care during one month; and
- (c) The total cost of the NSHB to the state does not exceed the amount appropriated for this purpose by the legislature for the current state fiscal year.

(2) Nonstandard hours are defined as:

- (a) Before 6 a.m. or after 6 p.m.;
- (b) Any hours on Saturdays and Sundays; and
- (c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

- (a) Seventy-six dollars and fifty cents for family homes;
- and
- (b) Seventy-five dollars for centers.

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

WAC 110-15-0266 Payment discrepancies—Generally. (1) Payment discrepancies include both underpayments and overpayments.

(2) For consumers not covered under WAC ~~((170-290-0267 through 170-290-0275))~~ 110-15-0267 through 110-15-

0275, payment discrepancies are subject to chapter 388-410 WAC.

(3) For providers covered under the collective bargaining agreement, all other payment discrepancy issues are covered under WAC ((170-290-0275 and 170-290-0277)) 110-15-0275 and 110-15-0277.

(4) For all providers, payment discrepancies resulting from program violations or suspected fraud are covered under WAC ((170-290-0277 and 170-290-0279)) 110-15-0277 and 110-15-0278.

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

WAC 110-15-0267 Payment discrepancies—Provider underpayments. (1) Underpayments to a provider occur if ((DSHS)) DCYF pays less than the amount the provider is eligible to receive.

(2) Underpayment requests will only be considered by DSHS if the provider submitted the original invoice for payment to ((DSHS)) DCYF no later than ((twelve)) six months after the date of service.

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

WAC 110-15-0275 Payment discrepancies—Providers. (1) This section applies to all child care providers.

(2) ((For in-home/relative and licensed family home child care providers, disputes regarding underpayments are grievable.

(3) ~~Payment discrepancies may be corrected based on time frames for payment. Correction of payment discrepancies depends on the following circumstances:~~

(a)) Providers must submit a billing invoice for payment within ((twelve)) six months of the date ((of service)) child care services are provided. Any invoice submitted more than ((twelve)) six months from date ((of service)) child care services are provided will not be processed.

((b) If the billing invoice for payment is made within the twelve-month period, the time limits for correcting payment errors are:)) (3) For purposes of correcting payment errors based on correctly submitted invoices under the provisions of subsection (2) of this section, the following time limits apply:

(a) For underpayments:

(i) Two years back from the date the payment was issued if the error ((is)) was based on rates paid by age or region, ((unless the error is discovered by a federal audit, in which case the provider has up to twenty-four months after the date of service to ask for a corrected payment)) except as provided in (a)(iii) of this subsection; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; and

(iii) Three years back ((if the error was for any other reason, including an error discovered)) from the date the payment was issued for any underpayment identified by a federal or state audit((, in which case the provider has up to three years after the date of service to ask for a corrected payment)).

(b) For overpayments:

(i) Two years back from the date payment was issued if the error was based on rates paid by age or region, except as provided in (b)(iii) of this subsection; and DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within two years of the date the payment was issued; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued; and

(iii) Three years back from the date the payment was issued for any overpayment identified by a federal or state audit; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued.

(4) For in-home/relative and family home child care providers, disputes regarding underpayments may be addressed through the grievance process provided for in the collective bargaining agreement.

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

WAC 110-15-0277 Provider program violations ((and suspected fraud)). ((Eligible child care providers described in WAC 170-290-0125 must comply with all provider responsibilities listed in WAC 170-290-0034. Failure to comply causing a provider overpayment will result in a program violation finding and may cause the agency to impose sanctions.

(1) ~~Administrative errors are payment discrepancies which result from a departmental mistake. Provider overpayments caused by administrative error still require repayment of ineligible amounts. Administrative errors will not result in a finding of a program violation.~~

(2) ~~An unintentional program violation is an overpayment resulting from a provider's error and not caused with willful knowledge.~~

(a) ~~An unintentional program violation can include a provider's unfamiliarity with program rules and requirements.~~

(b) ~~Any unintentional provider error resulting in an overpayment will result in department consultation with the provider.~~

(c) ~~The department tracks all unintentional program violations in order to identify program improvement areas.~~

(d) ~~Unintentional program violations require provider repayment of ineligible funds.~~

(3) ~~An intentional program violation is an overpayment caused by a provider's willful failure to comply with program rules.~~

(a) ~~Any repeated misrepresentation of invoices or other information submitted to the department or failure to submit documentation upon request is an intentional program violation.~~

(b) If a provider has been consulted by the department for billing concerns and overpayment but then continues to have overpayment findings, then the department will impose sanctions as listed in WAC 170-290-0279.

(c) Overpayments caused by intentional program violations require provider repayment of ineligible funds.

(d) Beginning March 1, 2018, all intentional program violations will be cited by the department, and providers with more than three instances of intentional program violations will be subject to review for program ineligibility.

(i) The department has discretion to impose additional sanctions if a provider has more than three instances of intentional program violations.

(ii) As per WAC 170-290-0280 and 170-290-0285, a provider can dispute the department's finding of program ineligibility.

(4) Suspected fraud is a departmental determination resulting in referral to the office of fraud and accountability (OFA) at the department of social and health services (DSHS).

(a) Program fraud is defined in RCW 74.04.004. Program staff at the department of early learning and DSHS do not criminally investigate fraud. OFA conducts criminal investigations and pursues prosecution of program fraud.

(b) Departmental program staff will identify instances of suspected fraud when facts available to the department indicate the provider willfully violated program rules. This includes repeated instances of misrepresentation.

(c) Program staff will not inform the provider when suspected fraud is referred to OFA.

(d) Providers convicted for program fraud are permanently barred from future participation in the program as a child care provider or consumer.)) (1) A provider's failure to comply with a requirement or condition described in this chapter may result in a program violation finding and may cause the department to terminate the provider from the WCCC program. If the department determines a provider failed to comply with a requirement or condition described in this chapter, the department may do one or more of the following:

(a) Offer and provide technical assistance to allow the provider an opportunity to correct the noncompliance issue or issues;

(b) Require a provider compliance agreement (PCA) for the purpose of correcting noncompliance issues;

(c) Terminate the provider's participation in the WCCC subsidy program based on a department determination of the third noncompliance within twenty-four months; and

(d) Establish an overpayment as outlined in WAC 110-15-0268.

(2) A provider compliance agreement (PCA) must contain the following:

(a) A description of the noncompliance issues and the regulations or statutes violated;

(b) A statement from the provider describing the provider's proposed plan to comply with the regulations or statutes;

(c) The date by which the noncompliance issues must be corrected; and

(d) The signatures of the provider and the department representative agreeing to the terms of the PCA.

(3) On or after the date the provider must be in compliance under subsection (2)(c) of this section, the department must provide written verification indicating whether the corrective action requirements described in the PCA were satisfactorily corrected.

(4) A provider found to have committed fraud to obtain child care subsidy payments is permanently disqualified from future participation in the WCCC program as a child care provider or consumer. The department considers a consumer or entity to have committed fraud when:

(a) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether:

(i) There is a post-trial motion or an appeal pending; or

(ii) The judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(b) A federal, state, or local court has made a finding of guilt against an individual or entity;

(c) A federal, state, or local court has accepted a plea of guilty or Alford plea by an individual entity; or

(d) An individual or entity has entered into participation in a first offender, deferred adjudication, or other program or arrangement where judgment of conviction has been withheld.

NEW SECTION

WAC 110-15-0278 Consumer program violation. A consumer found to have committed fraud to obtain child care subsidy benefits is permanently disqualified from receiving child care subsidy program benefits. The department considers a consumer or entity to have committed fraud when:

(1) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether:

(a) There is a post-trial motion or an appeal pending; or

(b) The judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(2) A federal, state, or local court has made a finding of guilt against an individual or entity;

(3) A federal, state, or local court has accepted a plea of guilty or Alford plea by an individual or entity; or

(4) An individual or entity has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction has been withheld.

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

WAC 110-15-3566 Subsidized child care providers' responsibilities. Licensed or certified child care providers who accept SCC subsidies must do the following:

(1) Comply with all of the ((~~DEL~~)) DCYF child care licensing or certification requirements as provided in chapters ((170-295, 170-296A, or 170-297)) 110-300A and 110-

300B WAC until August 1, 2019, and chapter 110-300 WAC thereafter, and chapter 110-305 WAC;

(2) Report pending charges or convictions to ~~((DSHS)) DCYF~~ as provided in chapters ~~((170-295, 170-296A, or 170-297)) 110-300A and 110-300B WAC until August 1, 2019, and chapter 110-300 WAC thereafter, and chapter 110-305 WAC;~~

(3) Keep complete and accurate daily attendance records for children in their care and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records including records from the previous twelve months, must be available immediately for review upon request by DEL.

(b) Attendance records ~~((older than twelve months to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department. Beginning July 1, 2017, or upon ratification of the 2017-19 collective bargaining agreement with SEIU 925, whichever occurs later, the records))~~ must be provided within twenty-eight consecutive calendar days of the date of a written request from either department.

(c) Failure to make attendance records available as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC ~~((170-290-0268;)) 110-15-0268.~~

(4) Allow consumers access to their child at all times while the child is in care;

(5) Collect copayments directly from the consumer or the consumer's third-party payor, and report to ~~((DSHS)) DCYF~~ if the consumer has not paid a copayment to the provider within the previous sixty days;

(6) Follow billing procedures as described in the most recent version of "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*"; "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*," including billing only for actual units of child care under WCCC billing guidelines;

(7) Not claim a payment in any month in which a child has not attended at least one day in that month;

(8) Invoice the state no later than ~~((one calendar year))~~ six months after the actual date of service;

(9) Not charge subsidized families for:

(a) The difference between the provider's customary rate and the maximum allowed state rate;

(b) Registration fees in excess of what is paid by subsidy program rules;

(c) Absent days on days in which the child is not scheduled and authorized for care;

(d) Handling fees to process consumer copayments, child care services payments, or paperwork;

(e) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(f) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state; and

(10) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations, and notify ~~((DSHS))~~

DCYF within ten days of any suspension, revocation, or changes to their license.

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

WAC 110-15-3850 Payment discrepancies generally. Child care subsidy payment discrepancies are described in WAC ~~((170-290-0266 through 170-290-0275)) 110-15-0266 through 110-15-0275~~, with the exception of underpayments requested by licensed child care centers, which will only be considered for ~~((twelve))~~ six months after the date of services.

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

WAC 110-15-3857 Program violations and suspected fraud. WAC ~~((170-290-0277 and 170-290-0279)) 110-15-0277 and 110-15-0278~~ apply to the seasonal child care program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-15-0130 In-home/relative providers—Eligibility.

WAC 110-15-0279 Program violation sanctions.