

WSR 21-07-034
EXPEDITED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed March 10, 2021, 8:02 a.m.]

Title of Rule and Other Identifying Information: Technical corrections to WAC 192-300-220, 192-320-036, 192-170-010, 192-350-070, 192-320-075, 192-320-080, 192-320-081, 192-320-082, 192-320-083, and 192-320-084.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The adoption of amendments corrects the numbering of subsections within WAC 192-170-010, which was amended by WSR 20-11-022 and 20-10-056. It also corrects cross-references to subsections of RCW 50.29.021, which was amended in 2020 by the legislature in SHB 2613, section 3, chapter 86, Laws of 2020, and RCW 50.29.025 and 50.29.062, which were amended by the legislature in 2021 in ESSB 5061, sections 17 and 20, chapter 2, Laws of 2021.

Reasons Supporting Proposal: WSR 20-11-022 and 20-10-056 went into effect on July 5, 2020. The amended rule will correct the numbering of subsections within WAC 192-170-010. SHB 2613, chapter 86, Laws of 2020 went into effect on June 11, 2020, and ESSB 5061 went into effect February 8, 2021. The amended rules will correct cross-references to statutes amended by those bills.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department (ESD).

Statute Being Implemented: RCW 50.20.010, 50.20.230, and 50.20.240

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, 360-890-9579.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The rule change corrects the numbering of subsections within WAC 192-170-010, which was amended by WSR 20-11-022 and 20-10-056. It also corrects cross-references to subsections of RCW 50.29.021, which was amended in 2020 by the legislature in SHB 2613, section 3, chapter 86, Laws of 2020, and RCW 50.29.025 and 50.29.062, which were amended in 2021 by the legislature in ESSB 5061, sections 17 and 20, chapter 2, Laws of 2021.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT

LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Joshua Dye, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, email rules@esd.wa.gov, TTD [TDD] relay 711, AND RECEIVED BY May 25, 2021.

March 10, 2021

Dan Zeitlin

Employment System

Policy Director

AMENDATORY SECTION (Amending WSR 20-11-022, filed 5/13/20, effective 7/5/20)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) ((f)) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3)((3)) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

((3)) (4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States; or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

AMENDATORY SECTION (Amending WSR 07-23-130, filed 11/21/07, effective 1/1/08)

WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers? (1) Effective January 1, 2008, each professional employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2)(a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.

(b) Except as provided in (d) and (e) of this subsection, the tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008. A client employer's proportionate experience (benefits charged and taxable payroll) for the entire first quarter beginning January 1, 2008, shall transfer to the client employer. On or after January 1, 2008, experience shall transfer to a client employer regardless of whether the professional employer organization was the base year employer prior to that date.

(c) The client employer's tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Client employers that are qualified employers under RCW 50.29.010 or are delinquent under RCW 50.29.025 ~~((2))~~ (1)(c)(i) and that joined a professional employment organization after the computation date of July 1, 2007, shall be assigned their own tax rate for 2008 as if they had not joined the professional employer organization. Any experience from July 1, 2007, to December 31, 2007, assigned to the professional employer organization for those client employers shall transfer to the client employer for purposes of setting future rates.

(e) If an employer is registered with the department and has its own tax rate, but is also a client employer for purposes of some of its employees, it shall keep its own tax rate for 2008 and that rate shall apply to all its employees. Any employees of a client employer that is in a coemployment relationship with a professional employer organization shall be considered a branch account under the registered employer.

(f) Beginning on January 1 of the year after the transfer, the client employer's tax rate for each rate year shall be based on a combination of:

(i) The client employer's experience with payrolls and benefits; and

(ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

(g)(i) The professional employer organization's tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

(ii) Beginning on January 1 of the year after the transfer, the professional employer organization's tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year

excluding the experience that has been attributed to client employers.

AMENDATORY SECTION (Amending WSR 17-14-077, filed 6/29/17, effective 7/30/17)

WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011? (1) An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if:

(a) The unpaid taxes, interest, and penalties add up to less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit the required tax and wage reports; or

(b) The unpaid taxes, interest, and penalties were found in a voluntary audit unless the department determines the employer did not make a good faith effort to comply with the law.

(3)(a) Under RCW 50.29.080, the department may re-determine an employer's previously assigned tax rate and retroactively assign delinquent tax rates to prior years if the department discovers an employer did not correctly report its taxes and wages.

(b) In the event an employer does not register with the department, the department may assign the delinquent tax rate beginning the calendar year after the July 1st following the first quarter an employer paid wages.

(4)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the department that he or she acted in good faith and that applying the delinquent tax rate would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the department. The department's decision will be subject to review only under the arbitrary and capricious standard and will be reversed in administrative proceedings only for manifest injustice.

(b) If the department finds the employer knew or should have known its actions or inactions would result in a failure to submit all reports, taxes, penalties and interest by September 30th, then the department will find that an employer did not act in good faith and that application of the delinquent tax rate will not be inequitable.

(c) In determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable, the department may consider all facts surrounding the delinquent reports, taxes, penalties and interest.

(i) The department will consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate will be inequitable. No single factor is conclusive. The factors include, but are not limited to:

(A) Whether there were events beyond the employer's reasonable control;

(B) Whether departmental error led to the delinquency;
 (C) Whether the employer made only isolated errors instead of repeated errors;

(D) If the employer was a domestic service employer under RCW 50.04.160;

(E) Whether the employer, upon learning of the delinquency, made a diligent effort to pay overdue taxes, penalties, and interest and file overdue reports within ninety days;

(F) The amount of taxes, penalties and interest an employer failed to pay compared to the amount of taxes an employer reported and paid during the same time period;

(G) The number of employees an employer failed to report compared to the number of employees an employer reported during the same time period;

(H) The additional amount of taxes, penalties, and interest resulting from the application of delinquent tax rates compared to the amount of taxes, penalties, and interest the employer failed to pay originally.

(ii) The department will not consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable:

(A) An employer's lack of available funds to pay taxes, penalties, and interest;

(B) Delay by the employer or its representative in opening mail or receiving other notices from the department relating to tax filing and payment.

(5)(a) An employer that is not a "qualified employer" because of failure to pay contributions when due will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department will use the higher of the rate calculated under RCW 50.29.025 ~~((2))~~ (1)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection will not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the department, the additional rate will be one-half percent less than it would otherwise have been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the

employer's tax rate will immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due will be assigned a social cost factor rate in rate class 40. The tax rate caps for "qualified employers" in RCW 50.29.025 will not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" will be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-320-070 What conditions apply for relief of benefit charges due to a voluntary quit? (RCW 50.29.021.) (1) A contribution-paying base year employer, who has not been granted relief of charges under RCW 50.29.021 ~~((3))~~ (2), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021 ~~((4))~~ (3) and WAC 192-320-065. This section does not apply to local governments.

(2) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's or domestic partner's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same; or the job location may have changed but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) Separation necessary to protect the claimant or any member of the claimant's immediate family from domestic violence or stalking; and

(j) Entry into an apprenticeship program approved by the Washington state apprenticeship training council.

(3) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a

compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

- (a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;
- (b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer and the employer has failed to correct the hazards within a reasonable period of time;
- (c) Employee skills no longer required for the job;
- (d) Unreasonable hardship on the health or morals of the employee;
- (e) Reductions in hours;
- (f) Reduction in pay;
- (g) Notification of impending layoff; and
- (h) Other work-related factors the commissioner considers pertinent.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-320-075 Charges to the separating employer—RCW 50.29.021 ((2)) (1)(c). (1) If a claimant voluntarily quits work to accept a job with a new employer, one hundred percent of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for one hundred percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

- (a) A reduction in the individual's usual compensation of twenty-five percent or more under WAC 192-150-115;
- (b) A reduction in the individual's usual hours of twenty-five percent or more under WAC 192-150-120;
- (c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;
- (d) A deterioration in the individual's worksite safety under WAC 192-150-130;
- (e) Illegal activities in the individual's worksite under WAC 192-150-135; or
- (f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2)(b) and 50.29.021 ((3)(a)) (4). (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (3) of this section.

(2) When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced due to a later correction in wages, the department will charge that employer for the benefits that should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except as provided in subsection (3) of this section.

(3) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

WAC 192-320-081 What constitutes an "event" for the purpose of determining if there is a pattern of failing to respond timely or adequately?—RCW 50.29.021((6)) (5). (1) An event occurs if a benefit overpayment is created and the employer or the employer's agent significantly contributed to the overpayment by failing to respond timely or adequately without good cause to the department's written request for information relating to a claim.

(2) When deciding if an event has occurred, there must be a decision made by the department resulting in a benefit overpayment.

(3) An event may occur even if the employer is not in the base year of the claim.

(4) The department must examine past events which contributed to benefit overpayments when deciding if a pattern exists.

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately?—RCW 50.29.021((6)) (5). (1) The department may find that good cause exists in certain situations when the employer fails to respond due to an unforeseen

event outside of the employer's or employer's agent's control, such as:

- (a) The death or serious illness of the employer;
 - (b) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent;
 - (c) Fraud or theft against the employer.
- (2) The employer is responsible to provide all pertinent facts and evidence or documentation for the department to determine good cause.

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

WAC 192-320-083 What is a written request for information?—RCW 50.29.021((6)) (5). For the purposes of this chapter, a written request for information relating to a claim is a paper or electronic transmission by the department requesting information from an employer or an employer's agent.

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

WAC 192-320-084 What is an employer's agent?—RCW 50.29.021((6)) (5). For the purposes of this chapter, the employer's agent is the employer's designated representative responsible for providing information to the department.

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates? (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B). However, if the predecessor terminates business on December 31st of any year and the successor begins busi-

ness on January 1st of the next year, the department will calculate tax rates as if the transfer occurred on January 1st. Therefore, the department will assign a tax rate to the predecessor for January 1st and that rate will transfer to the successor.

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 ((3)(b)) (2)(c)(ii).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

WSR 21-07-059

EXPEDITED RULES

SKAGIT VALLEY COLLEGE

[Filed March 15, 2021, 1:36 p.m.]

Title of Rule and Other Identifying Information: WAC 132D-122-010 Policy, 132D-122-020 Notification, and 132D-133-020 Organization—Operational—Information.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In June 2020, a new state law (HB [2SHB] 2513) was enacted that prevents colleges from withholding official transcripts for students owing past due fee amounts. As such, we have updated WAC 132D-122-010 Policy, to remove all references to withholding transcripts when fees are past due. While reviewing the language in WAC 132D-122-010 to be in compliance with the new law, college staff also reviewed related WAC 132D-122-020. This review revealed the need to update methods for notifying students of outstanding debt to the college. WAC 132D-133-020 includes information regarding the current addresses of Skagit Valley College (SVC) campuses and centers, as well as language regarding operational hours.

Reasons Supporting Proposal: In June 2020, a new state law (HB [2SHB] 2513) was enacted that prevents colleges from withholding official transcripts for students owing past due fee amounts. As such, we have updated WAC 132D-122-010 Policy, to remove all references to withholding transcripts when fees are past due. While reviewing the language in WAC 132D-122-010 to be in compliance with the new law, college staff also reviewed related WAC 132D-122-020. This review revealed the need to update methods for notifying students of outstanding debt to the college. WAC 132D-133-020 includes information regarding the current addresses of SVC campuses and centers, as well as language regarding operational hours.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: Not applicable.

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

Name of Proponent: SVC, public.

Name of Agency Personnel Responsible for Drafting: Lisa Radeleff, 2405 East College Way, Mount Vernon, WA, 360-416-7995; Implementation and Enforcement: Dr. Claire Peinado, 2405 East College Way, Mount Vernon, WA, 360-416-7961.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates 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.

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Bringing WAC into compliance with state law, clarifying notification, and updating address information.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Lisa Radeleff, Skagit Valley College, 2405 East College Way, phone 360-416-7995, fax 360-416-7773, email lisa.radeleff@skagit.edu, AND RECEIVED BY May 24, 2021.

March 15, 2021

Lisa Radeleff
Rules Coordinator

AMENDATORY SECTION (Amending WSR 89-09-039, filed 4/14/89)

WAC 132D-122-010 Policy. If any person, including faculty, staff, student or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual, including but not limited to transmitting files, records, (~~transcripts~~) or other services which have been requested by such person.

AMENDATORY SECTION (Amending WSR 89-09-039, filed 4/14/89)

WAC 132D-122-020 Notification. (1) Upon receiving a request for services where there is an outstanding debt due the institution from the requesting person, the institution shall notify the person in person, or by email or first-class mail that the services will not be provided since there is an outstanding debt due. The person shall be told that until the debt is satisfied, no such services as are requested will be provided.

(2) The letter of notification shall also state that the person has a right to a brief adjudicative proceeding before a person designated by the president of the institution. The proceeding must be requested within twenty days of the date of mailing notification of refusal to provide services.

AMENDATORY SECTION (Amending WSR 90-05-045, filed 2/16/90, effective 3/19/90)

WAC 132D-133-020 Organization—Operation—Information. (1) Organization. Skagit Valley College, Community College District No. 4, is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

2405 E. College Way
Mount Vernon, WA 98273

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. During the summer the college operates on an alternate schedule. Specific information is available through the college public information office and on the college website: www.skagit.edu. Educational operations are also located at the following addresses:

Whidbey Island Campus
~~((4201 E.))~~ 1900 S.E. Pioneer Way
Oak Harbor, WA 98277

~~((South Whidbey Campus~~
~~5611 S. Bayview Road~~
~~Langley, WA 98260))~~

San Juan Center
~~((P.O. Box 1432))~~ 221 Weber Way
Friday Harbor, WA 98250

Marine Technology Center
1606 R Avenue
Anacortes, WA 98221

Cardinal Craft Brewing Academy
15579 Peterson Road
Burlington, WA 98233

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

2405 E. College Way
Mount Vernon, WA 98273

WSR 21-07-064
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed March 16, 2021, 10:50 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-241 Radio and television broadcasting.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed technical corrections to edit two typographical errors and make two nonsubstantive changes restoring "special programming" from "custom-made programming" and restoring "special programs" to reflect industry usage.

Reasons Supporting Proposal: Technical corrections.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.04.280.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Danforth, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1538; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Tim Danforth, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1538, fax 360-534-1606, email TimD@dor.wa.gov, AND RECEIVED BY May 25, 2021.

March 16, 2021
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-20-036, filed 9/30/20, effective 9/30/20)

WAC 458-20-241 Radio and television broadcasting.
(1) Introduction.

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

(2) **Definitions.** For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors that supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors that supply goods or services on a regional basis over two or more states.

(3) **Business and occupation tax classifications.** Persons in the radio and television broadcasting industry must report business and occupation (B&O) tax based on the B&O classification of their income, as follows:

(a) **Radio and television broadcasting.** Gross income from the sale of radio or television advertising is taxable under the radio and television broadcasting classification, subject to the deduction authorized under RCW 82.04.280 (1)(f)(i) or (ii). (See subsection (4)(b) of this section for more information on the deduction);

(b) **Service and other activities.** Gross income from personal or professional services not taxed under a different classification, such as gross income from producing and making custom commercials or (~~custom-made programming~~) special programs, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211) is taxable under the service and other classification;

(c) **Royalties.** Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material) is taxable under the royalties classification;

(d) **Retailing or wholesaling.** Gross income from sales of tangible personal property to consumers, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., is taxable under the retailing classification even though the original was not subject to retail sales tax. Gross income from sales of tangible personal property to persons other than consumers is taxable under the wholesaling classification. Gross income from the sale of custom-made

programs, commercials, films, etc., is taxable under the service and other activities classification; and

(e) **Manufacturing.** The value of special programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use, is taxable under the manufacturing classification. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) Manufacturing B&O tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.

(4) Deductions from gross income from advertising.

(a) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(b) **Gross receipts from national, network, and regional advertising.** The broadcasting station may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting, either by using the "standard deduction" or by itemization of the individual broadcasting station's actual receipts.

(i) The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, is a percentage based on the national average of national, network, and regional advertising as reported by the United States Census Bureau's economic census. The standard deduction percentage must be published by the department by rule by September 30, 2020, and by September 30th of every fifth year thereafter. The standard deduction percentage as of September 30, 2020, is sixty-two percent.

(ii) As an alternative to using the standard deduction in (b)(i) of this subsection, a broadcasting station may opt to deduct gross receipts from national, network, and regional advertising (~~on an~~) by itemizing the actual receipts therefrom.

(c) **Allocation of local advertising revenues.** Revenues from local advertising may be allocated to remove from the tax base the gross income from advertising that is intended to reach potential customers of the advertiser who are located outside the state of Washington.

(i) **Presumption.** It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless the taxpayer submits proof to the department that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

(ii) Method of allocation.

(A) When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of rev-

enue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

(B) The most current United States and Canadian census figures must be used to determine the in-state and out-of-state audience.

(C) In the event that community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must be provided to the department upon request. The number of subscribers will be multiplied by a factor of 2.5, representing the average size household.

(D) Upon request by the department, the broadcasting station must submit documentation substantiating the computation of the out-of-state exclusion to the department, as directed.

(5) Retail sales tax.

(a) Purchases by broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes purchases of raw or unprocessed film, magnetic tape, DVDs, and other transcription material.

(b) If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

(c) The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

(6) Use tax.

(a) Acquisition or exercise of the right to broadcast material under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

(b) Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which include, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of produc-

tion) of programming when the broadcaster sells merely the right to broadcast such material under a right or license granted by lease or contract.

Rules Coordinator

WSR 21-07-079
EXPEDITED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 17, 2021, 1:34 p.m.]

Title of Rule and Other Identifying Information: WAC 181-77-081 Requirements for certification of career guidance specialist.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule makes nonsubstantive changes to the requirements for the career guidance specialist certificate.

Reasons Supporting Proposal: These nonsubstantive changes include updating citations and names of certificates, as well as clarification, organizational, and grammatical changes.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board (PESB), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Maren Johnson, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8424.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This change corrects a typographical error without making any substantive changes.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Maren Johnson, PESB, 600 Washington Street S.E., Olympia, WA 98504, phone 360-867-8424, email maren.johnson@k12.wa.us, AND RECEIVED BY May 24, 2021.

March 9, 2021
Maren Johnson

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77-081 Requirements for certification of career guidance specialist. Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) Probationary certificate.

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one or more of the following:

(i) Completion of three years of certificated experience at the initial, continuing, residency, or professional level as a (~~certificated~~) career and technical education administrator(~~s~~) career and technical education (~~instructor~~) teacher, (~~or~~) career and technical education counselor, (~~at the initial or continuing certificate level~~) or occupational information specialist; or

(ii) Hold a valid educational staff associate - School counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of six thousand hours of occupational experience of which two thousand hours shall have been in the last ten years, dealing with employment, including personnel or (~~with~~) placement and evaluation of workers(~~s~~); or experience providing career guidance, employment, or career counseling services.

(b) Such a certificate may be issued upon recommendation by (~~the employing~~) a school district according to the following:

(i) The candidate shall have developed a written training plan in cooperation with the career and technical education administrator. The plan must be approved by a local career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and (~~is renewable~~) may be reissued one time for two additional years upon recommendation of the (~~employing~~) school district if the individual has completed the procedures outlined for the first year in the written training plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

(a) The initial career guidance specialist certificate is valid for five years.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in subsection (1)(a) of this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved educator preparation program provider or state approved continuing education credit hour provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance, including history and philosophy of career and technical education;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical~~(A)~~ and legal issues;

(viii) Technology~~(S)~~

~~(ix) History and philosophy of career and technical education~~)).

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least ten quarter hours of college credit, one hundred continuing education credit hours, or four professional growth plans since the initial certificate was issued or renewed. At least ~~((two quarter credits or))~~ fifteen continuing education credit hours or the equivalent in credit must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) The initial renewal certificate is valid for five years.

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least ~~((fifteen quarter hours of college credit or))~~ one hundred fifty continuing education credit hours or the equivalent in credit completed subsequent to the issuance of the initial certificate; or hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full-time equivalency (FTE) as a career guidance specialist with ~~((an authorized))~~ a school employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

(5) Continuing certificate renewal. The continuing career guidance specialist certificate shall be renewed with the completion of ten quarter hours of college credit, the equivalent of one hundred continuing education credit hours, or four professional growth plans prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates. At least ~~((four quarter credits or))~~ thirty continuing education credit hours or the equivalent in credit must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate in subsection (2) of this section.

Holders of expired one-year occupational information specialist, or one-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired one-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing career guidance specialist certificate by the expiration date of the original certificate held, and will be considered to have met the requirements to

obtain a continuing career guidance specialist certificate in subsection (4) of this section.

Holders of expired three-year or five-year occupational information specialist, or three-year or five-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired three-year or five-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(c) Upon issuance of the ((probationary)) initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.