

WSR 23-15-078
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-03—Filed July 17, 2023, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-094.

Title of Rule and Other Identifying Information: Fishway and screening rules; creating new Washington department of fish and wildlife (WDFW) chapter 220-670 WAC to implement chapter 77.57 RCW.

Hearing Location(s): On September 28, 2023, at 9:00 a.m., at Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901. Detailed information about fish and wildlife commission meetings can be found at <https://wdfw.wa.gov/about/commission/meetings>.

Date of Intended Adoption: October 26, 2023.

Submit Written Comments to: Gabrielle Stilwater, P.O. Box 43200, Olympia, WA 98504-3200, email fish-passage-rules@PublicInput.com, fax 360-902-2946, Attn: Gabrielle Stilwater, phone 855-925-2801, project code 2051, website for comments <https://publicinput.com/fish-passage-rules>, by September 29, 2023.

Assistance for Persons with Disabilities: Contact WDFW Americans with Disabilities Act manager, phone 360-902-2349, fax 360-902-2946, Attn: Gabrielle Stilwater, TTY 360-902-2207, email adaprogram@dfw.wa.gov, by September 15, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WDFW is proposing a new WAC chapter implementing chapter 77.57 RCW.

In November 2018, the southern resident orca (SRO) task force published its report identifying lack of prey as a key threat to SROs. Recommendation number three of the 2018 SRO task force report endorsed agencies to apply and enforce laws that protect habitat. Specifically, the SRO task force noted that the governor should direct WDFW to develop rules to fully implement chapter 77.57 RCW. The Washington state legislature supported the SRO task force direction with the approval of the 2019 ESHB 1109 (chapter 415, Laws of 2019), which became effective on May 21, 2019. In 2019, WDFW entered into an informal comanagement agreement with Washington state treaty tribes to incorporate climate change science into policy. Additionally, the proposed rules are intended to be consistent with parallel WDFW rules for construction projects in state waters, chapter 220-660 WAC.

This proposal would create and populate new chapter 220-670 WAC that defines general passability and protection standards for new and existing fishways and water diversions. Consideration of incorporating climate change into the design of new water crossing structures is detailed within the standards as well. The proposal codifies current WDFW practices of using the agency's fish passage inventory and assessment guidance and water crossing design guidelines. These standards are the foundation for establishing compliance measures. Compliance measures detail technical assistance support and voluntary compliance steps a structure owner may follow to correct a barrier fishway or water diversion. Compliance measures also establish the effects of noncompliance when a structure owner does not agree to a WDFW compliance request.

Reasons Supporting Proposal: The proposal was developed over the course of three years with input from WDFW staff, tribal partners, additional Washington state agencies, Washington State Association of

Counties, Association of Washington Cities, nongovernmental agencies, small business economic impacts and cost-benefit analyses, and multiple staff work groups and public comment opportunities, including three public comment meetings on the preproposed draft proposal. The proposal defines important fishway and water diversion standards and WDFW administrative actions.

Although this proposal is rooted in restoring SRO populations, there are other reasons supporting this proposal. As the human population grows, land use policies that allow development in or near floodplains can lead to degradation and loss of functioning habitat necessary to support salmon and other fish species. Structures built to protect or support human development activities such as bridges, culverts, and water diversions often further impact fish habitat. In addition to effects of urbanization, transportation, agriculture, logging, mining, and other forms of land use, many rivers have been straightened, diked, and cleared of complex habitat features. Converting natural habitats into lands and rivers that support human uses often degrades the health of the habitat and the fish that depend upon it.

Fishway barriers limit fish life from accessing spawning and rearing habitat. Barriers can negatively affect streambed movement and large wood movement, prevent fish from moving up or downstream, concentrate predators, impact water temperature, and effects [affect] other natural ecological functions. In some cases, the effects associated with barriers can be as impactful as the barrier itself. Culverts are generally designed to last 50 to 100 years. Designing culverts to be resilient to future changes in stream conditions can reduce the risks of culvert failure and the creation of barriers to migrating fish. Culverts and bridges built to accommodate higher stream flows are less likely to fail and block fish, which reduces future maintenance and repair costs. Improperly designed water diversions can reduce the amount of useable fish habitat. In addition, unscreened withdrawal points can trap fish in conveyance structures that pump water from its source to its final destination, leading to injury or death.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.57.010, 77.57.030, 77.57.040, 77.57.060, 77.57.070, and 43.05.100; ESHB 1109 (chapter 415, Laws of 2019).

Statute Being Implemented: Chapter 77.57 RCW, Fishways, flow, and screening.

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

Name of Proponent: WDFW, habitat program, fish passage division, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Gabrielle Stilwater, 1111 Washington Street S.E., Olympia, WA 98501, 564-999-0768; Enforcement: Kelly Still, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2605.

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. Although these proposed rules are not significant legislative rules implementing chapter 77.57 RCW, WDFW voluntarily completed a cost-benefit analysis to provide greater scrutiny of the rules' potential impact. A preliminary cost-benefit analysis can be obtained by contacting Gabrielle Stilwater, P.O. Box 43200, Olympia, WA 98504-3200, email FishPassageRules@dfw.wa.gov, fax 360-902-2946, Attn: Gabrielle Stilwa-

ter, website <https://wdfw.wa.gov/species-habitats/habitat-recovery/fish-passage/rule-making>.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Executive Summary: WDFW is developing a proposed rule that would codify existing design standards for diversion screens and fish passage, introduce a climate-adapted design standard for water crossings, and outline procedures for supporting and achieving compliance with the regulatory requirements. This SBEIS was developed in accordance with the Regulatory Fairness Act (RFA), chapter 19.85 RCW to determine whether the rule would result in a disproportionate cost impact on small businesses.

Background: Governor Inslee's southern resident orca (orca) task force identified lack of prey as a major threat to recovery of the orcas within its 2018 report, and recommended that WDFW create rules describing how chapter 77.57 RCW (the fishways, flow, and screening statutes) will be implemented and enforced as one part of broader recovery efforts.¹ WDFW's fish passage and screening authority has existed for many decades; however, WDFW has never created a rules chapter describing implementation of the authority. This rule making seeks to fill that gap. In addition to clarifying fish passage and screening design standards, the proposed rule incorporates a requirement for new and replacement water crossing designs to account for projected changes to hydrology as a result of climate change, so that water crossing structures built today will be capable of accommodating stream conditions (and equivalently, providing fish passage) throughout their designed lifespan.

¹ Cascadia Consulting Group. 2018. "Southern Resident Orca Task Force: Report and Recommendations." Accessed October 20, 2022 at: https://www.governor.wa.gov/sites/default/files/OrcaTaskForce_reportandrecommendations_11.16.18.pdf.

Finally, although chapter 77.57 RCW establishes WDFW's authority to correct structures that are inadequate in terms of fish passage or protection, some of the compliance actions contained in the statute are not considered practical by today's standards and there needs to be a strategic approach to achieving compliance with this law.² Accordingly, the proposed rule includes a process and options for WDFW to support and achieve compliance with the proposed rule.

² Throughout this report, we refer to the dams, diversions, fish passage improvement structures, culverts, and crossings that would be subject to regulation under the proposed rule collectively as "structures."

Summary of Proposed Rule: The proposed rule includes three major components as follows:

- Clarifying the applicability of existing fish passage and screening standards, described in WDFW's assessment guidance document, and partially codified in the state hydraulic code rules (chapter 220-660 WAC), including screening of artificial waterways where fish life concerns exist;
- Requiring new and replacement water crossing structure (i.e., culvert and bridge) designs to consider future bankfull width and 100-year peak flows in parts of the state where they are projected to increase as a result of climate change; and
- Outlining a protocol designed to improve compliance with the existing fish passage and safety standards, effectively operation-

alizing WDFW's existing authority to identify and correct noncompliant structures.

Summary of Regulatory Baseline: Although there are a large number of privately owned fish passage structures, diversions and fish screens, and culverts and stream crossings across Washington (over 50,000 according to WDFW data),³ many of these structures would not be affected by the proposed rule for the following reasons:

³ The true number of structures on the landscape is unknown. WDFW's fish passage barriers inventory represents the best available data for conducting the SBEIS analysis, but it is known to be incomplete.

- Exemptions apply to structures on non-fish-bearing streams, on tribal land, obstructions that are federally owned or subject to federal laws that preempt chapter 77.57 RCW, agricultural drainage system components installed on or before May 20, 2003, and lawful diversions installed on or before June 11, 1947, in waters containing game fish exclusively.
- The design standards for fish passage and screening incorporated into the proposed rule are already required for most structures under the hydraulic code rules. Thus, any owners of structures that comply with these existing regulations (e.g., via the hydraulics project approval (HPA) permitting process) would not be affected by the proposed rule.
- WDFW already possesses the statutory authority to enforce existing fish passage and screening standards by making the necessary correction and imposing a lien on the structure owner's property (RCW 77.57.040 and 77.57.060).
- WDFW's design standards for climate-adapted culverts and stream crossings incorporated into the proposed rule are already made available to the regulated community via the culverts and climate change web tool. While not a baseline regulatory requirement, owners of culverts and stream crossings have a vested interest in ensuring these structures are resilient to the future effects of climate change. Therefore, a subset of these structures is likely to comply with the design standards in the baseline, regardless of WDFW's proposed rule.

Despite the existing baseline requirements for fish passage and screening, WDFW is aware that a subset of the regulated population is not currently complying with, or not aware of, the existing regulatory requirements. WDFW will help the regulated community understand how to voluntarily comply through education and technical assistance. WDFW's intentions are to strategically consider existing noncompliant structures and approach compliance reasonably by considering the nature of fish resources impacted by existing noncompliant structures as well as the quality and quantity of habitat to be gained. Thus, the focus of WDFW's proposed rule is on supporting and enforcing compliance across this population.

Changes in Behavior Generated by The Proposed Rule: Given the existing requirements and practices in developing and upgrading fish passage and screening structures in the baseline, this analysis finds that the proposed rule is most likely to affect behavior and, therefore, potentially generate costs under the following circumstances:

- *The proposed rule informs the structure owner of the design standards for fish passage and screening structures.* Although these design standards are a baseline legal requirement for most structures, even absent the proposed rule, a subset of owners may

be unaware of the requirement. The proposed rule may therefore alert owners of these requirements (and the agency actions for noncompliance), triggering compliance and associated costs. While most of these costs can be attributed to existing legal requirements (and not newly mandated by the proposed rule), they are assessed here for a comprehensive review of potential impacts.

- *WDFW identifies a noncompliant structure and makes a correction request.* Despite baseline regulatory requirements, owners may knowingly not comply, for cost or other reasons. While WDFW currently has authority to enforce compliance, it has not asserted this authority when owners have been resistant in the past. Under the proposed rule, however, WDFW reasserts its authority and process for enforcing compliance. Thus, for structures that are not in compliance and WDFW determines are priority projects, the proposed rule would affect behavior and generate costs.
- *Culvert or crossing structure would not meet climate-adapted standards.* For owners intending to replace (or build) a water crossing structure and not account for future climate change effects via WDFW's guidance, the proposed rule will require consideration of future climate impacts in the design. Under this circumstance, the rule may affect the planned design in such a way that total costs are increased. However, it is also possible that the proposed rule generates some avoided costs in the long run, as structures not adapted to future climate change are more likely to require repair and replacement.

Cost category	Diversion screening (small)	Diversion screening (large)	Dam removal	Fish passage structure	Culvert	Bridge
Permitting, design, and engineering	N/A	\$2,000 - \$4M	\$15,000 - \$4M	\$30,000 - \$400,000	\$5,000 - \$400,000	\$15,000 - \$1M
Construction	\$100 - \$10,000	\$50,000 - \$400,000	\$50,000 - \$1.5M	\$200,000 - \$1.5M	\$40,000 - \$800,000	\$50,000 - \$5M
Total	\$100 - \$10,000	\$52,000 - \$4.4M	\$65,000 - \$5.5M	\$230,000 - \$1.9M	\$45,000 - \$1.2M	\$65,000 - \$6M

Potentially Affected Businesses: The proposed rule regulates structures on the landscape, rather than a particular industry or sector. WDFW maintains a database of known structures. However, it is likely that many structures exist on the landscape that are currently unknown to WDFW and ownership information provided in the database is insufficient to identify potentially affected businesses.

The structures regulated by the proposed rule are owned and managed by a broad mix of federal, state, and local governments, residential landowners, as well as businesses. While businesses owning land may belong to a wide variety of industries, commercial and industrial businesses from certain industries may be more likely than others to own particular structure types due to the nature of their operations or scale of landholdings. For example, agricultural businesses are more likely to own diversions and crossings; forestry businesses are more likely to own crossings; and homeowner associations (HOAs, to the extent that they are incorporated and considered a business) may own diversions and crossings in residential landscapes. Nonetheless, this SBEIS provides information on potential costs to small businesses acknowledging that any businesses impacted by the proposed rule could theoretically belong to any industry.

Cost of Compliance: In situations where the proposed rule generates costs, the potential costs can range widely, mainly depending on structure type, nature of the violation, and site-specific characteristics. At the low end, a small intake pump may require an off-the-

shelf screen. At the other end of the violation spectrum, a severe fish passage violation at a water crossing could necessitate installation of a replacement structure. Because of the high degree of situational variation, our analysis concluded that the compliance costs can range from around \$100 to several million dollars. However, the structures most likely owned by small businesses are unlikely to be on a scale sufficient to generate costs at the higher end. For example, exceptionally large screens costing several million dollars to replace are most likely associated with hydropower production, which are categorically exempt from the proposed rule as federally regulated. Exhibit ES-1 contains a range of cost estimates for replacing each structure type.

Exhibit ES-1. Conceptual Cost Ranges for Replacing Relevant

Structures: It is important to note that not all violations will require full replacement of the structure. Additionally, many grant and cost-sharing opportunities exist that can potentially offset some portion of the compliance costs borne by owners, such as the fish barrier removal board, family forest fish passage program, and salmon recovery funding board. For these reasons, the costs provided in Exhibit ES-1 should be considered as contextual information rather than as compliance costs borne by owners.

Summary Findings: The assessment of the magnitude of costs borne by businesses and the potential for disproportionate impacts to small businesses is subject to significant data limitations and uncertainty. For any businesses that incur compliance costs, the costs may exceed the minor cost threshold, depending on the project type and specifications, as well as the industry classification of the affected business. Within any industry and for any particular project, however, the costs are expected to disproportionately impact small businesses. This is because no known relationship exists between drivers of project costs and business size, so cost per \$100 of revenue, cost per employee, or cost per labor hour will almost certainly be higher for small businesses.

As the potential exists for more-than-minor costs to be incurred by businesses as a result of the proposed rule, and because small businesses are expected to be disproportionately impacted in cases where costs are incurred, WDFW has identified several mitigation options to defray the impacts to small businesses. These include a strategic approach to technical assistance or compliance visits based on fish life concerns and the quality and quantity of potential habitat gains, and allowing the possibility for WDFW to defer compliance actions until a later date following identification of a violation. WDFW will also continue development of a robust technical assistance program for owners, additionally being able to identify relevant grant and cost-sharing opportunities as appropriate.

CHAPTER 1 - INTRODUCTION: This report evaluates the potential costs to businesses of compliance with a WDFW proposed rule that codifies existing design standards for diversion screens and fish passage, introduces a climate-adapted design standard for culverts and crossings, and outlines procedures for achieving voluntary and nonvoluntary compliance. This SBEIS was developed in accordance with RFA to determine whether the proposed rule would result in more-than-minor and disproportionate cost impact on small businesses. The primary sources of information for this analysis include the following:

- Information gathered through outreach to businesses providing the services required by the proposed rule, agencies with potentially

- similar regulatory authority, and owners (or owner-representatives) of structures that are subject to the proposed rule;
- Geospatial data, including WDFW's Washington state fish passage GIS layer, WDFW's culverts and climate change web application, federal and tribal land ownership layers, and land use layers; and
 - Targeted literature review of peer-reviewed journal articles.

1.1 NEED FOR THE RULE: Governor Inslee's orca task force identified lack of prey as a major threat to recovery within its 2018 report.⁴ One set of recommendations focused on improving habitat for prey species, recommendation number three in particular, suggested that WDFW create rules describing how chapter 77.57 RCW (the fishways, flow, and screening statues) will be implemented and enforced. Subsequently, the state legislature passed ESHB 1109 on July 28, 2019, directing WDFW to initiate the rule-making process through changes to the operating budget. WDFW's fish passage and screening authority has existed for many decades; however, WDFW has never created a rules chapter describing implementation of the authority. The proposed rule seeks to fill that gap.

⁴ Cascadia Consulting Group. 2018. "Southern Resident Orca Task Force: Report and Recommendations." Accessed October 20, 2022 at: https://www.governor.wa.gov/sites/default/files/OrcaTaskForce_reportandrecommendations_11.16.18.pdf.

In addition, WDFW intends to incorporate new standards for developing climate-adapted water crossings. WDFW has invested in research to understand how streams in Washington are likely to change as a result of climate change.⁵ The new standards seek to act upon this knowledge to ensure that culverts and other water crossing structures built today will accommodate stream conditions throughout their designed lifespan. The climate-adapted design standard codified in the proposed rule is also in alignment with a cooperative management agreement between WDFW and tribes established in 2019.

⁵ Wilhere, G., et al. 2017. "Incorporating climate change into culvert design in Washington State, USA." Ecological Engineering. <http://dx.doi.org/10.1016/j.ecoleng.2017.04.009>.

Finally, although chapter 77.57 RCW establishes WDFW's authority to correct structures that are inadequate in terms of fish passage or screening, imposing a correction (and potentially a lien on property) through compulsory process is not WDFW's preferred approach. The proposed rule lays out a process for WDFW to work with the regulated community to bring relevant structures into compliance before utilizing the full range of their authority.

To summarize, WDFW's objectives for this rule making include:

1. Creating a new WAC chapter describing implementation of chapter 77.57 RCW to improve fish passage and safety throughout the state;
2. Incorporating a new climate-adapted standard for culverts and other water crossing structures to ensure that they remain functional throughout their designed lifespan; and
3. Outlining a process intended to enhance compliance with the fish passage and screening standards.

1.2 REQUIREMENTS FOR DEVELOPING AN SBEIS: Chapter 19.85 RCW requires that the relevant agency prepare an SBEIS if the proposed rule "will impose more than minor costs on businesses in an industry."⁶ "Minor cost" is defined in RCW 19.85.020 as a cost per business that is less than 0.3 percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.⁷ The guidelines for preparing an SBEIS are included in RCW 19.85.040.⁸ This analysis also utilizes the more specific guidance and resources provided by Washington state's office

for regulatory innovation and assistance (ORIA).⁹ Per the SBEIS *Frequently Asked Questions* guidance, agencies are required to consider "costs imposed on businesses and costs associated with compliance with the proposed rules."¹⁰ Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance with the rule.

6 RCW 19.85.030 Agency Rules – Small Business economic impact statement reduction of costs imposed by rule. Accessed November 3, 2022 at: <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

7 RCW 19.85.020 Definitions. Accessed November 3, 2022 at: <https://app.leg.wa.gov/rcw/default.aspx?cite=19.85.020>.

8 RCW 19.85.040 Small business economic impact statement—Purpose—Contents. Accessed November 3, 2022 at: <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

9 ORIA. 2021. Regulatory Fairness Act Support. Accessed November 3, 2022 at: https://www.oria.wa.gov/site/alias__oria/934/regulatory-fairness-act-support.aspx.

10 WA Attorney General Office. 2021. Small Business Economic Impact Statements – Frequently Asked Questions. Accessed November 3, 2022 at: https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/DRAFT_SBEIS_FAQ.pdf.

1.3 SUMMARY OF THE PROPOSED RULE: WDFW is proposing a new WAC chapter to describe implementation of the fish, flow, and screening authority (chapter 77.57 RCW). One aspect of the rule is to clarify the applicability of existing standards, ensuring that they are applied at all existing and new fishways and diversions governed by chapter 77.57 RCW. The proposed rule achieves this goal by carefully defining "fishway" and "watercourse" (and equivalently, "river" and "stream"). In addition, the proposed rule requires new and replacement water crossing designs to consider future projected bankfull width and 100-year peak flows. Climate change impacts stream width and flows heterogeneously throughout Washington, so the consideration of future change should be specific to the project site. Finally, the rule defines a process for WDFW to encourage and enforce compliance among owners. In this section, we summarize how the proposed rule differs from the baseline requirements in Washington regulating fish passage and screening, design of fishways and water diversions, and enforcement (i.e., the "incremental effects" of the proposed rule).

1.3.1 FISH PASSAGE AND SCREENING STANDARDS: The proposed rule does not introduce any new or different standards for fish passage or diversion screening. The existing standards for compliant structures are currently described in the WDFW Fish Passage Inventory, Assessment, and Prioritization Manual and also partially codified in the state hydraulic code rules (chapter 220-660 WAC). The existing hydraulic code rules only apply to new hydraulic projects that "use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state."¹¹ The hydraulic code was designed to protect fish life in the face of construction projects. It also included standards about fish passage and protection for many years but does not apply to structures not actively being built, replaced, or rehabilitated. This leaves out a subset of structures which fall under WDFW's Fishway, Flow, and Screening statutory authority (chapter 77.57 RCW) but are not subject to the hydraulic code.

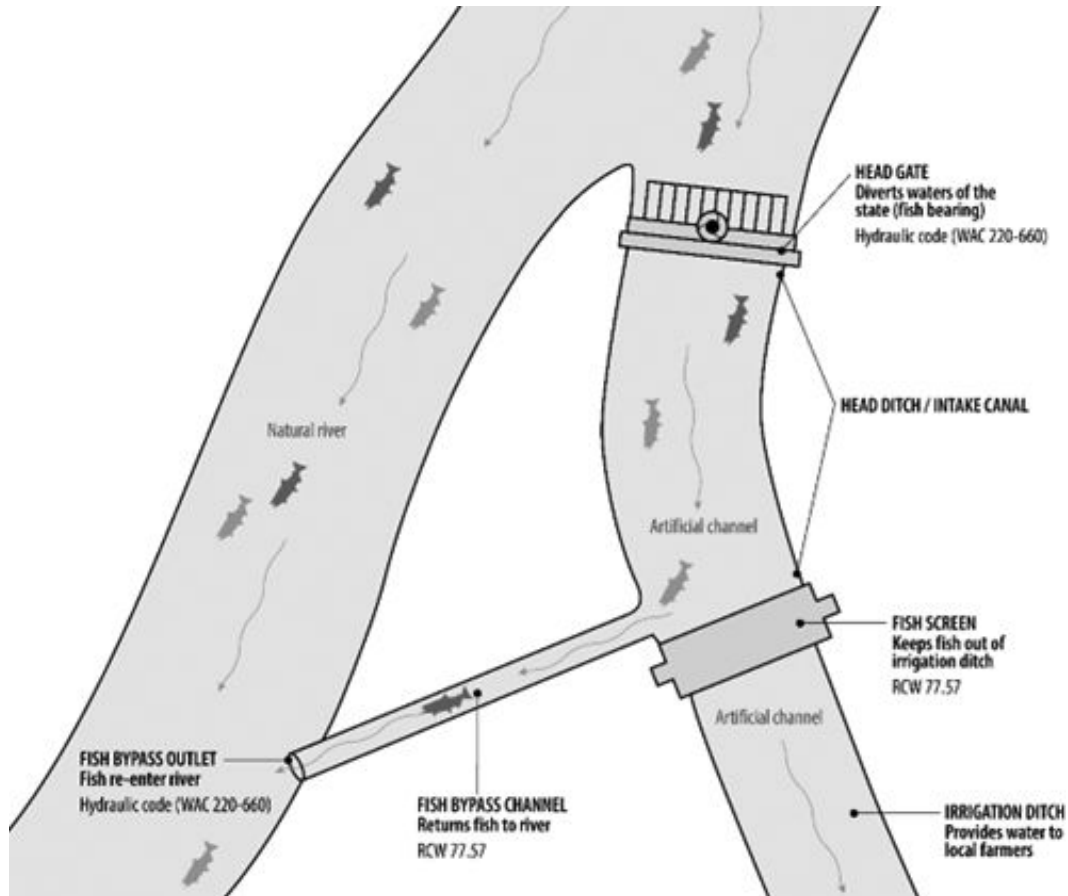
¹¹ WAC 220-660-010. Hydraulic Code Rules—Purpose. Accessed November 11, 2022 at: <https://app.leg.wa.gov/WAC/default.aspx?cite=220-660-010>.

The proposed rule clarifies that the existing standards apply to the full set of structures subject to chapter 77.57 RCW by: (1) Defining "fishway" to include both fish passage improvement structures (e.g., fish ladders) and all structures that span over, through, or under a watercourse; and (2) defining "watercourse," "river," or "stream" to include all surface-water-connected wetlands that provide or maintain habitat that supports fish life.

The main implication of this clarification is that all aspects of water diversions that incorporate an artificial waterway will be sub-

ject to the fish passage and screening standards (e.g., the fish screen and fish bypass channel in Exhibit 1-1). Most other structures on the landscape are already subject to the standards included in the proposed rule through the state hydraulic code, except where hydraulic code authority does not apply, such as wholly artificial waterways.

WATER DIVERSION DESIGN INCORPORATING AN ARTIFICIAL WATERWAY



1.3.2 CLIMATE-ADAPTED CULVERTS AND CROSSINGS REQUIREMENT: The proposed rule requires new and replacement water crossing designs to consider future climate conditions. As mentioned, existing design standards for water crossing structures are codified in chapter 220-660 WAC. The existing code requires bridge designs capable of passing 100-year flood flows and accounting for expected lateral stream migration. For culverts, the existing code requires a stream simulation design with the bed width determined by any WDFW-approved design methodology or with an approved alternative plan on a case-by-case basis.

The proposed rule requires consideration of projected future bankfull width and 100-year peak flow. Projected changes to bankfull width and peak flows can be obtained using the culverts and climate change web application located on the WDFW website,¹² or any comparable method. For a user-provided point on the landscape (i.e., a culvert or crossing site), the tool calculates the upstream watershed and outputs an expected percentage change to bankfull width and 100-year peak flows based on hydrologic analysis of 10 climate model projections.^{13 14} Importantly, climate impacts vary across the state. Some areas are expected to experience large increases to bankfull width and peak flow, while others are expected to experience decreases. If the

tool projects anything less than a five percent increase, no further consideration of climate is required. For sites expected to experience greater than five percent increases to bankfull width or peak flow, the projected values for those parameters should be considered as inputs into the overall design process.

¹² The tool can be accessed at: <https://wdfw.wa.gov/species-habitats/habitat-recovery/fish-passage/climate-change>.

¹³ Wilhere, G., et al. 2017. "Incorporating Climate Change into the Design of Water Crossing Structures – Final Project Report." Washington Department of Fish and Wildlife.

¹⁴ Wilhere, G. et al. 2017. "Incorporating climate change into culvert design in Washington State, USA." Ecological Engineering.

Culverts and crossings installed prior to the adoption of the proposed rule will not be subject to the climate adaptation requirement, as long as they are functioning as originally intended, and meet the existing fish passage requirements.

Additionally, outreach to professional firms performing the design and engineering of culverts and bridges generally indicated some degree of baseline consideration for future climate impacts. Some firms reported already using the culverts and climate change tool, while others applied some rule of thumb, such as the Washington state department of transportation (WSDOT) standard of increasing current bankfull width by 20 percent and adding two feet. Such rules of thumb may meet the climate-adapted standard in the proposed rule for some, but not all cases. The baseline for this requirement, therefore, is project specific.

1.3.3 COMPLIANCE PROCEDURES: The fishways, flow, and screening statute (chapter 77.57 RCW) grants WDFW the authority to enforce compliance with fish passage and screening standards by requiring correction. This can involve WDFW taking possession of a diversion device and closing it until properly equipped, removing an obstruction, or installing a fishway at the owner's expense.

The proposed rule seeks to enhance the rate of compliance with existing fish passage standards through three main avenues: (1) By raising awareness for the issue through the rule-making process itself, (2) by providing technical assistance and directing owners toward grant and other cost-sharing opportunities, and (3) by exercising legal authority in extreme cases when other voluntary compliance measures fail. If in such an extreme case WDFW exercises authority to impose a fish passage or screening correction, any costs incurred by WDFW to bring a site into compliance with the fish passage and screening standards would then constitute the value of a lien on the structure or the property on which it is located, with some exceptions. By creating voluntary compliance and technical assistance avenues, the rule seeks to minimize the likelihood of incidents where WDFW would have no choice but to resort to the existing statutory remedies.

The specific enforcement protocols are similar to those in the hydraulic code compliance program, essentially outlining a series of protocols for WDFW to operationalize the authority granted in chapter 77.57 RCW to ensure compliance with fish passage standards. The compliance and enforcement provisions included in the proposed rule are as follows:

- A technical assistance visit, requested by either the owner or WDFW. If the technical assistance visit identifies inadequate fish passage or protection, WDFW will develop a voluntary correction request or mandatory notice to comply, depending on the circumstances.
- A compliance inspection site visit may be conducted if WDFW becomes aware of a noncompliant structure, considering the nature

of the fish resources impacted by the existing noncompliant structure as well as the quality and quantity of habitat to be gained. WDFW may issue a correction request or a notice to comply at a compliance inspection site visit.

- In either a technical assistance visit or a compliance inspection visit, WDFW will only issue a mandatory notice to comply without first issuing a correction request if there is a history of similar violations by the owner of the diversion or structure, or a probability of causing more-than-minor harm to fish life.
- Failure to respond to the correction request triggers WDFW to issue a notice to comply.
- Failure to comply with the notice to comply can result in criminal enforcement actions, such as an action to classify noncompliant structure as a public nuisance, resulting in injunctive action, or misdemeanor charges under chapter 77.57 RCW.
- As a final resort, WDFW can impose the correction as permitted in the existing statutory remedies. In some cases, WDFW may place a lien on the structure or the owner's property to recoup the cost.

1.4 CONCEPTUAL MODELS OF RULE IMPACTS: As described in the previous section, the standards for fish passage contained in the proposed rule are not new. Therefore, structures on the landscape may already comply, and thus be unaffected by the proposed rule. We developed conceptual models to more precisely identify situations in which the proposed rule would generate changes in behavior that generate costs. We present separate conceptual models for: (1) Dams, diversions, and fish passage improvement structures; and (2) culverts and crossings, as these structures have an additional climate-adapted design requirement in addition to the existing fish passage standards.

1.4.1 DAMS, DIVERSIONS, AND FISH PASSAGE IMPROVEMENT STRUCTURES: Exhibit 1-2 considers how the proposed rule would affect any particular dam, diversion, or fish passage structure that exists on the landscape. Generally, the logic of the model flows from the fact that the proposed rule does not impose new standards for fish passage and screening beyond what is already partially codified in the hydraulic code and described in WDFW's assessment guidance document.

First, exempt structures are not affected. Second, it is possible that an owner would plan to achieve compliance with the existing standard regardless of whether the proposed rule is adopted or not. Third, some structures are already in compliance, and others will not be prioritized by WDFW for correction.

Accordingly, the rule is most likely to generate costs for owners of dams, diversions, and fish passage improvement structures under the following circumstances:

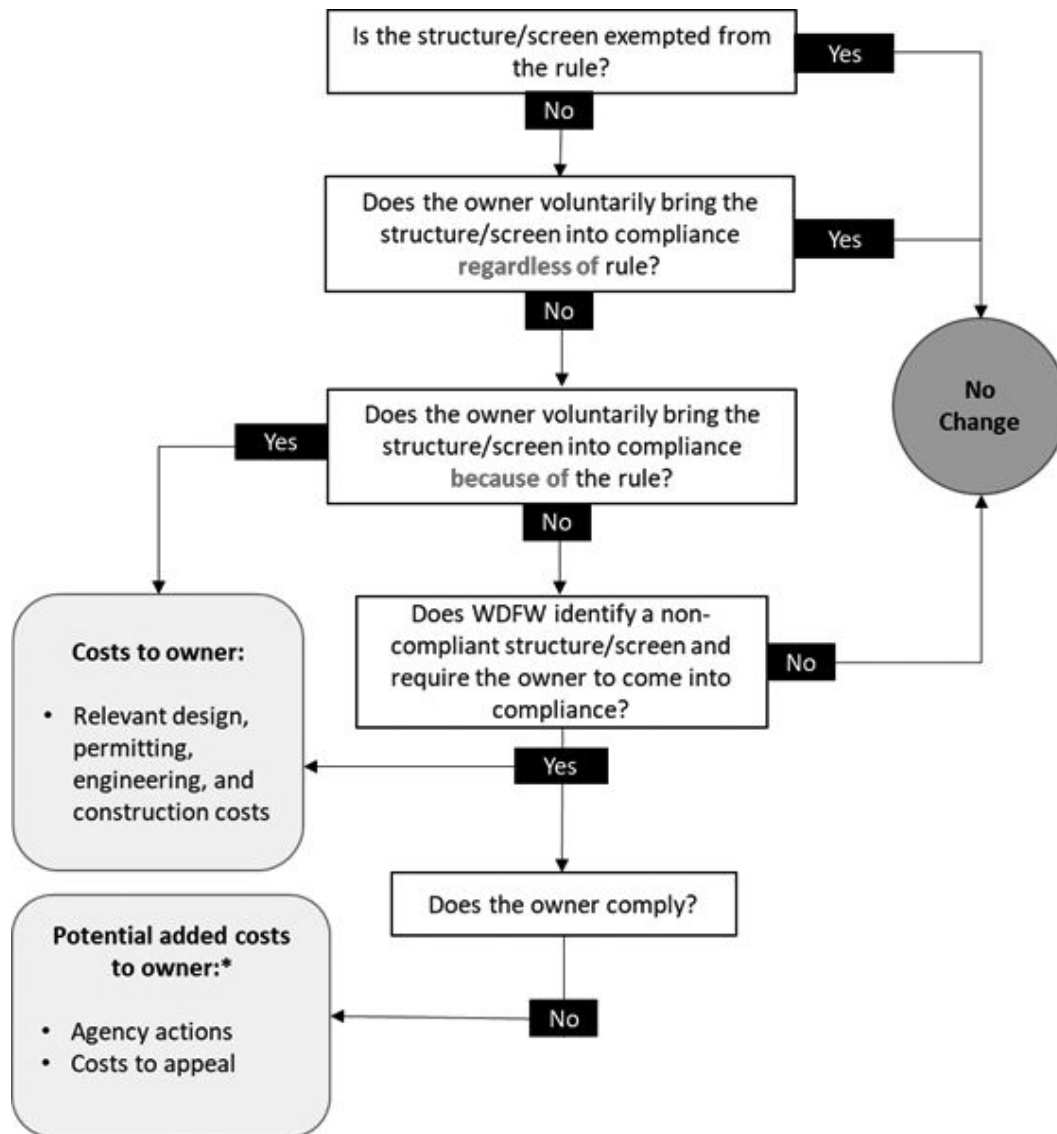
- *New information that triggers action on the part of owners to bring a structure into compliance.* The proposed rule could raise awareness regarding the requirement for owners to provide adequate fish passage and screening, including at sites that do not fall under HPA authority (e.g., artificial waterways). Costs incurred to comply would be triggered by the new rule in this case because owners would not be bearing the costs but for adoption of the rule. These costs, which include all aspects of bringing the noncompliant structure into compliance (e.g., permitting, design, construction) may be borne by the owner in whole or in part (if offset by grant or cost share opportunities).
- *Noncompliant structures subject to WDFW inspection.* As reinforced in the proposed rule, WDFW has authority to visit streams across

Washington state to identify noncompliant structures and enforce compliance. Upon completion of the rule, WDFW will prioritize sites for inspection and target compliance where needed. Costs to bring these noncompliant structures into compliance (e.g., permitting, design, construction) will ultimately be borne in whole or in part by the owners. Beyond the compliance costs, owners may bear additional costs if they refuse to comply. Potential costs of noncompliance include any costs associated with enforcement actions initiated by WDFW and/or any costs associated with appealing WDFW actions. While costs of noncompliance are not part of the analysis required for the RFA,¹⁵ they are mentioned here to provide a complete picture of the compliance and rule enforcement process given that a focus of the proposed rule is to clarify WDFW's existing authority to address noncompliance through enforcement.

¹⁵ RCW 19.85.040 – Small business economic impact statement—Purpose—Contents: "It [the SBEIS] shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, professional services, and increased administrative costs."

The conceptual model reveals two main conclusions. First, only a portion of the noncompliant dams, diversions, and fish passage improvement structures on the landscape will experience added costs as a result of the proposed rule. Second, the costs associated with the proposed rule include all aspects of bringing a noncompliant structure into compliance (e.g., permitting, design, construction). As described in Section 2.2, the nature and magnitude of these costs will be site specific, depending on the structure type and nature of the violation, among other things.

CONCEPTUAL MODEL OF RULE IMPLEMENTATION PROCESS FOR DIVERSION SCREENS, DAMS, AND FISH PASSAGE STRUCTURES



*While costs of noncompliance are not part of the analysis required for the RFA, they are mentioned here to provide a complete picture of the compliance and rule enforcement process given that a focus of the proposed rule is to clarify WDFW's existing authority to address noncompliance through enforcement.

1.4.2 CULVERTS AND CROSSINGS: The proposed rule affects water crossings similarly to dams, diversions, and fish passage improvement structures in terms of fish passage requirements (i.e., those already codified in the hydraulic code and WDFW assessment guidance). Therefore, the two circumstances identified in the previous section apply to water crossings as well. However, the climate-adapted standard introduces additional factors that complicate the conceptual model (Exhibit 1-3), leading to one additional circumstance where the proposed rule is most likely to generate costs to owners.

Two details from the proposed rule are relevant. First, water crossings installed prior to adoption of the proposed rule are not subject to the climate-adapted requirement as long as they are compliant in terms of fish passage and are within their designed lifespan. Second, only culverts and crossings located in areas where bankfull width or 100-year peak flows are expected to increase by at least five

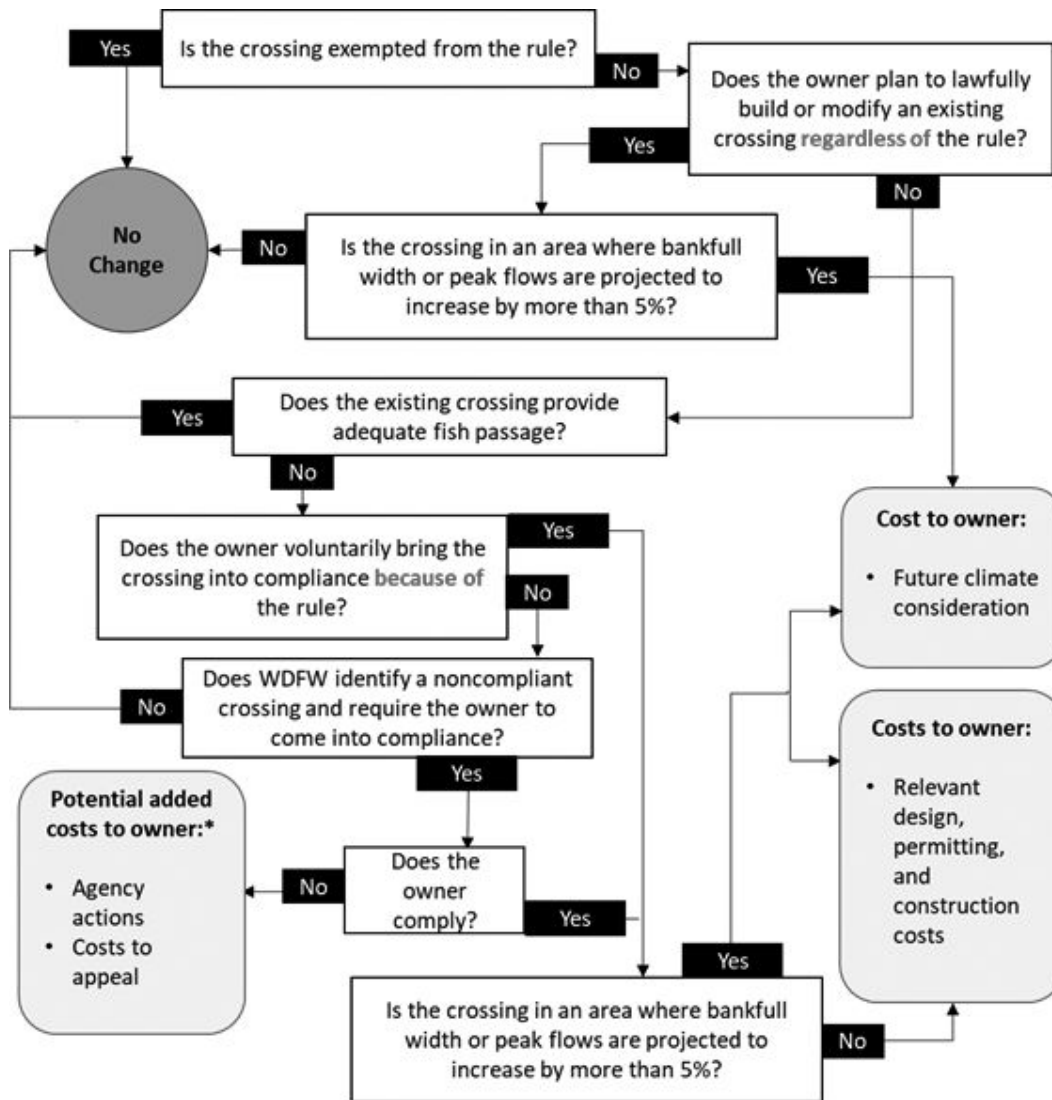
percent are required to consider incorporating climate projections into the design process.

For water crossings, the rule is most likely to generate costs to owners in the following circumstance (in addition to those identified in the prior section):

- *An owner would plan to replace (or build) a culvert or crossing regardless of the rule but would not consider future climate change in the design of the structure but for the rule. While compliance with the fish passage standards would be achieved through the existing HPA program in this case, the incremental cost of designing for future climate would be attributable to the rule in cases where the owner was not planning to do so already. In practice, many owners decide (or are advised) to consider future conditions even absent the proposed rule, so this is expected to be a small category of structures.*

This conceptual model reveals that only a portion of the noncompliant water crossings on the landscape will generate costs as a result of the proposed rule. This is because some structures are exempt, some are already compliant, and some noncompliant structures would have been replaced to the standards included in the proposed rule even in its absence, or will not be prioritized by WDFW for correction. Second, the costs associated with the proposed rule for this category of structures includes all aspects of bringing a noncompliant structure into compliance (e.g., permitting, design, construction). As described in Section 2.2, the nature and magnitude of these costs is site specific, depending on the structure type and nature of the violation, among other things.

CONCEPTUAL MODEL OF RULE IMPLEMENTATION PROCESS FOR WATER CROSSING STRUCTURES



*While costs of noncompliance are not part of the analysis required for the RFA, they are mentioned here to provide a complete picture of the compliance and rule enforcement process given that a focus of the proposed rule is to clarify WDFW's existing authority to address noncompliance through enforcement.

CHAPTER 2 - SMALL BUSINESS IMPACTS: This chapter evaluates the potential economic impacts of the proposed rule on small businesses in Washington state. As outlined in the RFA and in accordance with other guidance and best practices, this SBEIS addresses the following questions.^{16 17 18}

¹⁶ RCW 19.85.040 Small business economic impact statement—Purpose—Contents. Accessed October 13, 2022 at: <https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.
¹⁷ ORIA. 2021. Regulatory Fairness Act Support. Accessed October 13, 2022 at: https://www.oria.wa.gov/site/alias_oria/934/regulatory-fairness-act-support.aspx.
¹⁸ WA Attorney General Office. 2021. Small Business Economic Impact Statements – Frequently Asked Questions. Accessed October 13, 2022 at: https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/DRAFT_SBEIS_FAQ.pdf.

- What are the industries and universe of businesses that may incur costs as a result of this rule?
- What are the likely costs of the rule to those businesses?
- Are the costs resulting from the rule anticipated to be more than minor?
- Will the rule disproportionately affect small businesses?

- What steps has the agency taken to reduce the costs of the rule on small businesses?
- How has the agency involved small businesses in the development of the rule?
- How many jobs may be created or lost as a result of compliance with the rule?

The sections that follow address each of these questions.

2.1 POTENTIALLY AFFECTED SMALL BUSINESSES: As the proposed rule is directed toward regulating structures on the landscape, it does not target a particular sector or industry. However, the rule could potentially affect individual businesses that own a noncompliant structure, or a property on which a noncompliant structure is located, subject to the following three circumstances identified in Section 1.4: (1) New information from the rule prompts the owner to comply, (2) WDFW identifies the noncompliant structure and requests a correction, or (3) the owner was modifying (or building) a water crossing and not considering future climate conditions in the design.

The best available information regarding the universe of structures potentially subject to the rule is contained in WDFW's geodatabase of known fish passage barriers (henceforth, the "inventory").¹⁹ However, there are several issues with using the inventory to identify particular small businesses that would be impacted. First, the compliance status of barriers in the Inventory is unknown. Second, it is impractical to identify the specific businesses or relevant economic sectors that own structures. The inventory identifies which structures are privately owned, and in some cases the name of the owner, but it does not indicate whether the owner is a business or provide any information about the industry. Finally, the inventory is updated on an ongoing basis as barrier inventorying efforts progress. Therefore, the full extent of relevant structures on the landscape is unknown.

¹⁹ WDFW Open Data. Fish Passage Barriers Inventory. Accessed September 2022 at: <https://data-wdfw.opendata.arcgis.com/documents/wdfw::fish-passage-barriers-inventory-zipped-file-geodatabase/about>.

Given the nature of the proposed rule and the data limitations that exist, we take a conservative approach to identifying potentially affected businesses. We acknowledge that aside from the exemptions noted below, any business that owns property in Washington with a diversion, obstruction, or crossing on a fish bearing stream could incur costs as a result of the proposed rule, and such businesses could theoretically belong to any industry. At the same time, businesses within a few industries may be more likely to own certain types of structures based on the nature of their operations and/or the size of their landholdings.

2.1.1 NONEXEMPT STRUCTURES IN THE INVENTORY: The inventory identifies five types of structures potentially subject to the rule as follows:²⁰

²⁰ Within the inventory, fish passage improvement structures are categorized as "fishways." However, the definition of fishways in the proposed rule includes fish passage improvement structures, culverts, and non-culvert crossings (see Section 1.3.1). To minimize confusion, we generally adopt the language used in the Inventory for this section, except that we use "fish passage improvement structures" in place of "fishways."

- Dams;
- Diversions;
- Fish passage improvement structures;
- Culverts;
- Nonculvert crossings (e.g., bridges, conduits, fords).

There are a total of 50,367 structures in these categories within the inventory (Exhibit 2-1). However, the rule incorporates specific exemptions that reduce the number of structures subject to the rule,

either because they fall outside of WDFW authority, or because they are grandfathered in. The following categories of structures are exempt from all provisions of the proposed rule:

- Those on nonfish bearing lakes, streams, or rivers;
- Those on federal or tribal-owned land;
- Obstructions that are federally owned or subject to federal laws that preempt chapter 77.57 RCW;
- Agricultural drainage system components installed on or before May 20, 2003;²¹ and
- Lawful diversions installed on or before June 11, 1947, in waters containing game fish only.²²

²¹ These structures are identified as "Other" in the inventory, which we excluded from this analysis due to the varied types of structures contained within that category.

²² Date of installation is not provided in the inventory. However, outreach to stakeholders indicated that the majority of agricultural diversions were installed prior to this date.

Of the relevant structures in the inventory, one or more exemption applies to 15,653 (31 percent) structures. Of the 34,714 remaining structures, 15,682 (45 percent) are privately owned. Exhibit 2-2 demonstrates the spatial distribution of known nonexempt and privately owned structures throughout the state. Of these, a substantial portion (67 percent) are culverts, 17.5 percent are other types of crossings, eight percent are dams, six percent are diversions, and about one percent are fish passage improvement structures.²³

²³ The structure categories are not mutually exclusive. For example, a dam may be associated with a diversion, a fish passage structure, or both.

The inventory provides useful information, but it should not be considered a complete assessment of the situation that exists on the landscape. It provides sufficient data to perform coarse analysis based on structure location and owner type, but it is known to be incomplete. Washington state department of ecology, for example, has identified 49,430 points of water surface diversion, compared to the 1,550 diversions contained in the inventory.²⁴ It is unknown, however, what portion of the points identified by ecology represent active points of diversion that require screening, what portion would be exempt from the proposed rule, and what portion is privately owned. Therefore, we maintain that the inventory represents the best available information for performing SBEIS analysis but note that it likely underestimates the scale of the problem for diversions in particular.

²⁴ Email communication with WDFW staff on December 19, 2020.

NUMBER OF EXEMPT, NONEXEMPT, AND NONEXEMPT PRIVATELY OWNED STRUCTURES IN THE WDFW INVENTORY

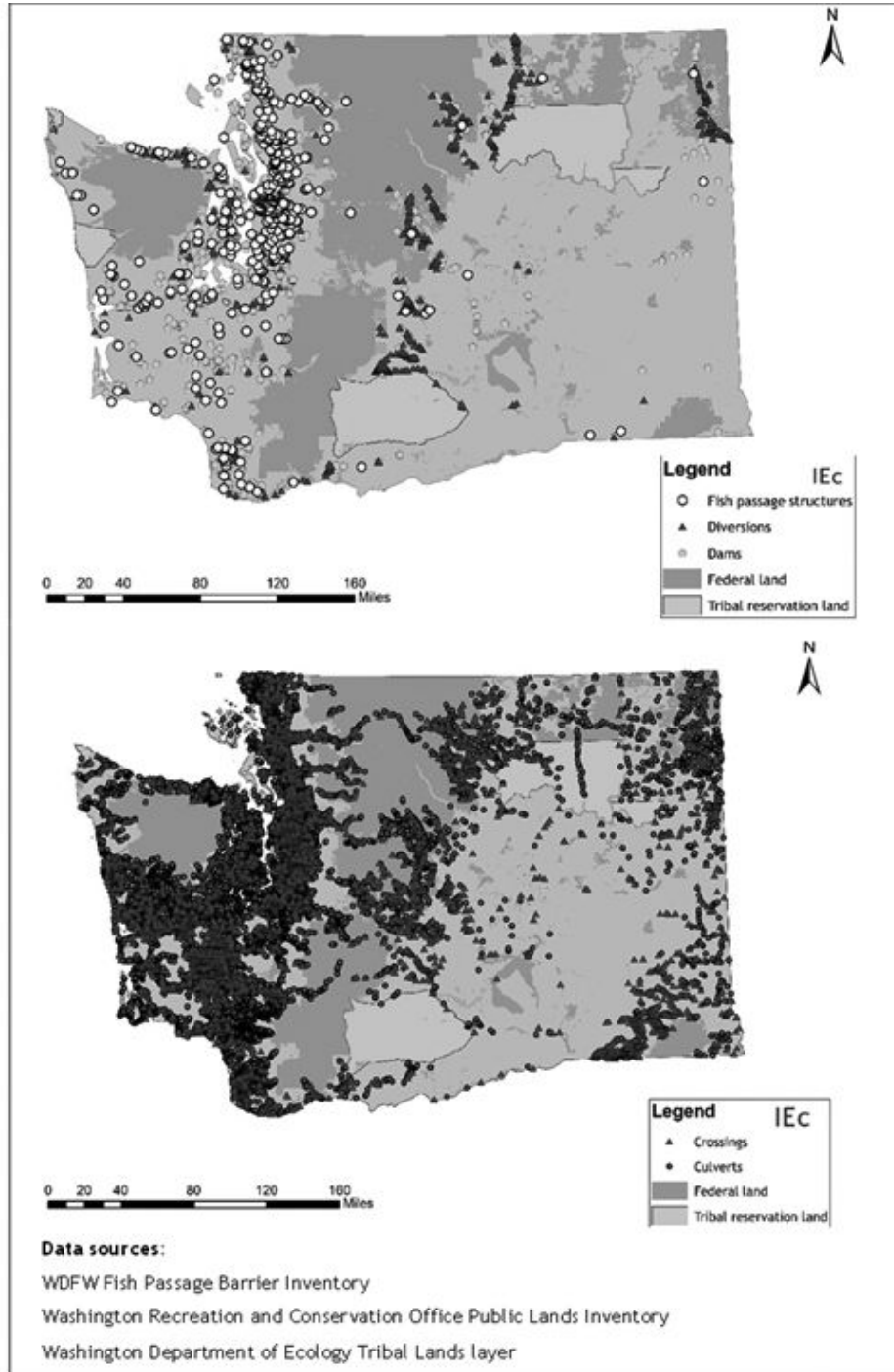
	DAMS	DIVERSIONS ¹	FISH PASSAGE STRUCTURES	CULVERTS	CROSSINGS	TOTAL
Total	2,046	1,550	944	38,818	7,009	50,367
Exempt	429	450	274	12,718	1,782	15,653
Nonexempt	1,617	1,100	670	26,100	5,227	34,714
Nonexempt, Privately Owned	1,258	939	187	10,548	2,750	15,682

Note: The true number of nonexempt, privately owned structures on the landscape is unknown and may be much higher. However, only a portion would be impacted by the proposed rule.
 1. As noted in the text, ecology estimates the total number of diversions may be several orders of magnitude higher. However, data is insufficient to confirm applicability of screening requirements, and to identify exemptions or ownership type.

Regardless of the true number of privately owned, nonexempt structures on the landscape, only a portion are expected to be both impacted by the rule and owned by a business (i.e., those that are the focus of this SBEIS). Considering the estimates in the inventory, a subset of the approximately 16,000 relevant structures are owned by

residential property owners that are not businesses. Additionally, a subset of the structures that are owned by businesses likely already comply with the design standards incorporated into the proposed rule or would comply with existing regulations in the future and would therefore not experience additional costs resulting from the proposed rule. However, both the universe of structures and the portion that would experience added costs due to the proposed rule are uncertain.

SPATIAL DISTRIBUTION OF NONEXEMPT PRIVATELY OWNED STRUCTURES IN THE INVENTORY



2.1.2 IDENTIFICATION OF POTENTIALLY AFFECTED BUSINESSES: As noted, businesses that may be impacted by the proposed rule can potentially belong to any industry that exists in Washington. For example, some individual businesses owning relevant structures that were mentioned during interviews include a shopping mall, a football field, an Amazon facility, hunting clubs, gas stations, and general contractors. Accordingly, this SBEIS provides contextual industry-scale information about the businesses that could potentially be affected by the proposed rule (Exhibit 2-3). This information should not be interpreted as identifying the universe of businesses that may or are likely to be affected by the rule. In fact, most businesses in these industries are unlikely to be affected by the rule making. However, given the uncertainty regarding the specific universe of entities that will experience costs of the rule, this analysis errs on the side of transparency to ensure due consideration of the full scope of potentially affected small businesses.

Exhibit 2-3 includes information relevant to the SBEIS analysis. First, it identifies the total number of businesses in Washington belonging to each industry, and the proportion considered "small." In addition, it provides the industry-wide average annual payroll and revenues, which are used to calculate the minor cost threshold. For an SBEIS, the threshold is used to determine whether the compliance costs of a proposed rule are considered "more than minor." As defined in RCW 19.85.020, the minor cost threshold is the greatest of \$100, one percent of annual payroll, or three-tenths of one percent of annual revenues.²⁵

²⁵ RCW 19.85.020 Definitions. Accessed November 3, 2022 at: <https://app.leg.wa.gov/rcw/default.aspx?cite=19.85.020>.

Depending on the industry, the likelihood that any business impacted by the proposed rule would be considered small varies. Within some industries, such as gasoline stations North American Industry Classification System (NAICS Code 447), a very large proportion (99 percent) are considered small. In other industries, such as general merchandise stores (NAICS Code 452), a much lower proportion are considered small (55 percent).

There is also wide variation across industries in the minor cost threshold. It ranges from as low as \$423 for private households employing workers such as cooks or house cleaners (NAICS Code 814), up to nearly \$1 million (\$915,976) for hospitals (NAICS Code 622).

NUMBER OF BUSINESSES, AVERAGE ANNUAL REVENUES, AND MINOR COST THRESHOLD FOR WASHINGTON STATE INDUSTRIES

INDUSTRY (NAICS CODE) ¹	INDUSTRY DESCRIPTION	TOTAL NUMBER OF BUSINESSES ²	PROPORTION CONSIDERED SMALL ³	AVERAGE ANNUAL PAYROLL	AVERAGE ANNUAL REVENUE	MINOR COST THRESHOLD (USD) ⁴
111	Crop Production	4,694	0.96	439,622	1,169,522	4,444
112	Animal Production and Aquaculture	779	0.97	358,501	703,769	3,681
113	Forestry and Logging	429	0.97	509,462	1,775,799	5,327
114	Fishing; Hunting and Trapping	209	0.97	546,119	828,952	5,461
115	Support Activities for Agriculture and Forestry	787	0.89	1,227,640	723,635	12,500
211	Oil and Gas Extraction	UNKNOWN	UNKNOWN	UNKNOWN	1,996,053	5,988
212	Mining (except Oil and Gas)	116	0.88	1,140,014	3,445,405	12,825
213	Support Activities for Mining	28	UNKNOWN	UNKNOWN	3,756,579	11,270
221	Utilities	595	0.90	3,620,713	20,219,438	60,658
236	Construction of Buildings	9,405	0.98	399,571	1,380,768	4,142
237	Heavy and Civil Engineering Construction	1,186	0.91	1,574,035	6,727,295	20,182

INDUSTRY (NAICS CODE) ¹	INDUSTRY DESCRIPTION	TOTAL NUMBER OF BUSINESSES ²	PROPORTION CONSIDERED SMALL ³	AVERAGE ANNUAL PAYROLL	AVERAGE ANNUAL REVENUE	MINOR COST THRESHOLD (USD) ⁴
238	Specialty Trade Contractors	16,306	0.97	508,232	1,068,808	5,084
311	Food Manufacturing	1,036	0.83	1,941,809	11,625,030	34,875
312	Beverage and Tobacco Product Manufacturing	829	0.96	532,644	2,060,783	6,182
313	Textile Mills	24	UNKNOWN	871,836	3,090,002	9,270
314	Textile Product Mills	137	0.96	657,358	963,465	6,574
315	Apparel Manufacturing	88	0.94	767,197	364,822	7,672
316	Leather and Allied Product Manufacturing	30	UNKNOWN	347,578	1,541,679	4,625
321	Wood Product Manufacturing	374	0.82	1,966,381	13,778,702	41,336
322	Paper Manufacturing	101	0.58	6,277,660	51,656,357	154,969
323	Printing and Related Support Activities	504	0.96	516,478	738,110	5,165
324	Petroleum and Coal Products Manufacturing	34	UNKNOWN	11,478,774	211,324,337	633,973
325	Chemical Manufacturing	351	0.91	1,717,059	9,061,750	27,185
326	Plastics and Rubber Products Manufacturing	208	UNKNOWN	2,084,421	10,251,484	30,754
327	Nonmetallic Mineral Product Manufacturing	306	0.83	1,864,570	6,271,891	24,146
331	Primary Metal Manufacturing	91	0.78	3,902,358	16,157,609	48,473
332	Fabricated Metal Product Manufacturing	1,076	0.91	1,025,313	4,218,991	12,657
333	Machinery Manufacturing	496	0.88	2,008,224	6,464,372	20,370
334	Computer and Electronic Product Manufacturing	405	0.82	4,590,449	15,368,835	47,837
335	Electrical Equipment; Appliance; and Component Manufacturing	155	0.92	2,746,337	10,772,296	32,317
336	Transportation Equipment Manufacturing	499	0.73	21,977,392	58,252,915	219,774
337	Furniture and Related Product Manufacturing	363	0.93	786,514	1,928,426	7,865
339	Miscellaneous Manufacturing	780	0.95	984,194	2,058,454	9,870
423	Merchant Wholesalers; Durable Goods	6,146	0.96	972,460	7,630,534	22,892
424	Merchant Wholesalers; Nondurable Goods	3,597	0.95	886,061	9,929,810	29,789
425	Wholesale Electronic Markets and Agents and Brokers	3,783	0.99	552,115	2,096,183	6,289
441	Motor Vehicle and Parts Dealers	2,329	0.90	1,019,470	7,767,559	23,303
442	Furniture and Home Furnishings Stores	840	0.97	466,570	1,759,330	5,278
443	Electronics and Appliance Stores	946	0.95	647,593	3,521,033	10,563
444	Building Material and Garden Equipment and Supplies Dealers	1,531	0.92	862,894	4,222,240	13,188
445	Food and Beverage Stores	2,883	0.85	865,435	4,530,545	13,592
446	Health and Personal Care Stores	1,688	0.99	431,227	3,243,206	9,730
447	Gasoline Stations	1,758	0.99	216,641	5,562,917	16,689
448	Clothing and Clothing Accessories Stores	2,005	0.97	245,754	818,862	4,272
451	Sporting Goods; Hobby; Musical Instrument; and Book Stores	1,268	0.97	307,000	1,269,975	4,155
452	General Merchandise Stores	692	0.55	3,662,019	19,750,293	183,683
453	Miscellaneous Store Retailers	2,995	0.98	250,449	1,156,840	3,471
454	Nonstore Retailers	897	0.96	16,205,591	1,945,471	162,056
481	Air Transportation	132	0.89	10,138,945	1,664,360	118,540
482	Rail Transportation	UNKNOWN	UNKNOWN	UNKNOWN	11,040,076	33,120
483	Water Transportation	70	0.76	4,468,656	3,675,900	44,687

INDUSTRY (NAICS CODE) ¹	INDUSTRY DESCRIPTION	TOTAL NUMBER OF BUSINESSES ²	PROPORTION CONSIDERED SMALL ³	AVERAGE ANNUAL PAYROLL	AVERAGE ANNUAL REVENUE	MINOR COST THRESHOLD (USD) ⁴
484	Truck Transportation	2,471	0.96	529,431	961,799	5,539
485	Transit and Ground Passenger Transportation	321	0.79	3,942,817	425,244	39,428
486	Pipeline Transportation	UNKNOWN	UNKNOWN	3,863,173	8,485,313	57,948
487	Scenic and Sightseeing Transportation	93	UNKNOWN	179,981	298,070	1,800
488	Support Activities for Transportation	1,308	0.92	1,490,053	3,456,933	14,901
491	Postal Service	556	0.87	1,429,088	1,366,764	14,291
492	Couriers and Messengers	528	0.87	1,579,236	1,260,781	20,300
493	Warehousing and Storage	352	0.84	2,515,217	3,511,665	37,189
511	Publishing Industries (except Internet)	1,999	0.96	10,493,716	3,509,376	106,531
512	Motion Picture and Sound Recording Industries	477	0.95	341,202	584,475	3,835
515	Broadcasting (except Internet)	166	0.89	1,356,561	13,991,370	41,974
517	Telecommunications	876	0.93	3,231,416	14,391,650	72,451
518	Data Processing; Hosting; and Related Services	854	0.94	3,093,580	4,897,141	31,579
519	Other Information Services	1,080	0.95	7,584,633	3,455,841	91,127
521	Monetary Authorities-Central Bank	UNKNOWN	UNKNOWN	UNKNOWN	10,619,926	31,860
522	Credit Intermediation and Related Activities	3,671	0.97	1,299,289	12,547,552	39,961
523	Securities; Commodity Contracts; and Other Financial Investments and Related Activities	2,577	0.99	887,653	3,699,369	13,872
524	Insurance Carriers and Related Activities	3,625	0.97	1,010,890	2,439,165	11,871
525	Funds; Trusts; and Other Financial Vehicles	79	UNKNOWN	UNKNOWN	1,743,641	5,231
531	Real Estate	7,792	0.98	383,778	944,906	4,418
532	Rental and Leasing Services	1,019	0.97	483,241	2,609,092	8,218
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	50	UNKNOWN	451,905	2,757,528	8,273
541	Professional; Scientific; and Technical Services	28,284	0.98	823,090	1,287,629	8,393
551	Management of Companies and Enterprises	734	0.82	7,463,110	1,207,340	86,101
561	Administrative and Support Services	12,441	0.96	623,642	1,470,903	6,499
562	Waste Management and Remediation Services	705	0.91	1,957,675	5,663,318	22,296
611	Educational Services	4,164	0.87	3,777,796	363,526	37,778
621	Ambulatory Health Care Services	11,584	0.95	936,062	1,204,416	10,852
622	Hospitals	205	0.41	53,901,534	158,541,672	915,976
623	Nursing and Residential Care Facilities	2,670	0.85	933,842	3,361,833	10,085
624	Social Assistance	46,342	0.99	85,169	495,281	1,486
711	Performing Arts; Spectator Sports; and Related Industries	773	0.95	778,973	154,766	7,814
712	Museums; Historical Sites; and Similar Institutions	269	0.91	799,191	437,989	7,992
713	Amusement; Gambling; and Recreation Industries	2,284	0.91	582,224	390,715	5,822
721	Accommodation	1,684	0.92	463,273	469,106	4,904
722	Food Services and Drinking Places	16,093	0.96	296,082	854,026	3,514
811	Repair and Maintenance	4,627	0.99	283,254	494,163	2,985

INDUSTRY (NAICS CODE) ¹	INDUSTRY DESCRIPTION	TOTAL NUMBER OF BUSINESSES ²	PROPORTION CONSIDERED SMALL ³	AVERAGE ANNUAL PAYROLL	AVERAGE ANNUAL REVENUE	MINOR COST THRESHOLD (USD) ⁴
812	Personal and Laundry Services	5,301	0.99	167,239	171,042	1,848
813	Religious; Grantmaking; Civic; Professional; and Similar Organizations	3,793	0.97	451,782	580,613	4,675
814	Private Households	6,363	UNKNOWN	42,277	116,576	423

Notes:

1. Type of business as identified by three-digit NAICS code.
 2. Some entities represented in these broad industry categories may be public or quasi-public.
 3. In some cases, this value may underestimate the percentage of businesses considered small. For the SBEIS, chapter 19.85 RCW defines small businesses as those with 50 or fewer employees. Washington state employment security department's labor market and economic data reports statewide counts of businesses with 49 or fewer employees.
 4. In accordance with RCW 19.85.030 (1)(a) minor cost threshold is the greater of one percent of annual payroll, 0.3 percent of annual revenue, or \$100.
- Sources:** Washington State Employment Security Department 2020 Labor Market and Economic Data (Number of Businesses and Proportion Considered Small); United States Bureau of Labor Statistics 2020 Total Wages and Number of Establishments (Average Annual Payroll); Washington State Department of Revenue 2020 Gross Business Income and Number of Establishments (Average Annual Revenue).

Although businesses potentially impacted by the proposed rule can theoretically belong to any industry, some industries may be more likely to be affected than others. Outreach efforts consistently identified three main industries they felt were the most likely to be impacted: agriculture, forestry, and HOAs. Agricultural businesses rely on stream diversions for irrigation, forestry businesses for their haul road crossings, and HOAs for irrigation diversions (e.g., for lawn watering) and for culverts and crossings along privately owned roadways.

In addition to the association between these industries and particular structures they use in normal business operations, agriculture and forestry businesses may be more likely than businesses in other industries to own structures on the landscape simply due to their large landholdings. Washington has a total land area of 45.7 million acres, of which roughly 19.8 million are publicly owned and about six million are owned by tribes.^{26 27} Of the remaining 19.9 acres of generally privately owned land, about four million (20 percent) are privately owned forestland and about 8.37 million (42 percent) are devoted to agriculture.^{28 29}

²⁶ Washington State Recreation and Conservation Office. 2014. "Washington Public Lands Inventory Final Report."

²⁷ State of Washington Department of Ecology. "Working with tribal governments." Accessed November 3, 2022 at: <https://ecology.wa.gov/About-us/Accountability-transparency/Government-coordination/Tribal-relations>.

²⁸ Washington State Department of Commerce. "Stewardship and sustainability in a growing industry." Accessed November 1, 2022 at: <http://choosewashingtonstate.com/why-washington/our-key-sectors/forest-products>.

²⁹ Washington State Department of Agriculture. Agriculture Land Use geodatabase. Accessed October 6, 2022 at: <https://agr.wa.gov/departments/land-and-water/natural-resources/agricultural-land-use>.

2.2 COST OF COMPLIANCE: Consistent with RCW 19.85.040(1), this analysis evaluates the relevance of the following potential categories of costs to comply with the proposed rule:

- Reporting, recordkeeping, and other compliance requirements.
- Professional services that a small business is likely to need in order to comply with such requirements.
- Costs required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs.
- Based on input received, determine whether compliance with the rule will cause businesses to lose sales or revenue.

The range of costs for complying with the proposed rule will generally vary according to the structure type and the nature of the violation. For example, the violation could be caused by a buildup of debris, which could potentially be corrected with a few hours of labor (or less). At the higher end, situations could exist where a culvert

requires replacement with a bridge due to inadequate fish passage and large expected changes from climate change. Here we provide cost estimates for replacing (or in the case of dams, removing) five types of structures, though we acknowledge that full replacement (or removal) may not be necessary in every case. At the same time, many projects of this type receive at least partial funding through some grant or cost-sharing program. We highlight some of these programs in a subsequent section but note here that the cost estimates do not necessarily reflect the costs ultimately borne by an owner.

We collected project cost estimates from seven firms for five types of projects: (1) Installing diversion screens, (2) removing dams, (3) installing fish passage improvement structures, (4) installing culverts, and (5) installing bridges. For diversion screening, we learned that it is appropriate to consider two subcategories (small and large). Requested costs for each project type fell in three broad categories, or project phases: (1) permitting, (2) engineering and design, and (3) construction. Not all firms were able to provide estimates for each project and/or phase, and some firms combined permitting with design and engineering. For consistency, therefore, the summarized estimates presented in Exhibit 2-4 combine permitting with design and engineering into a single cost category. Full (anonymized) results from each firm are provided in Attachment C.

EXHIBIT 2-4. COST RANGES FOR REPLACING RELEVANT STRUCTURES

COST CATEGORY	DIVERSION SCREENING (SMALL)	DIVERSION SCREENING (LARGE)	DAM REMOVAL	FISH PASSAGE STRUCTURE	CULVERT	BRIDGE
Permitting, design, and engineering	N/A	\$2,000 - \$4M	\$15,000 - \$4M	\$30,000 - \$400,000	\$5,000 - \$400,000	\$15,000 - \$1M
Construction	\$100 - \$10,000	\$50,000 - \$400,000	\$50,000 - \$1.5M	\$200,000 - \$1.5M	\$40,000 - \$800,000	\$50,000 - \$5M
Total	\$100 - \$10,000	\$52,000 - \$4.4M	\$65,000 - \$5.5M	\$230,000 - \$1.9M	\$45,000 - \$1.2M	\$65,000 - \$6M

Source: Data collected from engineering and consulting firms performing the services (see Attachment C).

The ranges in project cost estimates reported in Exhibit 2-4 reflect two types of variation: variation between firms and variation due to project-specific characteristics. Firm-level variation is provided in Attachment C. Some comparisons between firms are possible in cases where multiple firms provide estimates for a project-phase combination. These are generally in agreement, with a few notable exceptions. One firm provided estimates for diversion screening that were several orders of magnitude larger than others, and another firm did the same for bridges. Differences of these type are most likely indicative of the firm's clientele (e.g., public utility diversions and state highway bridges versus privately owned structures).

Aside from firm-level variation, significant variation exists due to project-specific characteristics (summarized in Exhibit 2-5). Some factors apply to projects across many of the categories. These include things like the number of jurisdictions involved, which can complicate permitting, difficulties moving heavy equipment around more urban environments, and increased transportation costs to more remote locations.

EXHIBIT 2-5. PROJECT-SPECIFIC CHARACTERISTICS DRIVING VARIATION IN TOTAL COST

CATEGORY	DESCRIPTION
Structure characteristics	Structure type, dimensions, roadway design speed, vertical profile, intake speed
Geotechnical factors	Slope, soil type
Site characteristics	Presence of utility, ownership of adjacent land

CATEGORY	DESCRIPTION
Permitting requirements	Involvement of multiple jurisdictions, environmental concerns
Location characteristics	Population density (urban/rural), traffic management during construction
Hydrologic characteristics	Stream flow/velocity
Notes: The influence of these factors on cost are often interactive (e.g., larger structures can trigger additional permitting or require easements).	

Other cost drivers are more specific to particular project types. For diversions, the largest driver of variation is the flow rate at the point of diversion or intake. Smaller pump screens, for example, require a self-cleaning apparatus at flows beyond three cubic feet per second, which can increase the cost by several thousand dollars or more. Larger gravity diversion screens need custom fabrication and construction and require more permitting and complicated installation processes, driving the cost into the tens of thousands or even millions for a small number of very large projects.

Dam removal costs are highly dependent on project scale (i.e., dimensions) and the extent of sediment buildup in the reservoir. If the sediment is determined to contain contaminants, sediment disposal can represent a substantial portion of overall costs.

Costs for culverts and bridges are also highly dependent on scale. Other key factors include the vertical profile of the surrounding road, the designed speed of the roadway, and the need to manage traffic during construction.

Lacking detailed information about the project-specific characteristics (and ownership) of each structure in the inventory, it is impossible to determine the compliance costs for any particular business or even the distribution of compliance costs. However, published data containing costs of completed projects provides some information to characterize the likely distribution, and to ground the cost estimates more generally.

The National Oceanic and Atmospheric Association (NOAA) collects data for projects that received grant funds from the Pacific Coastal Salmon Recovery Fund, including fish screens and culverts.³⁰ The database identifies 69 completed "fish screen" projects. Median cost for these projects is \$72,236 and median is \$202,489. The database does not identify culvert replacement as a unique project type. However, a recent study utilized the database to analyze culvert project costs within Washington and Oregon.³¹ Among the 1,236 culvert projects analyzed, mean cost was \$82,600.

30 Pacific Northwest salmon habitat project database, 2022. National Marine Fisheries Service, Northwest Fisheries Science Center. Accessed November 11, 2022 at: <https://www.webapps.nwfsc.noaa.gov/pnshp/>.

31 Van Deynze, B., et al. 2022. "What influences spatial variability in restoration costs? Econometric cost models for inference and prediction in restoration planning." *Biological Conservation*.

A few studies report dam removal costs. One found a median cost of \$150,000 and mean cost of \$1.8 million based on a national survey of project managers for 317 completed dam removal projects.³² Another analyzed a subset of projects contained in American Rivers' database of dam removals in the United States for which cost information was available, reporting a median of \$116,283 and a mean of \$440,448.³³

32 Bernhardt E.S., et al. 2007. "Restoring Rivers One Reach at a Time: Results from a Survey of U.S. River Restoration Practitioners." *Restoration Ecology*.

33 Blachly, B. and E. Uchida. 2017. "Estimating the marginal cost of dam removal." *Environmental and Natural Resource Economics Working Papers*. University of Rhode Island.

The completed projects reported above do not perfectly match the projects relevant to this rule. However, they provide useful contextual information. First, all of the reported summary statistics fall within the range for each project type obtained from firms as part of this analysis (Exhibit 2-4), supporting the validity of our estimates.

Second, they suggest that the likely compliance cost for most affected businesses in Washington will be at the lower end of the range. The mean and median empirical cost estimates for completed screen, dam removal, and culvert replacement projects cited above are all well below the midpoints of the respective ranges in Exhibit 2-4. In addition, where both means and medians are reported, mean project costs exceed medians. These facts both suggest that values at the high end of the range are less common than those at the lower end (i.e., the distribution is skewed left, and higher-cost projects are outliers).

As a final note about costs, in particular situations, the only compliance cost will be the incremental cost of the climate-adapted crossing requirement versus the full cost of replacing a crossing to comply with fish passage and the climate requirement. Therefore, it would be beneficial to understand how these individual components contribute to overall costs. Regarding this question, firms included in outreach efforts generally indicated two things: (1) Any cost differential associated with constructing bridges and culverts on fish-bearing versus non-fish-bearing streams is negligible, and (2) their existing culvert and crossing design processes tend to already incorporate climate adaptation to some degree. As described in Section 1.3.2, some firms are aware of and already using WDFW's culverts and climate change web application, while others use either a rule of thumb for upsizing or the Washington state department of transportation (WSDOT) standard of increasing current bankfull width by 20 percent and adding two feet.

The culverts and climate change application predicts increases to bankfull width or peak flow will exceed five percent for roughly two-thirds of the state by area, which applies to about 97 percent of known culvert and crossing sites.³⁴ Some areas have projected increases as high as 42.6 percent for bankfull width and 203.5 percent for peak flow. Existing rules of thumb or the WSDOT standard may align with the culvert and climate change application when projected changes are modest, but current practices are unlikely to be sufficient in extreme cases. Unfortunately, there is no way to quantify a threshold when existing practices become insufficient. In addition, there is a large degree of site specificity affecting the incremental cost of upsizing a structure. For example, even minimal upsizing may trigger the need to purchase additional land, raise the vertical profile of the surrounding road, or relocate utilities, all of which can add significant costs. On the other hand, the incremental cost of upsizing may be restricted to the cost of any additional materials required, since permitting, design, and engineering often represent fixed costs. To summarize, the incremental cost of the climate adaptation requirement ranges from zero in cases where sufficient upsizing would occur absent the rule, to a substantial portion of the overall budget in complex cases where things like raising the roadbed, relocating utilities, or shifting from a culvert to bridge design may be necessary.

³⁴ The spatial correlation between structures and climate impacts arises because both are less likely in high elevation areas of the state.

SUMMARY STATISTICS DESCRIBING THE MAGNITUDE OF CLIMATE-INDUCED PROJECTED CHANGES CONTAINED IN WDFW'S CULVERTS AND CLIMATE CHANGE WEB APPLICATION

	PORTION OF STATE WITH PROJECTED INCREASE 5% OR HIGHER	MEAN PROJECTED INCREASE (PERCENTAGE)	MEDIAN PROJECTED INCREASE (PERCENTAGE)	MAXIMUM PROJECTED INCREASE (PERCENTAGE)
Bankfull width	0.64	11.6	9.3	42.6
100-year peak flow	0.66	32.5	25.3	203.5

2.3 ASSESSMENT OF MINOR COST: As summarized in Exhibit 2-4, the likely cost of complying with the rule ranges from \$100 for a small pump diversion screen to \$6 million or higher for a complex bridge construction. Uncertainty in the compliance cost arising from project and site specificity, coupled with uncertainty about the industry classification of any business incurring costs, suggests that the compliance costs will be minor in some situations and more than minor in others. For example, a relatively low compliance cost (e.g., \$500) would be below the minor cost threshold for businesses within most, but not all, industries (see Exhibit 2-3 for the minor cost threshold for each industry). As compliance costs are expected to exceed the minor cost threshold in at least some situations, however, this analysis finds that the proposed rule could impose more-than-minor costs on businesses.

2.4 DISPROPORTIONATE ECONOMIC IMPACT ANALYSIS: When proposed rule changes impose more-than-minor costs to businesses, RCW 19.85.040 requires an analysis that compares the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules to determine whether the costs are considered disproportionate. RCW 19.85.040(1) describes the following formula for determining disproportionate impacts:

$$\frac{C_s}{A_s} > \frac{C_L}{A_L}$$

Where:

- C indicates the cost of compliance,
- A indicates an adjustment factor (total number of employees, total sales, or total labor hours),
- S subscripts denote small businesses (those with 50 or fewer employees) required to comply with the proposed rule, and
- L subscripts denote large businesses (the top 10 percent) required to comply with the rule.

If the analysis finds that the inequality condition is met, the proposed rule is considered to have a disproportionate impact on small businesses. As described in Section 2.1.2, data limitations prevent precise identification of sectors, industries, or particular businesses that may be affected. Therefore, there is no way to empirically perform the analysis. However, insight can be gained from simple reasoning.

As described in Section 2.3, C depends on the type and size of the structure as well as site-specific characteristics. These factors have no known or hypothesized relationship with business size within a particular industry or sector. Therefore, it is reasonable to assume that $C_S = C_L$ (i.e., there is no difference between the expected cost of compliance for small and large businesses). All three potential adjustment factors, on the other hand, are expected to directly correlate with business size within an industry (i.e., $A_S < A_L$). It follows that for any industry, compliance costs are likely to be disproportionately borne by small businesses. Accordingly, this SBEIS identifies and documents cost mitigation strategies.³⁵

³⁵ In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more-than-minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter (RCW 19.85.030(4)).

2.5 COST MITIGATION STRATEGIES: RCW 19.85.030 requires that, when a rule is expected to disproportionately impact small businesses, the agency consider several methods for reducing the impact of the rule on small businesses, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based. These methods may include decisions that were made in determining the provisions of the rule itself, or opportunities to reduce the costs of implementing the rule as written. This section outlines existing and proposed opportunities for offsetting compliance costs, as well as the steps WDFW has taken to limit the costs of the proposed rule to businesses.

The compliance costs presented in Section 2.2.3 represent estimates for the full cost of each relevant service. However, outreach to owners, owner representatives, and firms performing the services indicated that most relevant project types that have been completed to date received at least some grant funding. Exhibit 2-7 highlights these grant programs.

GRANT PROGRAMS AVAILABLE FOR OFFSETTING COSTS TO OWNERS FOR CERTAIN PROJECT TYPES

PROGRAM NAME	LEVEL AND ADMINISTERING AGENCY	PROGRAM INFORMATION
Fish Barrier Removal Board ¹	State; DFW and Recreation and Conservation Office	Grant program for fish passage projects that remove impediments to salmon and steelhead migration. Up to \$40 million in funding available for 2021-2022.
Family Forest Fish Passage ²	State; DNR and Recreation and Conservation Office	Funding for private forestland owners to remove culverts/stream crossings that prevent trout, salmon, and other fish from traveling upstream. Structures must be on forestland and on a fish-bearing stream. Up to \$5.9 million in funding for 2022-2023. \$5,000 cost-sharing for owners who have harvested in the previous three years.
Salmon Recovery Funding Board ³	State; Recreation and Conservation Office	Funding for salmon habitat protection for existing, high-quality habitat or restoration for degraded habitat. Typical projects replace barriers to fish migration, replant stream banks, remove shoreline armoring, etc. Open to local/state agencies, tribes, private landowners, nonprofits. Applicants can request between \$5,000 and \$200,000.
Barrier Removal Grants ⁴	Federal; NOAA	\$65 million in funding available in 2022 for projects that remove in-stream barriers to fish passage (under Bipartisan Infrastructure Law). Open to institutions of higher education, non-profits, commercial organizations, and state, local, and tribal governments. Award amounts range from \$1 million to \$15 million.
Fish Passage Program ⁵	Federal; U.S. Fish and Wildlife Service	Working with private landowners and tribes to remove obsolete/dangerous dams and working with transportation agencies to improve road stream crossings. \$200 million in funding from the bipartisan infrastructure law over the next five years. Six projects in Washington have received funding for culvert replacement and fish passage barrier removal.
Watershed and Flood Prevention Operations Program ⁶	Federal; USDA Natural Resource Conservation Service	Technical and financial assistance to states, local governments, and tribes (project sponsors) for watershed protection projects. Project sponsors can then leverage NRCS assistance to help landowners implement the projects. Types of projects include fish and wildlife enhancement.
Washington Coast Restoration and Resiliency Initiative ⁷	State; Recreation and Conservation Office	Grants of up to \$2 million for specific coastal communities to address restoration and resiliency projects. Eligible applicants include cities, counties, conservation districts, private or public corporations, tribes, nonprofits, and state and federal agencies.
Estuary and Salmon Restoration Program ⁸	State; WDFW	Funding and technical assistance for organizations restoring shoreline and nearshore habitats for salmon restoration. Small grants ranging from \$30,000 to \$150,000 are available for local engagement and restoration projects.
Conservation District Resources ⁹	State; Conservation Commission	Various grant and cost-share programs through conservation districts, including reimbursement for cultural resources surveys and monitoring, which may be required for some fishways projects.

¹ <https://wdfw.wa.gov/about/advisory/fbrb>; <https://ecology.wa.gov/Blog/Posts/September-2021/Up-To-40-million-available-for-streamflow-restora>.

² <https://www.dnr.wa.gov/fffpp>; <https://rco.wa.gov/grant/family-forest-fish-passage-program/>.

³ <https://rco.wa.gov/grant/salmon-recovery/>.

⁴ <https://www.fisheries.noaa.gov/grant/restoring-fish-passage-through-barrier-removal-grants>.

⁵ <https://www.fws.gov/program/national-fish-passage>; <https://www.arcgis.com/apps/dashboards/99040e452de9487f80d9f5748f717880>.

⁶ <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo/>; <https://www.nrcs.usda.gov/wps/portal/nrcs/main/ma/programs/planning/wo/>.

⁷ <https://rco.wa.gov/grant/washington-coast-restoration-and-resiliency-initiative/>.

⁸ <https://wdfw.wa.gov/species-habitats/habitat-recovery/puget-sound/esrp-esrp-grants>.

⁹ <https://www.scc.wa.gov/cd/grants-contracts-and-finance>.

Additionally, RCW 19.85.030(2) specifies particular options that the agency must consider in mitigating rule costs. Exhibit 2-8 identi-

fies each type of cost mitigation opportunity and how WDFW has considered them during this rule-making process.

EXHIBIT 2-8. WDFW ASSESSMENT OF COST MITIGATION OPPORTUNITIES OUTLINED IN RCW 19.85.030

RCW 19.85.030(2) REQUIREMENTS	WDFW RESPONSE
(a) Reducing, modifying, or eliminating substantive regulatory requirements	Two exemptions (agricultural drainage system components installed on or before May 20, 2003, and lawful diversions installed on or before June 11, 1947, in waters containing game fish) are likely to eliminate a large number of small businesses from rule requirements.
(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements	The rule does not introduce any new recordkeeping or reporting requirements.
(c) Reducing the frequency of inspections	WDFW will limit the criteria that trigger a technical assistance or compliance visit, focusing on high priority projects.
(d) Delaying compliance timetables	
(e) Reducing or modifying fine schedules for noncompliance	The rule does not authorize fines, and to the contrary, introduces a graduated system of technical assistance and voluntary compliance options that may be exercised before WDFW resorts to mandatory compliance measures. Following inspection, WDFW can opt to take no action.
(f) Any other mitigation techniques, including those suggested by small businesses or small business advocates	WDFW will direct owners toward existing cost mitigation resources (e.g., grant programs) and is considering a revolving loan program to assist owners achieve compliance.

Many remaining costs associated with the rule, including costs to small businesses, do not readily lend themselves to legal or feasible reductions that are consistent with the clear objectives of chapter 77.57 RCW. The statutes on which the rules are based require fish passage and appropriate screening of diversions, which will impose some unavoidable costs notwithstanding these mitigation efforts.

2.6 INVOLVEMENT OF SMALL BUSINESSES IN RULE-MAKING PROCESS: This section describes how WDFW has sought to engage affected parties, including small businesses, in the rule-making process, and how small businesses were involved in the development of the SBEIS.

2.6.1 INVOLVEMENT IN THE PRESENT RULE MAKING: The proposed rule targets fish passage and screening activities throughout Washington state and does not directly regulate a specific industry or group of businesses. Additionally, the rule does not target specific landowners. Due to the rule's broad nature and numerous fish passage and water diversion structures throughout the state, identifying small business owners has been difficult, especially with available data. To ensure due consideration of potential effects on small businesses, WDFW took a broad approach to outreach, communicating the objectives of the rule proposal and soliciting input through virtual presentations. News releases and social media notifications were also used to publicize rule-making activities. This provided opportunities for potentially affected small businesses to be involved in the rule proposal process. The outreach activities and events to date are summarized in Exhibit 2-9.

WDFW OUTREACH ACTIVITIES FOR PROPOSED RULE

DATE	ACTIVITY
June 23 and July 1, 2020	Tribal technical workshop presentation on existing WDFW fish passage and screening processes and to take comments about the direction of rule development
July 1, 2020	CR-101, preproposal statement of inquiry, published (filed on June 17, 2020)
July 20, 2020	News release
July 29, 2020	General public technical workshop presentation on existing WDFW fish passage and screening processes and to take comments about the direction of rule development
February 10, 2021	Tribal policy webinar to review the initial draft rule proposal and take comments
February 16, 2021	News release

DATE	ACTIVITY
February 26, 2021	General public policy webinar to review the initial draft rule proposal and take comments
October 11, 2022	News release
October 18, 2022	Tribal second policy webinar to review the updated draft rule proposal and take comments
October 25, 2022	General public second policy webinar to review the updated draft rule proposal and take comments

In addition, WDFW has attempted to identify and directly contact affected industries for engagement. For example, employees at the Washington Forest Protection Association were emailed regarding the October 25, 2022, policy webinar and were encouraged to provide feedback regarding the draft rule language. More recently, WDFW has engaged with the department of agriculture (DOA) to work with their affected stakeholders. WDFW has accepted public comments via email, phone, fax, and mail since the first news release on July 20, 2020. In 2021, WDFW began to offer a dedicated public input website for additional comments and feedback. There has been minimal engagement from self-identified business owners.

2.6.2 INVOLVEMENT IN SBEIS DEVELOPMENT: As described previously, because this rule making does not regulate a specific industry or group of businesses, it was not possible to systematically identify and target outreach activities at businesses in general, and small businesses in particular, that may incur costs as a result of the rule. IEC did, however, conduct several interviews with state agencies and other groups who interact directly and regularly with the two industries most likely to own structures based on the scale of their landholdings (agriculture and forestry). These included representatives from conservation districts, DOA, Washington state department of natural resources, and the Washington state water resources association. A complete description of the outreach activities conducted to support this analysis is included in Attachment A.

2.7 JOBS CREATED OR LOST: Increased compliance will drive an increase in demand for all services related to replacing or modifying diversion screens and fishways (e.g., permitting, engineering, design, construction). For example, several interviewees mentioned firms manufacturing precast concrete structures (i.e., box culverts) as potential beneficiaries. To the extent that increased demand for these products and services results in firms hiring additional staff, that creation of jobs could be considered an indirect effect of the rule. However, whether this would occur, and the number of businesses or jobs affected, is uncertain. On a related note, several interviewees also indicated that there is currently a lack of professional capacity in the state to perform the relevant services. The effect of the proposed rule on job losses is also uncertain. Compliance costs are highly variable, but they can potentially be significant. Imposing significant costs on any business carries a risk of job loss. At the same time, WDFW has taken many steps and identified many opportunities to mitigate the costs to owners. Coupled with WDFW's stated intention of prioritizing the highest impact projects, it is unlikely that the proposed rule will result in significant job losses.

2.8 SUMMARY CONCLUSIONS: The proposed rule targets structures on the landscape posing an impediment to fish passage and safety. These structures can theoretically be owned by businesses from any industry, although businesses within some industries (e.g., agriculture and for-

estry) are more likely to own relevant structures due to the nature of their business and their large landholding. Regardless, only a portion of any structures owned by businesses will be impacted by the rule.

Compliance costs stemming from the rule are expected to range widely depending on a number of factors. They may be as low as \$100 for a small pump diversion screen to over \$6 million for a complicated bridge design. Compliance cost variation, coupled with variation between industry in the minor cost threshold, suggests that the costs are likely to be more than minor in some but not all cases.

Finally, within any industry and for any particular project, the costs are expected to disproportionately impact small businesses. This is because no known relationship exists between drivers of project costs and business size, so cost per \$100 of revenue, cost per employee, or cost per labor hour will almost certainly be higher for small businesses. Given the findings outlined above, WDFW has identified several actions intended to mitigate the impacts to small businesses.

REFERENCES: LEGAL AND POLICY DOCUMENTS: Chapters 19.85, 76.09, 77.55, 77.57, 87.03 RCW and chapter 220-660 WAC.

Washington v. United States, 584 U.S. ____ (2018)

PEER REVIEWED RESEARCH:

Bernhardt E.S., et al. 2007. "Restoring Rivers One Reach at a Time: Results from a Survey of U.S. River Restoration Practitioners." Restoration Ecology.

Van Deynze, B., et al. 2022. "What influences spatial variability in restoration costs? Econometric cost models for inference and prediction in restoration planning." Biological Conservation.

Wilhere, G., et al. 2017. "Incorporating climate change into culvert design in Washington State, USA." Ecological Engineering.

TECHNICAL REPORTS AND OTHER NON-PEER REVIEWED RESEARCH:

Blachly, B. and E. Uchida. 2017. "Estimating the marginal cost of dam removal." Environmental and Natural Resource Economics Working Papers. University of Rhode Island.

Cascadia Consulting Group. 2018. "Southern Resident Orca Task Force: Report and Recommendations." Accessed October 20, 2022 at: https://www.governor.wa.gov/sites/default/files/OrcaTaskForce_reportandrecommendations_11.16.18.pdf.

Wilhere, G., et al. 2017. "Incorporating Climate Change into the Design of Water Crossing Structures - Final Project Report." Washington Department of Fish and Wildlife.

A copy of the statement may be obtained by contacting Gabrielle Stilwater, P.O. Box 43200, Olympia, WA 98504-3200, phone 564-999-0768, fax 360-902-2946, Attn: Gabrielle Stilwater, TTY 360-902-2207, email FishPassageRules@dfw.wa.gov, <https://wdfw.wa.gov/species-habitats/habitat-recovery/fish-passage/rule-making>.

July 17, 2023

Scott Bird
Rules Coordinator

OTS-4699.3

**Chapter 220-670 WAC
FISHWAY AND SCREENING RULES**

NEW SECTION

WAC 220-670-010 Purpose. The ability of salmon and steelhead to migrate to and from their traditional spawning grounds is vital to their recovery in Washington. Additionally, other fish species and the freshwater life stages of juvenile salmon move between different areas of the stream to find suitable habitat. Barriers such as deteriorating or outdated fishways and water diversions block fish from swimming upstream and moving within the stream, undermining recovery efforts. Two actions crucial to fish recovery are correcting human-made fish passage barriers and properly screening surface water diversions to enable safe upstream and downstream passage for all fish at all life stages.

This chapter establishes rules for the department's fish passage and screening authorities under chapter 77.57 RCW.

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NEW SECTION**WAC 220-670-020 Instructions for using chapter 220-670 WAC.**

This chapter defines passability and protection standards for fishways and fish guards, and with respect to those structures, provides for the protection of fish life at all life stages. These rules are intended to be used in tandem with chapter 220-660 WAC, Hydraulic code rules. The hydraulic code rules contain guidance for the construction or performance of hydraulic projects that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state. Both chapters reflect the current and best science, technology, and construction practices related to fish protection.

The department will consider new science and technology as it becomes available and will allow alternative practices that provide equal or greater protection for fish life. In addition to the rules in this chapter, the department has developed guidance to help owners of fishways and water diversions understand and comply with fishway and screening requirements. The guidance reflects the department's experience and expertise with various types of structures. Following the guidance will help ensure that a structure will adequately protect and pass fish. All guidance documents are available on the department's website.

[]

NEW SECTION

WAC 220-670-030 Definitions. The following are definitions for terms used in this chapter:

(1) "Bankfull width" means the width of the surface of the water at the point where water just begins to overflow into the active flood plain. In streams where there is no flood plain, it is often the width of a stream or river at the dominant channel forming flow that recurs every one to two years.

- (2) "Climate adapted water crossing" means a water crossing structure for which the design has been modified to accommodate changes in the stream flow and/or channel shape caused by future climate change.
- (3) "Department" means the department of fish and wildlife.
- (4) "Director" means the director of the department of fish and wildlife.
- (5) "Ditch" means a wholly artificial watercourse or a lake, river, or stream altered by humans.
- (6) "Diversion" means to divert water from one course to another. Diversion, when used without qualification, includes the diversion of surface water and the withdrawal of groundwater.
- (7) "Diversion structure" means any structure that functions to facilitate withdrawal of water from the natural watercourse.
- (8) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.
- (9) "Entrained" means the entrapment of fish into a watercourse diversion that has no screen, into high velocity water along the face of an improperly designed screen, or into the vegetation cut by a mechanical harvester.
- (10) "Fish" means all fish species, including food fish, shellfish, game fish, unclassified fish and shellfish species, and all stages of development of those species.
- (11) "Fish guard" means a device installed at or near a surface water diversion headgate, or on the intake of any device used for removing water from fish-bearing waters, to prevent entrainment, impingement, injury, or death of fish life. Fish guards physically keep fish from entering the diversion or intake and do not rely on avoidance behavior.
- (12) "Fish habitat" or "habitat that supports fish life" means habitat, which is used by fish life at any life stage at any time of the year including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat.
- (13) "Fish passage improvement structure" means artificial structures that are used to provide passage through, over, and/or around artificial barriers. They provide a graduated change in gradient with refuge areas allowing for fish to pass barriers.
- (14) "Fish screen" means fish guard.
- (15) "Fishway" means a structure, facility, or device that is designed to enable fish to effectively pass around or through an obstruction without undue stress or delay. They are generally known as "water crossing structures" or "fish passage improvement structures."
- (16) "Game fish" is defined by RCW 77.08.020.
- (17) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state.
- (18) "Impinge" or "impingement" means the condition where a fish comes in contact with the surface of a screen and cannot volitionally escape. This occurs when the approach velocity exceeds the swimming capability of a fish given the screen size and condition.
- (19) "Lake" means any natural standing fresh waters or artificially impounded natural fresh waters of the state, except impoundments of the Columbia and Snake rivers.
- (20) "Maintenance" means repairing, remodeling, or making minor alterations to a facility or project to keep the facility or project in properly functioning and safe condition.

(21) "Mitigation" means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to fish life or habitat that supports fish life.

(22) "Ordinary high water line" or "OHWL" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of water are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(23) "Person" means a structure owner, the owner's agent, or the person in charge of operating the structure. The term person includes an individual, a public or private entity, or organization.

(24) "Protection of fish life" means avoiding, minimizing unavoidable impacts, and compensating for remaining impacts to fish life and the habitat that supports fish life through mitigation sequencing.

(25) "Rehabilitation" means major work required to restore the integrity of a structurally deficient or functionally obsolete structure. This can include partial replacement of a structure.

(26) "Replacement" means the complete removal of an existing structure and construction of a substitute structure in the same location.

(27) "River" means "watercourse."

(28) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(29) "Unimpeded fish passage" means the free movement of all fish species at any mobile life stage around or through a human-made or natural structure.

(30) "Water crossing structures" means structures that span over, through, or under a water course. Examples are bridges, culverts, and conduits.

(31) "Water right" means a certificate of water right, a vested water right or claim to a valid vested water right, or a water permit, under Title 90 RCW.

(32) "Watercourse," "river," or "stream" means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or entirely artificially watercourses, except where they exist in a natural watercourse that has been altered by humans.

(33) "Written notice" or "written notification" means a communication sent through U.S. mail or email.

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NEW SECTION

WAC 220-670-040 Applicability of fish passage and screening authority. (1) The standards of this chapter apply to the following structures and circumstances:

(a) Performance standards:

(i) Ensuring that all fish species at all life stages can freely move through and/or around fishways.

(ii) Ensuring that all fish species at all life stages are safe from diversion structures that may harm or cause entrainment or impingement.

(b) Projects:

(i) All new fishways and diversion structures connecting to a lake, stream, or river.

(ii) The repair or replacement of existing noncompliant fishways and diversion structures connecting to a lake, stream, or river.

(2) The provisions of this chapter do not apply to the following:

(a) Tide gates, flood gates, and associated human-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates.

(b) Lawful diversions of water from a lake, stream, or river that

(i) contain game fish exclusively (do not contain food fish), and (ii) were installed on or prior to June 11, 1947.

(3) For fishways and water diversion devices in existence on September 1, 1963, or before, the director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish screen without cost to owner. The fishway or diversion structure will be maintained at the expense of the owner.

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NEW SECTION**WAC 220-670-050 Standards for fishways and water diversions.**

This section requires fish passage through obstructions and appropriate screening of water diversions. The standards of this section are intended to ensure protection and passability for fish at all life stages.

(1) **Water crossing structures.** This subsection applies only to water crossing structures over fish-bearing lakes, streams, and rivers.

(a) **Description:** Water crossing structures are built to facilitate the movement of people, animals, or materials across or over rivers and other water bodies. These structures include bridges, culverts, and conduits.

(b) **Fish life concerns:** Water crossing structures in fish-bearing streams must allow fish to move freely through them at all flows when fish are expected to move. All water crossing structures must retain upstream and downstream connection to maintain fish habitat and provide unimpeded fish movement. Structures that are not designed to accommodate current and future flows can block or alter these processes. Growing evidence shows that climate change is impacting our region's aquatic systems. Washington's hydrology is changing, including reductions in glaciers and snowpack size and earlier peak stream flow in

many rivers. Most freshwater fish species can only survive in certain water temperature ranges or stream flow conditions. Climate change can threaten aquatic ecosystems by altering these conditions including increasing stream temperature, altering stream flow due to drought or increased storms, and worsening other stressors. These trends are expected to continue, along with increasing flood size and decreasing summer low flows. Typically, the size of water crossing structures like culverts and bridges is based on bankfull width. As the size of floods increases, water crossing sizes must also increase. Culverts are generally designed to last 50 to 100 years under current stream conditions. Designing culverts to be resilient to future changes in stream conditions will reduce the risk of structural failure and the creation of fish passage barriers.

(c) **Standards:**

(i) Water crossing structures must provide unimpeded passage for all species of adult and life history stages of fish. Passage is assumed when there are no barriers due to behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, and other related conditions. Fish passage improvement structures will only be approved where (A) extreme and unusual site conditions prevent a person from complying with the standards in this section and (B) associated impacts are adequately mitigated.

(ii) Projections of future 100-year peak flow and future bankfull width shall be fully considered in the design of water crossing structures, and, taking those projections into account, water crossing structures must be capable of freely passing all species and life histories of fish expected to be present in that system. To determine the future bankfull width and future 100-year peak flow, a person must use (A) the department's Culverts and Climate Change web application located on the department's website, or (B) another method approved by the department. If the projected change in bankfull width and 100-year peak flow is less than five percent, further consideration of future bankfull width and future peak flow is not required in the design of the water crossing structure.

(iii) Climate adapted water crossings must still follow the rules provided elsewhere in this chapter and in chapter 220-660 WAC. Appropriate methods to design water crossing structures are available in the department's *Water Crossing Design Guidelines*, or other published manuals and guidelines approved by the department. A list of approved manuals and guidelines is on the department's website.

(iv) Methods and guidance to initially determine if the fishway can freely pass fish can be found within the fish passage inventory and assessment guidance on the department's website. The fish passage inventory and assessment guidance should be considered along with the site-specific metrics listed above.

(d) **Existing water crossing structures:** Structures that were in existence on or before the adoption of this chapter that were legally installed are not required to consider projections of future bankfull width and future 100-year peak flows unless being rehabilitated or replaced, so long as they function as originally intended, have not exceeded their useful life, and are not otherwise required to be replaced relative to an existing agreement.

(2) **Fish passage improvement structures.** The standards in this subsection apply to fish passage improvement structures, including fish ladders, weirs constructed for fish passage management, roughened channels, trap-and-haul operations, and hydraulic design culvert retrofits.

(a) **Description:** Fish passage improvement structures facilitate the passage of fish through or around a barrier. They restore upstream and downstream fish access to habitats that have become isolated by human activities such as placing culverts, dams, and other artificial obstructions.

(b) **Fish life concerns:** Barriers can block fish from using or accessing upstream or downstream spawning and rearing habitat. The preferred method of providing fish passage is to remove artificial fish passage barriers and ensure unimpeded passage of fish at all life stages, as well as to maintain natural channel processes and function. However, when it is not feasible to remove an artificial barrier, a fish passage improvement structure may be an alternative mitigation measure. Fish passage improvement structures are generally not preferred because they can be partial barriers to fish passage and generally require regular maintenance to provide fish passage as intended. Fish passage improvement structures that mainly pass one species, life history stage, or class of fish may unintentionally limit the passage of other species.

(c) **Standards:**

(i) Fish passage improvement structures, such as fish ladders, must not accumulate sediment, ice, and debris at the downstream entrance, or upstream exit of the structure that could impact flow or passage.

(ii) The fish passage structure must not result in significant migratory delays as determined by the department or mortality to fish life due to disorientation, distraction, predation, stress, or injury.

(iii) Water must adequately flow through the structure at a reasonable velocity for the species and life history stages that are expected to be present in that system.

(iv) Any water surface drop present at a fish passage improvement structure must not exceed .24 meters at any of the controls to be fully passable.

(v) Fish passage improvement structures should not be used to bypass permanent natural barriers except in limited situations where the department determines they are necessary to restore native fish species.

(vi) Methods and guidance to initially determine if the fish passage improvement structure can pass fish can be found within the fish passage inventory and assessment guidance on the department's website. The fish passage inventory and assessment guidance should be considered along with the site-specific metrics listed above.

(3) **Water diversions.** This subsection applies to water diversions and fish guards. For diversions and fish guards in wholly artificial waterways, the provisions in this section match those of WAC 220-660-250 to ensure consistent design and construction of diversions and screens.

(a) **Description:** Surface water diversions are common instream features in agricultural areas where the water is used for irrigation. Throughout the state, people also divert water for hydropower, industrial, recreational, residential, municipal, and hatchery uses. A water right must be obtained by the Washington department of ecology prior to diverting waters of the state.

(b) **Fish life concerns:** Surface water diversions must be appropriately screened to prevent fish from being drawn into the diversions where they are at risk of injury or death from entrainment and/or impingement. Other elements of a water diversion can result in direct and indirect sources of injury or mortality. Wing and check dams can

prevent or delay upstream and downstream fish passage, increase predation, and fish may be physically injured or dewatered by active cleaning mechanisms or bypass mechanisms.

(c) **Standards:** Diversion structures must be designed and maintained so that fish are unharmed if fish life is present at a diversion or water intake. Effective fish screening is assumed when a given fish screen has appropriately sized screen material and approach velocities, no apparent damage, such as holes, dents, or corrosion, and there is no accumulation of woody, vegetative, or other debris near the screen when the device is in use. Fish screen design criteria and methods to initially determine if the diversion structure is protecting fish is described in the fish passage inventory and assessment guidance on the department's website. The fish passage inventory and assessment guidance should be considered along with the site-specific metrics listed in this section.

(d) **Water diversion design, construction, operation, and maintenance:**

(i) A diversion structure must not hinder upstream or downstream adult and juvenile fish passage. If passage problems develop, the department may require a person to modify the diversion structure.

(ii) At pump stations, screens, and headgate areas, a person may use excavation equipment or suction dredge to remove accumulated silts and gravel from within 20 feet of the point of diversion unless otherwise permitted. Place material must be removed from the OHWL so it will not reenter a lake, river, or stream. The water diversion must be open during this work to capture disturbed sediment within the irrigation diversion and minimize loss of sediment into the stream.

(iii) A person must equip and maintain any device used for diverting water from a fish-bearing watercourse with a fish screen approved by the department to prevent passage, entrainment, or impingement of fish into the diversion structure. A person must maintain the fish screen and associated structures as necessary to achieve the appropriate approach velocity, a functional bypass, and fish protection criteria. Methods and guidance to initially determine if the diversion structure is protecting fish life can be found within the fish passage inventory and assessment guidance on the department's website. The fish passage inventory and assessment guidance should be considered along with the site-specific metrics listed in this section.

(iv) Irrigation diversions must not create blind diversion channels leading to the fish screen. Diversions must be equipped with a fish bypass mechanism to provide opportunity for fish entrained within a delivery canal to volitionally return to the stream.

(v) Gravity diversions:

(A) Wing and check dams.

(I) Prior to constructing a wing or check dam, a person must contact the department for opportunity to assess the site and determine whether active spawning and incubation is occurring at the site.

(II) A person must maintain diversion canals to maximize hydraulic gradient in the diversion canal to minimize the need for work within the natural watercourse. Maintenance includes removing accumulated sediment and debris from the point of diversion.

(III) Unless a permanent structure is approved, temporary wing or check dams for irrigation may be constructed using a combination of local bed materials, jersey barriers, concrete blocks, steel posts and wood, pinned straw bales, plastic sheeting, and similar inert materials.

(IV) Where gravel dams are permitted, they must be constructed with gravels available on-site waterward of the ordinary high water line, or with clean round gravel transported to the site. Limit bed disturbance to the minimum needed to achieve the provisions of the water right.

(V) Bed excavation depth to construct an irrigation diversion must not exceed 18 inches unless otherwise approved by the department to avoid destabilizing the streambed.

(VI) Earth or dirt must not be used to seal check or wing dams. Straw, plastic sheeting, filter fabric, and similar inert materials may be used to seal wing or check dams.

(VII) Do not use logs or other woody material waterward of the ordinary high water line to construct the dam unless approved by the department. Large wood from upland locations may be used to create a wing or check dam.

(VIII) If logs or other large woody material block water flow into a ditch or inhibit construction, a person may relocate them within the ordinary high water line.

(IX) Wing or check dams must be constructed in a manner that does not cause bank erosion.

(X) All foreign materials, except clean or native gravel or large woody material, used to construct wing or check dams must be removed within seven days after the end of the irrigation season.

(B) Diversion dams must not extend completely across the stream unless needed to seal the dam to achieve the water right.

(C) Temporary water control structures must be removed or breached down to the natural bed elevation in at least two locations at the end of the irrigation season. Temporary water control structures include, but are not limited to, gravel berms or temporary check structures made from hay bales, wood, metal, or other materials.

(vi) Start-up and shut-down of water diversions.

(A) A person must clean and maintain the fish bypass mechanism of all roots, sediments, vegetation, and debris prior to diverting water to ensure it is operational and will prevent injury or stranding of fish life.

(B) A person must ensure that there is sufficient flow within the bypass mechanism to safely return fish life from the fish screen to state waters.

(C) If at any point during water diversion there is insufficient instream flow to provide opportunity for fish life to migrate downstream of the bypass outlet, a person must close the fish bypass until there is sufficient flow.

(D) A person must slowly ramp down flows at the end of the irrigation season in a manner that prevents stranding or predation of fish life within a canal above the fish screens or within the fish bypass mechanism. Do not close the headgate completely or remove the diversion structure until fish have either left the canal and bypass or are salvaged and returned to the stream. Headgates located downstream of the fish screen may be closed immediately at the end of the irrigation season.

(e) Limit of department authority over water diversions and intakes:

(i) The department cannot limit emergency water diversions during emergency fire response. When possible, a person must notify the department before the emergency diversion. When advance notification is not possible, a person must notify the department within 24 hours of

the emergency diversion, at the 24-hour hotline phone number at 360-902-2537.

(ii) The department cannot limit the amount or timing of water diverted under a water right, other than ensuring that there is sufficient bypass flow to return fish back to the stream of origin from a water diversion. However, the department requires compliance with the provisions within chapter 220-660 WAC for work that will use, divert, obstruct, or change the natural flow or bed of any lake, river, or stream, or that will utilize any of the waters of a lake, river, or stream to divert water under a water right. The department also requires compliance with the provisions of this chapter to ensure adequate fish passage and/or protection at a water diversion site.

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NEW SECTION

WAC 220-670-060 Compliance with chapter 220-670 WAC standards.

A person must comply with all applicable standards of chapters 77.57 and 77.55 RCW, and this chapter. The department will help the regulated community understand how to voluntarily comply through education and technical assistance.

When a person does not voluntarily comply, the department may progressively elevate enforcement responses to achieve a compliant structure. The type of enforcement actions range from issuing a voluntary correction request, to issuing a mandatory notice to comply and, when appropriate, civil and/or criminal enforcement actions, such as injunctive relief or criminal prosecution. This section outlines the enforcement tools available to WDFW to facilitate compliance with chapter 77.57 RCW and this chapter.

(1) **Voluntary compliance:**

(a) "Voluntary compliance" means an act of following a rule or law, or of acting according to an agreement without being forced to comply.

(b) For the construction of a new fishway, diversion, or fish screen, or rehabilitation, replacement, or maintenance of an existing fishway, diversion, or fish screen, a person must obtain a construction permit called the hydraulic project approval (HPA) from the department when applicable. Procedures for an HPA can be found in chapter 220-660 WAC.

(c) At proposed or existing structure locations where an HPA is not required, the department may request a structure owner enter into an agreement to ensure the construction of a new fishway, diversion, or fish screen, or the rehabilitation, replacement, or maintenance of an existing fishway, diversion, or fish screen is done in a manner that protects fish life. In the absence of such an agreement, the department will assess compliance with the requirements of chapter 77.57 RCW and this chapter independently. The agreement must protect fish life as follows:

(i) Technical provisions in the agreement must meet requirements within this chapter for fishways and water diversions; and

(ii) The provisions in the agreement may include the proposed project plans for meeting the requirements of this chapter and a narrative that includes detail on construction materials, timing, inva-

sive species control, pre- and post-construction notifications, clean up, and other considerations specific to the site and project.

(2) **Technical assistance program:** The department will continue to develop programs to encourage voluntary compliance. These programs include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate delivery methods of technical assistance. Technical assistance includes:

(a) Information on the laws, rules, and compliance methods and technologies applicable to the department's programs;

(b) Information on methods to avoid compliance problems;

(c) Assistance in applying for required department permits; and

(d) Information on the mission, goals, and objectives of the program.

(3) **Technical assistance site visit:**

(a) A technical assistance visit is defined as a visit by the department to a project site or other location that:

(i) Has been requested or is voluntarily accepted; and

(ii) The department declares to be a technical assistance visit at the start of the visit.

(b) If during a technical assistance visit the department identifies any violations of law or department rules, the department will inform the person of the violation, including a description of what is not in compliance and how to achieve compliance during the visit or within a reasonable time thereafter. The technical assistance visit may result in a correction request or notice to comply.

(c) The department may issue a notice to comply under this section without first issuing a correction request when a violation is observed during a technical assistance visit if:

(i) The person has previously been notified for the same or similar type of violation under chapter 77.57 or 77.55 RCW; or

(ii) The violation has a probability of causing more than minor harm to fish life.

(4) **Compliance inspections:** If the department becomes aware of conditions that do not comply with the applicable laws and rules enforced by the department, the department may conduct a compliance inspection site visit.

(a) During a compliance inspection the department may issue a correction request or notice to comply. If the department identifies any violations of law or department rules, the department will inform the fishway or diversion structure owner of the violation, including a description of what is not in compliance and how to achieve compliance during the visit or within a reasonable time thereafter.

(b) The department recognizes the high volume of existing fish passage and diversion structures throughout Washington. When prioritizing compliance inspection site visits, prioritizing the deployment of compliance resources, and determining the appropriate enforcement response to a violation, the department will consider the nature of the fish resources impacted by the existing noncompliant structure as well as the quality and quantity of associated habitat.

(c) The department will also consider the following when determining the appropriate enforcement response to a violation:

(i) Previous violation history of the person;

(ii) Severity and repairability of the impact of the violation(s) on fish life;

(iii) Whether the violation(s) was intentional; and

(iv) The extent, if any, to which the person has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life.

(5) **Compliance pathways:**

(a) **Correction request:**

(i) A correction request is an informal written request issued to a fishway owner, the owner's agent, or the person in charge, or the diversion structure owner, which can be used to gain compliance and communicate violations discovered during a technical assistance site visit or compliance inspection.

(ii) When issuing a correction request, the department must provide for a reasonable time to achieve compliance.

(iii) Contents of a correction request: A correction request must include:

(A) A description of what is not in compliance with chapter 77.57 RCW or this chapter;

(B) The text of the specific section(s) or subsection(s) of chapter 77.57 RCW or this chapter;

(C) A statement of what is required to achieve compliance;

(D) The date by which the fishway or fish screen owner must achieve compliance;

(E) Notice of the means to obtain technical assistance services provided by the department or others; and

(F) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the correction request.

(iv) The correction request may request the structure owner to enter into an agreement with the department in order to correct a non-compliant structure. The agreement must protect fish life as follows:

(A) The agreement must specify the corrective action to be taken and may also require additional action to avoid, minimize, and rectify for adverse impacts to fish life associated with the corrective action;

(B) Technical provisions in the agreement must meet requirements within this chapter for fishways and water diversions; and

(C) The provisions in the agreement must include the proposed project plans for meeting the requirements of this chapter and a narrative that includes detail on construction materials, timing, invasive species control, pre- and post-construction notifications, clean up, and other considerations specific to the site and project.

(v) The department must provide for a reasonable time to achieve compliance.

(vi) Time extension to comply: A request for an extension of the deadline for achieving compliance with the correction request must be submitted to the department in writing. The department must respond in writing to a request for extension of the deadline.

(vii) A correction request is not a formal enforcement action and is not subject to appeal under WAC 220-670-070 or 220-670-080.

(viii) The department may issue a notice to comply without first issuing a correction request when a violation is observed if:

(A) The person has previously been notified for the same or similar type of violation under chapter 77.57 or 77.55 RCW; or

(B) The violation has a probability of causing more than minor harm to fish life.

(b) **Notice to comply:**

(i) If a correction request does not effectuate full compliance with chapter 77.57 RCW and this chapter, the person has previously

been subject to an enforcement action for the same or similar type of violation under chapter 77.57 or 77.55 RCW, or there is probability a violation may cause more than minor harm to fish life, the department may issue a notice to comply to the structure owner.

(A) A notice to comply must specify the corrective action to be taken, and may also require additional action to avoid, minimize, and rectify adverse impacts to fish life associated with the corrective action.

(B) Contents of a notice to comply. A notice to comply must include:

(I) A description of the condition that is not in compliance with chapter 77.57 RCW and/or this chapter;

(II) The text of the specific section(s) or subsection(s) of chapter 77.57 RCW and/or this chapter;

(III) A statement of what is required to achieve compliance;

(IV) The date by which the department requires compliance to be achieved;

(V) Notice of the means to obtain any technical assistance services provided by the department or others;

(VI) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order; and

(VII) The right to appeal.

(ii) The department must provide for a reasonable time to achieve compliance, which shall not be less than 30 days.

(iii) Signature authority for a notice to comply: A notice to comply must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.

(iv) Providing notice: Within five business days of issuing a notice to comply, the department must mail a copy of the notice to the last known address of the structure owner or, at the department's option if the structure is a fishway or requires a fishway, to the last known address of the owner's agent or the person in charge of operating the structure. Within five business days of issuing a notice to comply, the department must also mail a copy of the notice to the local jurisdiction in which the fishway or diversion structure is located.

(v) Consequences of noncompliance: Failure to comply with a notice to comply can result in subsequent civil or criminal enforcement actions.

(vi) Time extension to comply: A request for an extension of the deadline for achieving compliance with the notice to comply must be submitted to the department in writing. The department must respond in writing to a request for extension of the deadline.

(vii) Appealing a notice to comply: A notice to comply may be appealed within 30 days from the date of receipt of the notice by the structure owner. Informal appeals must be filed in the form and manner provided in WAC 220-670-070 and formal appeals must be filed in the form and manner provided in WAC 220-670-080.

(c) **Additional responses to noncompliance:**

(i) The department may initiate additional civil or criminal enforcement actions in circumstances where a structure owner has failed to comply with a notice to comply.

(ii) Civil or criminal enforcement action may include any remedy available under Washington law, specifically including, but not limited to:

(A) An action for injunctive relief to abate a noncompliant obstruction or diversion structure as a public nuisance.

(B) Reporting the violation to law enforcement as a gross misdemeanor under RCW 77.15.310.

(C) Reporting the violation to law enforcement as a gross misdemeanor under RCW 77.15.320.

(D) Department removal of obstruction(s) and construction of fishway(s).

(I) If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within 30 days after written notice to comply has been served upon the owner, their agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam or obstruction and upon the personal property of the person owning the dam or obstruction. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

(II) If, within 30 days after notice to construct a fishway or remove a dam or obstruction, the owner, the owner's agent, or the person in charge fails to do so, the dam or obstruction is deemed a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.

(E) Replacement/repair of a noncompliant diversion structure by the department:

(I) If an owner fails to equip a diversion structure with a fish guard approved by the director, the director or the director's designee may close a water diversion structure and keep it closed until it is properly equipped with a fish guard, screen, or bypass.

(II) The fish screens must be installed at places and times prescribed by the director, and based on plans approved by the director prior to construction, upon 30 days' notice to the owner of the diversion structure.

(III) If within 30 days after notice to equip a diversion structure the owner fails to do so, the director may take possession of the diversion structure and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion structure and upon the real and personal property of the owner. Notice of the lien will be filed and recorded in the office of the county auditor of the county in which the action is taken.

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NEW SECTION

WAC 220-670-070 Informal appeal of notice to comply. An informal appeal is an internal department review of a notice to comply and is conducted under chapter 34.05 RCW (Administrative Procedure Act).

(1) The department recommends that a structure owner aggrieved by a notice to comply issued under this chapter contact the department employee responsible for issuing the notice before initiating an in-

formal appeal. Discussion of concerns with the department employee may result in a resolution without the need for an informal appeal.

(2) The department encourages a structure owner aggrieved by a notice to comply to take advantage of the informal appeal process before initiating a formal appeal. However, a structure owner may pursue a formal appeal under WAC 220-670-080 without first obtaining informal review under this section. This rule does not apply to correction requests.

(3) Requesting an informal appeal. A notice to comply may be informally appealed only by the structure owner.

(4) A request for an informal appeal must be in writing and must be received by the department within 30 days from the date of receipt of the notice to comply. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to 45 days from the date of mailing. A sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt.

(5) A request for informal appeal must be submitted in one of the following ways:

(a) Mailed to:

Fishways & Diversion Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
P.O. Box 43234
Olympia, WA 98504-3234

(b) Email: FishPassageRules@dfw.wa.gov

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Olympia, Washington 98501, Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, email address (if available), and phone number;

(b) The specific components of the notice to comply that the appellant contests;

(c) The date of the notice being contested;

(d) A copy of the notice that the appellant contests;

(e) A short and plain statement explaining why the appellant considers the notice to be unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) The specific relief requested;

(h) The attorney's name, address, email address (if available), and phone number, if the appellant is represented by legal counsel; and

(i) The signature of the appellant or their attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the notice to comply.

(8) Informal conference. If the appellant agrees, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for

the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearings. If a resolution is not reached through the informal conference process, then the fishway and water diversion appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the fishway and water diversion appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within 60 days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-670-080. Formal review must be requested within the time periods specified in WAC 220-670-080.

[]

NEW SECTION

WAC 220-670-080 Formal appeal of notice to comply. A formal appeal is an adjudicative proceeding under chapter 34.05 RCW.

(1) The department recommends that a structure owner aggrieved by a notice to comply issued under this chapter contact the department employee responsible for making the decision on the fishway or water diversion before initiating a formal appeal. Discussion of concerns with the department employee may result in a resolution without the need for a formal appeal.

(2) The department encourages a structure owner aggrieved by a notice to comply issued under this chapter to take advantage of the informal appeals process under WAC 220-670-070 before initiating a formal appeal. However, a structure owner may pursue a formal appeal under this section without first completing the informal appeal process under WAC 220-670-070. This rule does not apply to correction requests.

(3) Requesting a formal appeal. Issuance of a notice to comply may be formally appealed only by the structure owner.

(4) A request for formal appeal must be in writing and must be received by the department within 30 days from the date of receipt of the notice to comply. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to 45 days from the date of mailing. A sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt.

(5) A request for formal appeal must be submitted in one of the following ways:

(a) Mailed to:

Fishways & Diversion Appeals Coordinator

Department of Fish and Wildlife
Habitat Program
P.O. Box 43234
Olympia, WA 98504-3234

(b) Email: FishPassageRules@dfw.wa.gov

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Olympia, Washington 98501, Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Formal Appeal" and, must include the following:

(a) The appellant's name, address, email address (if available), and phone number, and if represented by an attorney, the attorney's name, mailing address, email address, and phone number;

(b) The specific components of the notice to comply that the appellant contests;

(c) The date of the notice to comply being contested;

(d) A copy of the notice to comply that the appellant contests;

(e) A short and plain statement explaining why the appellant considers the notice to be unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) The specific relief requested;

(h) The signature of the appellant or their attorney.

(7) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within 30 days from the date of receipt of the department's written decision in response to the informal appeal.

(8) The department at its discretion may stay the effectiveness of any decision or order that has been formally appealed. At any time during the appeal, the appellant may seek a stay from the presiding officer pursuant to RCW 34.05.467.

(9) If there is no timely request for an appeal, the notice to comply will be final and nonappealable.

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WSR 23-16-014
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 20, 2023, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-015.

Title of Rule and Other Identifying Information: WAC 181-82A-210 and 181-82A-212, specialty endorsement policy.

Hearing Location(s): On September 28, 2023, at 8 a.m., in Spokane, Washington. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8 a.m., Monday, September 25, 2023.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb.k12.wa.us, by Thursday, September 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal of WAC 181-82A-210 regarding who can propose adding a new specialty endorsement and amending WAC 181-82A-212 regarding who can offer a specialty endorsement.

Reasons Supporting Proposal: PESB decided that changes were needed to [create a] specialty endorsement policy.

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: PESB, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jisu Ryu, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8510; and Enforcement: Erica Hernandez-Scott, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-890-2443.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

July 19, 2023
Jisu Ryu
Rules Coordinator

OTS-4662.1

AMENDATORY SECTION (Amending WSR 22-08-101, filed 4/5/22, effective 5/6/22)

WAC 181-82A-212 Proposal process for an organization to be approved to offer a specialty endorsement. Organizations seeking approval to offer a specialty endorsement follow a one-phase proposal process.

(1) Organizational eligibility:

~~((a) Organizations eligible to apply for approval as a specialty endorsement program provider include those eligible to serve as an in-service education agency under WAC 181-85-045.~~

~~(b) In order to offer a specialty endorsement, providers must maintain status as an approved in-service education agency or)~~ The following organizations are eligible to apply to offer a specialty endorsement:

(a) Professional educator standards board approved educator preparation program providers; or

(b) Other organizations maintaining status as approved in-service education agencies under WAC 181-85-045 in partnership with a professional educator standards board approved educator preparation program provider.

(2) Proposal process. The prospective provider will submit a proposal that addresses all requirements published by the board including, but not limited to, the following:

(a) Description of how the organization will determine that a participant has met the requirements for the specialty endorsement, including the essential learnings;

(b) Statement of need for the provider offering the specialty endorsement, demonstrating response to educator, student, and community needs;

(c) Description of strategies and practices the organization will use to recruit and retain participants from historically excluded groups, including participants of color;

(d) Description of how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under WAC 181-85-204;

(e) At least two letters of support from education or community-related organizations; and

(f) Organizational capacity to support participants in completing a specialty endorsement.

(3) Reapproval, rescindment, and disapproval.

(a) Specialty endorsement program providers approved under this section must complete a reapproval process every five years per a schedule posted by the professional educator standards board.

(b) The board, upon receipt of a serious complaint from any source, or upon its own initiative prompted by indications of the need for response, may require a provider to complete the reapproval process.

(c) Approved providers that voluntarily rescind their approval shall be permitted to continue to prepare and recommend for a specialty endorsement. Candidates who have been previously admitted to the program, provided that no recommendations for credentials will be accepted later than 12 months following receipt of the formal letter to rescind provider approval. The provider will notify all currently enrolled candidates of the provider's change in status and notify candi-

dates of the 12-month timeline to complete requirements for recommendation.

(d) Disapproved specialty endorsement programs may reapply for approval by following the specialty endorsement approval process.

[Statutory Authority: Chapter 28A.410 RCW. WSR 22-08-101, § 181-82A-212, filed 4/5/22, effective 5/6/22; WSR 21-20-047, § 181-82A-212, filed 9/28/21, effective 10/29/21.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-82A-210	Proposal process for a new specialty endorsement in Washington state.
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**WSR 23-16-020
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed July 20, 2023, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-007.

Title of Rule and Other Identifying Information: WAC 181-78A-100
Existing approved programs.

Hearing Location(s): On September 28, 2023, at 8 a.m., in Spokane, Washington. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 28, 2023.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8 a.m., Monday, September 25, 2023.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb.k12.wa.us, by Thursday, September 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will change and extend the current program review cycle for educator preparation programs.

Reasons Supporting Proposal: This will allow programs adequate time to meaningfully improve their programs and incorporate legislative requirements and initiatives.

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: PESB, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jisu Ryu, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8510; Enforcement: Erica Hernandez-Scott, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-890-2443.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

July 19, 2023
Jisu Ryu
Rules Coordinator

OTS-4672.1

AMENDATORY SECTION (Amending WSR 22-01-017, filed 12/2/21, effective 1/2/22)

WAC 181-78A-100 Existing approved programs. Providers of programs approved by the board shall comply with the review process established in this chapter and published by the board.

(1) **Teacher and principal preparation programs:** The board will annually review performance data of all educator preparation programs based on components and indicators established in this chapter and published by the board. The professional educator standards board will provide annual updated written guidance to providers regarding the submission of annual program data.

(a) **Notification:** If annual preparation program data analysis indicates that program performance falls below thresholds during any given review period, the board staff will provide written notification to the educator preparation program provider. The educator preparation program provider may choose to submit a response to the board staff. The response must be received by board staff within four weeks following receipt of the notification by the provider. The response should offer evidence of factors and circumstances that explain why program performance is below board approved thresholds on the indicators identified in the notice. The board staff will offer providers guidance on content and timelines for submission of this optional response. The board will review responses concurrently with annual data analysis reports.

(b) **Interventions:** Providers with program performance below indicator thresholds are subject to graduated levels of intervention as follows:

(i) **Intervention 1 - Required self-study report:** If a provider that received written notification of performance below threshold on one or more indicators during the previous review period has performance below thresholds on the same indicator(s) during the subsequent review period, the board will send the provider a second notification. The provider must complete a self-study report related to the components and domain(s) identified in both notifications and submit it to the board. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also submit evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. If the board is satisfied with the self-study report, the board will approve it at a board meeting. If the board is not satisfied with the self-study report, staff will give providers additional written timelines and guidance to address the board's concerns.

(ii) **Intervention 2 - Formal review:** If a provider demonstrates performance below thresholds for a third successive review period or more, the professional educator standards board will provide a third notification. Based on its discretion and authorized by a vote, the board also may require a formal review related to the provider's performance in the domains of practice identified in the notifications. Prior to commencing a formal review, the board will consider the notifications, responses, and self-study report to determine whether to proceed with or postpone a formal review.

(A) The formal review will incorporate the following elements:

(I) The board shall determine the schedule, format, and which forms of validation shall be used to evaluate programs.

(II) The provider will submit requested evidence to the board staff.

(III) A review team will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed.

(IV) The review team will provide a report to the board identifying areas of practice associated with the previous notifications where the provider is out of compliance with educator preparation program requirements, expectations, and outcomes established in chapter 181-78A WAC. The review team may also identify areas of practice where the provider is out of compliance with educator preparation program requirements that were not associated with previous notifications but were noticed by the review team during the process of review. The report may also identify whether the approved indicators or thresholds are functioning as intended.

(V) Board staff serving on the review team will provide assistance to the review team during the review process but will not serve in an evaluative role.

(VI) The review team will submit its report and other appropriate documentation to the provider and the board within one year of the board designating the program for formal review.

(VII) The board may extend the length of the one-year period for submission of the review team's report up to two years at its discretion.

(B) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is to focus on the evidence, conclusions, and recommendations in the report but also may include additional evidence of factors and circumstances that explain why program performance is persistently below board approved thresholds on the indicators identified in the notice and self-study report. The board shall publish the process for submitting and reviewing the reply.

(C) In considering the review team's report, the board may request additional information or review, or take action to extend, or change the program's approval status under WAC 181-78A-110.

(c) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board under WAC 10-08-035 no more than 30 calendar days from the decision date.

(d) **Curriculum and instruction review:** In addition to annual indicator reviews, the board will publish a schedule for focused curriculum and instruction review for fully approved teacher and principal preparation programs.

~~((e))~~ (i) The professional educator standards board shall conduct formal reviews to evaluate curriculum and instruction, with particular focus on the cultural competency, diversity, equity, and inclusion standards; the social and emotional learning standards and benchmarks; and the approved preservice educator role standards. The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs. The result of the review will be a report. Based on the findings of the re-

port, the board will decide to either renew full approval status or designate the program on limited approval under WAC 181-78A-110 pending action on the findings of the review report.

~~((i))~~ (ii) Curriculum and instruction reviews will be conducted at least every ~~((five))~~ six years and not more frequently than every ~~((three))~~ four years.

~~((ii))~~ (iii) Program providers will submit requested evidence to the staff of the board.

~~((iii))~~ (iv) A review team will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Members of the review team shall include two preparation program providers at peer programs, at least one P-12 practitioner and one PEAB member with expertise related to the program scheduled for review, and two individuals with expertise related to culturally responsive practice and social and emotional learning.

~~((iv))~~ (v) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements established under this chapter and the program expectations and outcomes established in WAC 181-78A-220.

(2) **Superintendent programs:** The board will annually review data related to the performance of all superintendent programs according to data reporting guidance published by the board.

(a) **Annual data analysis:** After each annual review period, the board will give superintendent program providers written analysis of the program's annual data submission.

(b) **Superintendent program review:** The professional educator standards board shall determine the schedule for formal reviews.

The board will determine whether a formal review will take place and what forms of documentation and validation shall be used for evaluation.

(i) Superintendent program reviews will be conducted at least every ~~((five))~~ six years and not more frequently than every ~~((three))~~ four years.

(ii) Superintendent program providers will submit requested evidence to the staff of the professional educator standards board.

(iii) A review team will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual data analyses or in the program's self-study report.

(iv) One of the two providers with peer representatives on the review team will be scheduled for annual review during the subsequent review period.

(v) Prior to the scheduled review, superintendent program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submis-

sions. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also provide evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. Evidence shall include such data and information from the annual data submissions required under WAC 181-78A-235 as have been designated by the board as evidence pertinent to the program approval process.

(c) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements, expectations, and outcomes established in chapter 181-78A WAC.

(i) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(ii) The board may extend the length of the one-year report period up to two years at its discretion. The review team's report and other appropriate documentation will be submitted to the provider and the board within one year of the board designating the program for formal review.

(iii) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review. The board shall publish the process for submitting and reviewing the reply.

(iv) In considering the review team's report, the board may request additional information or review, or take action to extend or change the educator preparation program's approval status under WAC 181-78A-110.

(d) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief, adjudicated hearings. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035 no more than 30 calendar days from the decision date.

(3) **Program administrator programs:** The board will annually review data related to the performance of all program administrator programs according to data and reporting guidelines published by the board.

(a) Program administrator programs implemented in conjunction with principal preparation programs will be reviewed concurrently with that provider's principal preparation program.

(b) Program administrator programs implemented in conjunction with superintendent preparation programs will be reviewed concurrently with that provider's superintendent preparation program.

(c) Program administrator programs not implemented in conjunction with a principal or superintendent program will be reviewed on a schedule published by the board.

(4) **School counselor programs:** School counselor program providers shall comply with accrediting procedures for council for the accreditation for counseling and related education programs, unless the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any

additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of residency school counselor programs without approval from council for the accreditation for counseling and related education programs shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225.

(b) The board will place any existing approved residency school counselor program not accredited from the council for the accreditation for counseling and related education programs into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards under WAC 181-78A-225.

(c) Annual data analysis: After each annual data submission, the board will give school counselor preparation program providers written analysis of the program's annual data submission.

(d) School counselor preparation program review: The board shall determine the schedule, format, and which forms of validation shall be used to evaluate programs under applicable program approval standards listed in WAC 181-78A-225.

(i) School counselor preparation program reviews will be conducted during the same period of time as their council for the accreditation for counseling and related education programs' review. If the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225, the review will take place as scheduled by the board.

(ii) School counselor preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required under WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iii) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual data analyses.

(iv) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use preparation program data available at the time of review.

(B) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board-approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence

required, how it may be gathered and used, and how it must be submitted.

(v) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(e) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements as listed in WAC 181-78A-225.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than 30 calendar days from the decision date.

(5) **School psychologist programs:** Providers of school psychologist programs shall comply with accrediting procedures for the National Association for School Psychologists. School psychologist program providers shall comply with accrediting procedures for the National Association for School Psychologists, unless the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of school psychologist programs without approval from the National Association for School Psychologists shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225.

(b) The board will place any existing approved school psychology program not accredited from the National Association of School Psychologists into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards under WAC 181-78A-225.

(c) Annual data analysis: After each annual data submission, the board will give school psychologist preparation program providers written analysis of the program's annual data submission.

(d) School psychologist preparation program review: The board shall determine the schedule, format, and which forms of validation shall be used to evaluate programs under applicable program approval standards listed in WAC 181-78A-225.

(i) School psychologist preparation program reviews will be conducted during the same period of time as their National Association for School Psychologist's review. If the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225, the review will take place as scheduled by the board.

(ii) School psychologist preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required under WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iii) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual data analyses.

(iv) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use preparation program data available at the time of review.

(B) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board-approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(v) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(e) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements as listed in WAC 181-78A-225.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than 30 calendar days from the decision date.

(6) **Career and technical education administrator and business and industry route educator preparation programs:** The board will annually review data related to the performance of all such programs according to data reporting guidance published by the board.

(a) **Annual data analysis:** After each annual review period, the board will give career and technical education administrator and business and industry route educator preparation program providers written analysis of the program's annual data submission.

(b) **Career and technical education administrator and business and industry route educator preparation program review:** The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs.

(i) Career and technical education administrator and business and industry route educator preparation program reviews will be conducted at least every ~~((five))~~ six years and not more frequently than every ~~((three))~~ four years.

(ii) Prior to their scheduled review, career and technical education administrator and business and industry route educator preparation program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials.

(iii) Career and technical education administrator and business and industry route educator preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required under WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iv) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise in career and technical education related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual data analyses or in the program's self-study report. One of the two providers with peer

representatives on the review team will be scheduled for the subsequent program review.

(v) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use the self-study report to identify program provider's goals and strategies for improvement.

(B) The review team and the preparation program provider will use preparation program data available at the time of review.

(C) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(vi) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(c) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than 30 calendar days from the decision date.

[Statutory Authority: Chapter 28A.410 RCW. WSR 22-01-017, § 181-78A-100, filed 12/2/21, effective 1/2/22; WSR 21-15-103, § 181-78A-100, filed 7/20/21, effective 8/20/21; WSR 21-08-023, § 181-78A-100, filed 3/29/21, effective 4/29/21; WSR 20-16-027, § 181-78A-100, filed 7/24/20, effective 8/24/20; WSR 18-17-089, § 181-78A-100, filed 8/14/18, effective 9/14/18. Statutory Authority: RCW 28A.410.210. WSR 15-12-123, § 181-78A-100, filed 6/3/15, effective 7/4/15; WSR 14-24-004, § 181-78A-100, filed 11/19/14, effective 12/20/14; WSR 14-12-018, § 181-78A-100, filed 5/23/14, effective 6/23/14; WSR 13-20-028, § 181-78A-100, filed 9/23/13, effective 10/24/13; WSR 12-23-023, § 181-78A-100, filed 11/13/12, effective 12/14/12; WSR 12-12-033, § 181-78A-100, filed 5/29/12, effective

6/29/12; WSR 12-02-028, § 181-78A-100, filed 12/28/11, effective 1/28/12; WSR 10-08-017, § 181-78A-100, filed 3/29/10, effective 4/29/10; WSR 08-16-005, § 181-78A-100, filed 7/23/08, effective 8/23/08; WSR 06-24-082, § 181-78A-100, filed 12/5/06, effective 1/5/07; WSR 06-14-010, § 181-78A-100, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-78A-100, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-15-052, § 180-78A-100, filed 7/12/05, effective 8/12/05; WSR 05-04-056, § 180-78A-100, filed 1/28/05, effective 2/28/05; WSR 04-21-038, § 180-78A-100, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 04-04-090, § 180-78A-100, filed 2/3/04, effective 3/5/04; WSR 02-18-037, § 180-78A-100, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.305.130 (1) and (2). WSR 00-09-049, § 180-78A-100, filed 4/14/00, effective 5/15/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-78A-100, filed 12/23/98, effective 1/23/99.]

WSR 23-16-034
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed July 21, 2023, 3:25 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: Olympic Region Clean Air Agency (ORCAA) Regulations: Rule 1.11 Federal Regulation Reference Date and Rule 1.12 State Regulations Reference Date.

Hearing Location(s): On September 13, 2023, at 10:00 a.m., at ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502. In addition to attending the hearing in person, remote participation via Zoom is also an option. Please see our website for log-in information www.orcaa.org/about/board-of-directors/.

Date of Intended Adoption: September 13, 2023.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., email mark.goodin@orcaa.org, fax 360-491-6308, by September 12, 2023.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by September 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA proposes to update the effective date of the federal regulations and state regulations that were previously adopted by the agency. Currently, where federal and state rules are referenced in agency regulations, the effective date of the regulations are July 1, 2022. The agency intends to update the effective date annually. This proposal would change the reference date to July 1, 2023.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Lauren Whybrew, 2940 Limited Lane N.W., Olympia, 360-539-7610 ext. 107; Implementation and Enforcement: Jeff C. Johnston, Ph.D., 2940 Limited Lane N.W., Olympia, 360-539-7610 ext. 100.

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 applies to state government. It does not apply to local air agencies per RCW 70A.15.2040.

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

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70A.15.2040(1) states: "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

Scope of exemption for rule proposal:

Is fully exempt.

July 21, 2023
Jeff C. Johnston, Ph.D.
Executive Director

AMENDATORY SECTION

RULE 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((2))3.

AMENDATORY SECTION

RULE 1.12 STATE REGULATION REFERENCE DATE

Whenever state regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((2))3.

WSR 23-16-050
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-10—Filed July 26, 2023, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-081 on May 2, 2023.

Title of Rule and Other Identifying Information: Amending coastal and Puget Sound recreational and commercial fixed gear fishery and implementing electronic monitoring for the coastal commercial Dungeness crab fishery.

Hearing Location(s): On September 28-30, 2023, at 8:00 a.m., at the Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901; in person and online. Visit our website at <https://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or email commission@dfw.wa.gov for instructions on how to join the meeting.

Date of Intended Adoption: October 26-28, 2023.

Submit Written Comments to: Heather Hall, P.O. Box 43200, Olympia, WA 98501, email crab-and-shellfish-rulemaking@PublicInput.com, website <https://publicinput.com/crab-and-shellfish-rulemaking>, phone comments 855-925-2801, project code 2872, by October 2, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, by September 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to regulations include both non-administrative and administrative amendments. The non-administrative changes are presented first followed by administrative changes. Each of the amended rules and their specific changes are listed below:

Nonadministrative:

Installation and Use of Electronic Monitoring (WAC 220-340-420): Proposed rule changes would require the installation and use of an electronic monitoring (EM) system on vessels participating in Washington's nontribal coastal commercial Dungeness crab fishery. The EM system is a tool that enables the collection of more accurate and timely fishing information, thereby improving the Washington department of fish and wildlife's (WDFW) ability to ensure fishing is not occurring within closed areas, confirm that participants are not fishing before the opening of the crab season, confirm adherence to license-based or seasonal pot limits, and gather additional information that may aid in identifying instances of gear tampering.

Coastal Commercial Crab Logbook - Not Required with Operational EM (WAC 220-340-460): Proposed rule changes would eliminate the requirement for an operator in the coastal Dungeness crab fishery to maintain a paper logbook when an EM system is installed and fully operational on the vessel. A paper logbook would only be required when an EM system has failed. The effect of this change is to reduce the reporting burden on vessel operators.

Line Marking in Coastal Dungeness Crab Fishery (WAC 220-340-430): Proposed rule changes would specify that line-marking must be sufficient to identify it as being exclusive to the coastal Dungeness crab fishery and that the two 12-inch red marks, an existing line-marking requirement for coastal Dungeness crab fishery participants, be con-

tinuous. These proposed changes standardize line markings in the coastal Dungeness crab fishery and clarify that the line itself is to be marked for the full extent of the 12-inch span. These changes advance the intended purpose of line-marking to increase gear visibility in marine mammal entanglements and thus fishery attribution.

Prohibit Line Marks or Colors Required in Another Fishery (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220): Proposed rule changes would prohibit the use of line marks or color combinations in Washington fixed gear fisheries that are required for other state or federal fisheries. The effect of the proposed rule changes is to disallow fishers that currently do not and are not required to mark the fishing line from the marking line in a manner that is consistent with another fishery and to further support fishery-specific attribution of line in marine mammal entanglements.

Crab and Shrimp Buoys (WAC 220-330-020): Proposed changes would allow buoys to be submerged by a director-issued permit in personal use (i.e., recreational) fisheries.

Limit Line in Shellfish and Hagfish Fisheries to Amount Needed (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520): Proposed rule changes would allow no more than the amount of line required to compensate for tides, currents, and weather in commercial and recreational fisheries for Dungeness crab and shrimp, and commercial hagfish. The change is necessary to standardize and implement fishing best practices consistent with reducing gear entanglements with marine mammals.

Standardize Crab and Shrimp Pot Buoy Colors (WAC 220-330-020, 220-340-430, and 220-340-520): Proposed rule changes would standardize and clarify buoy colors for recreational and commercial crab and shrimp pot gear. These changes standardize that buoys in the Puget Sound and coastal commercial crab fisheries may not be both red and white unless at least 30 percent of the buoy is marked in additional color(s). The proposed rule changes clarify that for commercial shrimp fisheries in Puget Sound, buoy color, already required to be orange, must be *solid* orange and for Puget Sound recreational shrimp pots, already required to be yellow, must be *solid* yellow. These proposed changes are consistent with the intent to support attribution of marine mammal entangled gear to a specific fishery.

Administrative Rule Changes:

Define a New Management Category for Nonspot Shrimp Species (WAC 220-320-015): Proposed rule changes would define a new management "non-spot shrimp" or pandalid complex to include shrimp species other than spot shrimp. The purpose for the change is to eliminate the need to list each nonspot shrimp species individually, thereby improving the clarity and brevity of the rule.

Require Annual Registration of Commercial Crab Buoy Color Schemes (WAC 220-340-430): Proposed rule changes would align Puget Sound and coastal commercial Dungeness crab fishery requirements and specify that crab fishery participants must complete buoy registration annually using the WDFW online registration form. Existing rules require the creation and registration of a unique buoy color scheme for each commercial license but do not specify a frequency.

Buoy Tags in Commercial Dungeness Crab Fisheries (WAC 220-340-430): Proposed rule changes would cap the number of buoy tags issued in the Puget Sound commercial crab fishery, limit the number of potential pots deployed to the current maximum pot limit of 100 per license, with no pot replacement. The proposed rule changes also streamline the reporting of derelict gear and issuance of replacement

tags for commercial users, reduce waste, and reduce the possibility of issuing of a buoy tag for the wrong fishery.

Puget Sound Commercial Pot Shrimp (WAC 220-340-520): Proposed rule changes would clarify that the pot limit for commercial shrimp pot fisheries in Puget Sound are based on the fishery and gear type and are not per license limit. Additionally, the changes would limit fishing depth and align the rule with revised electronic fish ticket rules.

Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530): Proposed rule changes would update Puget Sound commercial crab and shrimp fishery boundary designations. The purpose of the changes is to correct outdated boundary designations and add specially designated fishing areas.

Shellfish Harvest Logs (WAC 220-340-030): Proposed rule changes would correct and update logbook reporting requirements for Puget Sound and coastal commercial shellfish fisheries where logs are required by defining some rule elements separately either by fishery or region (i.e., Puget Sound or coast) and by deleting unnecessary requirements. The changes are needed to clarify rule language and align rule language with the implementation of mandatory electronic fish tickets and electronic monitoring.

Fish Receiving, Transportation Ticket, and Quick Reporting Revisions (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420): Proposed rule changes would describe when and where electronic fish tickets must be submitted to the department, including provisions for when access to cellular broadband is not immediately available when the fish ticket is completed. The proposed changes would clarify applicability of transportation ticket requirements by including "shellfish" in the rule, improve transportation ticket information by requiring the WDFW-issued vessel identification number and date of harvest, and clarify transportation ticket requirements for crab removed from the vessel prior to landing in Puget Sound. Proposed rule changes clarify stored crab reporting and time frame, and sale reporting for stored crab.

Reasons Supporting Proposal: The adoption of these proposed rules will enhance fishery monitoring and clarify existing rules. Overall, these rule amendments will accomplish conservation objectives, advance achieving orderly fisheries, and improve the enforceability of current rules.

Nonadministrative:

Installation and Use of Electronic Monitoring (WAC 220-340-420); **Coastal Commercial Crab Logbook - Not Required with Operational EM** (WAC 220-340-460): The EM system is necessary to ensure fishing is not occurring within closed areas, to monitor adherence to license-based and seasonal pot limits, and to collect spatial and temporal fishing data to inform management of the fishery, including addressing marine mammal interactions, particularly endangered humpback whales.

WDFW comanages the nontribal coastal commercial Dungeness crab fishery with the tribal governments whose usual and accustomed (U&A) fishing grounds are located on the outer coast of Washington state. As a comanager of the fishery, WDFW must ensure accurate reporting of where and when state-licensed fishermen are fishing, and that nontribal fishery participants do not cross into areas that are reserved for tribal fishing only. WDFW must also implement actions to reduce the entanglement of whales in Dungeness crab fishing gear. The EM system will more accurately identify the locations in which fishing gear is

deployed thereby improving data inputs to models that estimate or predict the distribution and likelihood of cooccurrence. With this collected data, WDFW could consider management measures to reduce the amount of gear that could be deployed in areas of concern. Finally, implementation of EM systems will improve WDFW's ability to manage the fishery with respect to biotoxins (particularly domoic acid). With EM systems in place, WDFW would have the ability to manage biotoxin events using area closures to prohibit the fishery in discrete areas affected by biotoxins. Like other area management needs, the EM system ensures fishing around biotoxin restricted areas is enforceable and protects public health.

Line Marking in Coastal Dungeness Crab Fishery (WAC 220-340-430); **Prohibit Line Marks or Colors Required in Another Fishery** (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220); **Crab and Shrimp Buoys** (WAC 220-330-020); **Limit Line in Shellfish and Hagfish Fisheries to Amount Needed** (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520); **Standardize Crab and Shrimp Pot Buoy Colors** (WAC 220-330-020 and 220-340-520): These regulatory changes enhance compliance with the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected. To address entanglement cases with marine mammals where the entangling gear is visible but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service has indicated that lines and buoys marked in a way that is unique to each fishery would aid in achieving compliance with the MMPA and ESA. Marking supports positive attribution of gear to the fishery. Attribution can be improved by prohibiting a fishery from using marks/line colors required in another fishery; other coastal states have implemented or intend to implement a similar rule. These proposed changes to the rules clarify the requirements for unique line marks or buoy colors for Washington fisheries that use line and buoys as part of the gear configuration. These proposed changes also support reducing the amount of fishing line in the water, thereby reducing entanglement risk.

Administrative Rule Changes:

To effectively manage commercial and recreational shellfish fisheries, WDFW utilizes a variety of management measures relating to fishing area, gear, and catch reporting. As part of the proposed rule package, to improve management and enforcement capabilities, WDFW is also proposing administrative rule changes for coastal and Puget Sound recreational and commercial shellfish fisheries.

Define a New Management Category for Nonspot Shrimp Species (WAC 220-320-015): This rule proposal simplifies regulatory language, supporting improved compliance and enforcement.

Require Annual Registration of Commercial Crab Buoy Color Schemes (WAC 220-340-430): The rule change to require annual registration would ensure commercial buoy color schemes remain unique to each license and records are up-to-date such that lost or entangled gear can be associated with the owner. This rule change improves current buoy color registration practices and incorporates the use of an electronic buoy registration form to ensure that licensed harvesters are compliant with conservation plan requirements. The rule change proposal would also create a data source for enforcement to identify gear with gear owners. The rule change would advance efforts to further improve gear marking and aid in achieving compliance with the MMPA and ESA.

Buoy Tags in Commercial Dungeness Crab Fisheries (WAC 220-340-430): The proposed rule changes streamline the reporting of derelict gear and issuance of replacement tags for commercial users, reduce waste and costs by limiting the number of replacement tags that can be obtained, and minimizes the possibility of issuing of a buoy tag for use in the wrong fishery.

Puget Sound Commercial Pot Shrimp (WAC 220-340-520): The proposed rule change implements depth restrictions to limit interaction with nontarget species in the nonspot shrimp fishery per Puget Sound co-manager shellfish agreements.

Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Shellfish Harvest Logs (WAC 220-340-030): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Fish Receiving, Transportation Ticket, and Quick Reporting Revisions (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA, 360-581-5611; Implementation: Coast - Matt George, 48 Devonshire Road, Montesano, WA 98563, 360-249-4648; or Puget Sound - Katelyn Bosley, 375 Hudson Street, Port Townsend, WA 98368, 360-302-3030; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

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 RCW 34.05.328(5), a cost-benefit analysis is not required for this rule as WDFW is not implementing chapter 77.55 RCW with this rule.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

An evaluation by WDFW determined that the rule requirement of the EM system is the only element that would result in costs to businesses. The other elements of the rule package are not expected to result in costs to businesses. Therefore, this evaluation of whether the proposed rule is likely to result in more-than-minor costs is focused on the EM system requirement of the rule proposal. Based on a range of annual revenues in the coastal Dungeness crab fishery, the analysis estimates a minor cost threshold of between \$450 and \$1,500 for affected businesses. The likely cost of complying with the proposed rule ranges from \$1,830 to \$2,045. As the businesses in the coastal commercial Dungeness crab fishery are almost exclusively small businesses (fewer than 50 employees), this analysis finds that the proposed rule

would have a disproportionate cost impact on small businesses. WDFW has provided significant opportunities for stakeholder input during the development of the proposed rule making over a period of four years. Based on stakeholder input, potential mitigation options to defray the costs to small businesses were identified. These include the cessation of the logbook requirements, allowing flexibility in the type of the EM unit purchased, coordinating EM unit purchases to take advantage of bulk pricing, and allowing fishermen to revert to use of paper logbooks in cases of EM system malfunction.

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-17](#) issue of the Register.

A copy of the statement may be obtained by contacting Lorna Wargo, 1111 Washington Street S.E., Olympia, WA, phone 360-581-5611, email Lorna.Wargo@dfw.wa.gov.

July 26, 2023
Scott Bird
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-17](#) issue of the Register.

WSR 23-16-057
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed July 26, 2023, 11:08 a.m.]

Continuance of WSR 23-10-028.

Preproposal statement of inquiry was filed as WSR 23-04-053.

Title of Rule and Other Identifying Information: Medical examiner, coroner, and medicolegal investigator training and certification through the Washington state criminal justice training commission.

Hearing Location(s): On September 13, 2023, at 10 a.m., at 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: September 13, 2023.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email Derek.Zable@cjtc.wa.gov, by September 10, 2023.

Assistance for Persons with Disabilities: Contact Derek Zable, phone 206-793-6332, TTY 206-793-6632, email Derek.Zable@cjtc.wa.gov, by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establishing rules to carry out RCW 43.101.480, regarding the training and certification of medical examiners, coroners, and other medicolegal investigators.

Reasons Supporting Proposal: To establish clear rules and requirements to receive or be exempted from training, and establishes the processes to receive certification and seek recertification.

Statutory Authority for Adoption: RCW 43.101.080 and 43.101.480.

Statute Being Implemented: RCW 43.101.480.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Pendray, 19010 1st Avenue South, Burien, WA 98148, 206-571-2190.

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; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 26, 2023
Derek Zable
Records Manager

OTS-4501.1

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-03-030 Request for exemption, waiver, extension or variance. (1) Requests for exemption, waiver, extension or variance from the commission's regulations may be pursued only under this section.

(2) A request for exemption, waiver, extension or variance may be made only by the head of a law enforcement or corrections agency or head of an agency responsible for death investigations, on behalf of an employee or employees directly affected by the regulation. Where a request for an exemption or variance is on behalf of a chief of police or chief medical examiner, such request shall be made by the appointing authority. Requests under this section shall be for mitigation only and shall not raise questions of law or of fact. Such requests shall be submitted in writing to the executive director of the commission and shall include, where applicable:

(a) The particular regulation from which exemption, waiver, extension or variance is sought;

(b) The nature of the exemption, waiver, extension or variance which is sought;

(c) The mitigating factors in the particular case;

(d) The name and mailing address of the requesting party and any person who will personally appear in support of the requesting party, including legal counsel;

(e) A statement that the person signing the request has read it and that to the best of his or her knowledge or information and belief the contents thereof are true.

(3) Upon receipt of a request under this section which satisfies the requirements of subsection (2) of this section, the executive director shall schedule the request for full consideration at the next commission meeting. If it is determined by the chair that circumstances justify expedited review, the chair may schedule a special meeting for the sole purpose of effecting review. After full consideration of the matter, the commission shall deny the request, grant the request or provide alternative mitigating relief.

[Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-03-030, filed 8/4/00, effective 9/4/00.]

OTS-4502.3

**Chapter 139-27 WAC
MEDICOLEGAL FORENSIC INVESTIGATION TRAINING AND CERTIFICATION**

NEW SECTION

WAC 139-27-010 Definitions. (1) **Coroner** means the elected or appointed official tasked with overseeing the medicolegal system of a county, whose principal duty is to investigate death.

(2) **Good standing** means a member of a profession regulated by this chapter who:

(a) Does not have their professional license(s) or certification(s) suspended or revoked;

(b) Does not have any findings by an employer for discrimination, sexual harassment, or other policy violations that factually demonstrate unethical behavior; and

(c) Is in compliance with their employing agency's training requirements.

(3) **Medical examiner** means a physician who is responsible for examining bodies postmortem to determine the cause and manner of death.

(4) **Medicolegal forensic investigation training** means training designated to provide tools, resources, and standards to individuals who perform medicolegal death investigations.

(5) **Medicolegal investigative personnel** means personnel whose role is to investigate any death that falls under the jurisdiction of a coroner's or medical examiner's office, including all unnatural, suspicious, or violent deaths.

(6) **Part-time** means any personnel who work less than full-time hours. Full-time hours are defined by their employer. For the purposes of this chapter, a single day of work in a month will count as employment for that month.

[]

NEW SECTION

WAC 139-27-020 Notice of hire/separation and ineligibility. (1) Coroner's and medical examiner's offices must use an approved form to notify the commission within 15 days when mandated personnel begin ongoing regular employment or appointment with the agency.

(2) Upon separation of a coroner, medical examiner, or medicolegal investigative personnel from a coroner's or medical examiner's office, or upon their movement or rotation, for any reason, to a position within that office that does not require certification, the agency shall notify the commission via an approved form within 15 days of the separation date.

(3) Upon an agency receiving notice or making a final determination on any matter that is defined in WAC 139-27-010(2) that would otherwise make a certificant ineligible to receive certification, an agency shall notify the commission via an approved form within 15 days of the notice or final determination date. If the employee is separated or removed from their position as stated in subsection (2) of this section, the requirements of that section shall be followed.

[]

NEW SECTION

WAC 139-27-030 Certifications. (1) All coroners, medical examiners, and medicolegal investigative personnel who are employed in a coroner's or medical examiner's office, must maintain certification as a condition of continued employment.

(2) The commission shall issue a certificate if:

(a) The individual has completed the core medicolegal forensic investigation training developed and delivered by the commission; or

(b) The individual has been granted exemption following the requirements of WAC 139-27-110.

(3) Certificates shall be valid for a period of three years from the date of initial certification.

(4) Certifications may be revoked during their three-year period upon notice that the individual is ineligible or no longer in good standing for certification.

(5) Certification shall be revoked for the following reasons:

(a) No longer maintaining eligibility for certification due to the revocation of required existing license or certification.

(b) Admission by the employing agency that the certificant is not in good standing.

(c) Determination that the certificant was not eligible to receive a certificate at the time of its issuance.

[]

NEW SECTION**WAC 139-27-040 Continuing education conditions and requirements.**

(1) After the initial training period, continuing education is necessary to maintain knowledge and update skills in new technology, equipment, methods, and practices. Every coroner, medical examiner, and medicolegal investigative personnel required to satisfy RCW 43.101.480 must complete a minimum of 30 continuing education hours every three years to be eligible for recertification.

(a) Training may be obtained through the commission or other training resources.

(b) All courses must be relevant to medicolegal forensic death investigation.

(c) Courses must be taught by instructors who are subject matter experts, qualified by industry standards, and are not involved in controversy over their instruction.

(2) Continuing education hours accrued will only count towards recertification if they are attained after the date of initial certification and before the expiration date.

(3) Continuing education credits must be provided by an accredited institution or agency and approved by the commission including, but not limited to: American Board of Medicolegal Death Investigators, American Medical Association, American Osteopathic Association, American Nursing Association, American Academy of Physician Assistants, American Society for Clinical Pathology, American Bar Association, College of American Pathologists, Emergency Medical Services, Federal Emergency Management Agency, International Association for Continuing Education and Training, Peace Officer Standards and Training (or equivalent), Pennsylvania Coroner's Education Board, U.S. Department

of Homeland Security or a postsecondary institution recognized by a national educational accrediting agency.

(4) Medical examiner's who maintain certification as a board-certified forensic pathologist certified from the American Board of Pathology meet the continuing education requirements.

[]

NEW SECTION

WAC 139-27-050 Recertification eligibility and requirements.

(1) All medicolegal forensic death investigation certificates have a three-year duration from the date issued, after which individuals who continue to meet the requirements of WAC 139-27-100 or 139-27-030 must seek recertification. Recertification will begin six months prior to the certification expiration date, and materials must be received by or before the expiration date. The recertification process is provided in WAC 139-27-060. To be eligible for recertification, individuals must meet these requirements:

(a) A medical examiner must:

(i) Maintain employment by a coroner's or medical examiner's office in Washington state.

(ii) Maintain their status as a board-certified forensic pathologist certified by the American Board of Pathology or has completed continuing education following WAC 139-27-040.

(iii) Maintain their license by the Washington state medical commission.

(iv) Be in good standing with their agency of employment.

(b) A coroner or medicolegal investigative personnel must:

(i) Maintain employment by a coroner's or medical examiner's office in Washington state.

(ii) Complete 30 hours of continuing education following WAC 139-27-040 over the three-year certification period.

(iii) Be in good standing with their agency of employment.

(2) If certification lapses, the coroner, medical examiner, or medicolegal investigative personnel will be required to complete the initial certification process again. If certification lapses by one year or more, the individual will be required to attend the core medicolegal forensic investigation training regardless of previous attendance.

[]

NEW SECTION

WAC 139-27-060 Recertification process. (1) Requests for recertification must be submitted by the employing agency designee for any coroner, medical examiner, or medicolegal investigative personnel directly affected by the regulation.

(2) Requests shall be submitted in writing, with appropriate documentation, to the commission. Requests shall be accepted up to six months prior to the expiration date and due by or before the expiration date.

- (3) Request for recertification:
- (a) For a medical examiner:
- (i) Proof of continued board certification as a forensic pathologist by the American Board of Pathology or proof of 45 hours of continuing education, for which documentation shall include:
- (A) Certificate of completion or other documentation showing completion;
- (B) Course description;
- (C) Agenda/syllabus/program;
- (D) Number of education hours.
- (ii) Proof of continued licensure by the Washington state medical commission.
- (iii) Proof of good standing by the employing agency on agency letterhead.
- (b) For a coroner or medicolegal investigation personnel:
- (i) Proof of 30 hours of continuing education. Documentation shall include:
- (A) Certificate of completion or other documentation showing completion;
- (B) Course description;
- (C) Agenda/syllabus/program;
- (D) Number of education hours.
- (ii) Proof of good standing by the employing agency on agency letterhead.
- (4) Upon submission of the appropriate documentation, the commission shall review and evaluate relevant materials and issue recertification, if applicable, within 60 days.
- (5) If the applicant has not met the qualifications to receive recertification, the commission shall:
- (a) Issue recertification upon satisfactory completion of acceptable continuing education to be completed within six months from time application for recertification is deemed not to have met the qualifications, or submission of needed materials; or
- (b) Require attendance of the core medicolegal forensic investigation training regardless of previous attendance if certification has lapsed by one year or more.
- (6) During the six-month period to complete or rectify missing eligibility requirements for recertification required by the commission as provided in subsection (5)(a) of this section, expiration of the current certificate will be delayed until the end of this six-month period or upon the issuance of a new certificate.

[]

NEW SECTION

WAC 139-27-070 Core medicolegal forensic death investigation training curriculum. The core medicolegal forensic death investigation training shall include, but is not limited to, the following subject areas:

- (1) Medicolegal systems;
- (2) Ethics;
- (3) Cause and manner of death;
- (4) Sharp force trauma;
- (5) Blunt force trauma;

- (6) Gunshot wounds;
- (7) Identification;
- (8) Drowning/water related deaths;
- (9) Fire deaths;
- (10) Decomposition and postmortem changes;
- (11) Infant death investigations;
- (12) Next of kin;
- (13) Report writing;
- (14) Photography;
- (15) Missing persons;
- (16) Toxicology.

[]

NEW SECTION

WAC 139-27-100 Exemption eligibility and requirements. (1) As a condition of continued employment, unless exempted by the commission under this section, all coroners, medical examiners, and medicolegal investigative personnel employed at a county coroner's or medical examiner's office must complete training and receive certification within 12 months of hire for full-time personnel or 18 months of hire for part-time personnel.

(2) Requirements for exemption:

(a) A medical examiner who:

(i) Is employed by a coroner's or medical examiner's office in Washington state.

(ii) Is a board-certified forensic pathologist certified by the American Board of Pathology (ABP), maintains their certification, and who shows proof of certification.

(iii) Is licensed by the Washington state medical commission, maintains their license, and who shows proof of license.

(iv) Is in good standing with their agency of employment.

(b) A coroner or medicolegal investigative personnel who:

(i) Has been employed as a coroner or medicolegal investigative personnel by a county coroner's or medical examiner's office for at least 12 months as a full-time employee or 18 months as a part-time employee.

(ii) Is certified (minimum registry certification required) by the American Board of Medicolegal Death Investigators (ABMDI).

(iii) Has attended a basic, introductory, or core training course or program or has attended an accumulation of courses which is equivalent to a basic, introductory, or core training course or program within the last five years. The courses/program substitution must be comparable in content and quality to that produced by the commission for the core medicolegal forensic investigation training.

(iv) Is in good standing with their agency of employment.

[]

NEW SECTION

WAC 139-27-110 Exemption process. (1) Requests for exemption must be submitted by the employing agency designee for any coroner, medical examiner, or medicolegal investigative personnel directly affected by the regulation who wish to receive exemption from the initial certification training requirement. Requests shall be submitted in writing with appropriate documentation to the commission.

(2) Request for exemption:

(a) For a medical examiner:

(i) Proof of board certification as a forensic pathologist by the American Board of Pathology.

(ii) Proof of licensure by the Washington state medical commission.

(iii) Proof of good standing by the employing agency on agency letterhead.

(b) For a coroner or medicolegal investigative personnel:

(i) Proof of employment as a coroner or medicolegal investigative personnel by a county coroner's or medical examiner's office for at least 12 months as a full-time employee or 18 months as a part-time employee.

(ii) Proof of certification (minimum registry) by the American Board of Medicolegal Death Investigators.

(iii) Proof of medicolegal forensic investigation training comparable to that offered by the commission. Documentation shall include:

(A) Certificate of completion or other documentation showing completion;

(B) Course description;

(C) Agenda/syllabus/program;

(D) Number of education hours.

(iv) Proof of good standing by the employing agency on agency letterhead.

(3) Upon submission of the appropriate documentation, the commission shall review and evaluate relevant materials and issue a certificate if applicable within 60 days (days calculated per RCW 1.12.040).

(4) If the individual has not met the qualifications to receive exemption, the commission shall:

(a) Issue a certificate upon satisfactory completion of required training or submission of needed materials; or

(b) Require the individual to attend the core medicolegal forensic investigation training produced by the commission in conjunction with the Washington Association of Coroners and Medical Examiners (WACME).

(5) Issuance of a certificate through the exemption process does not exempt the individual from recertification requirements of WAC 139-27-050 or the continuing education requirements of WAC 139-27-040.

[]

OTS-4785.1

NEW SECTION

WAC 139-27-120 Collaboration with interstate and local agencies regarding certification eligibility. Commission staff shall work with other licensing state agencies and commissions to determine if individuals can be and continue to be eligible for certification including, but not limited to:

- (1) Inquiring about potential revocations;
- (2) Receiving determinations on revocations of other certifications or licenses; or
- (3) Sharing and receiving records on a case-by-case basis when necessary.

[]

WSR 23-16-060
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed July 26, 2023, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-031.

Title of Rule and Other Identifying Information: Including limited authority officers, who have the powers to arrest and carry a firearm, under the authority of peace officer certification processes, procedures, and rules. This filing also includes general updates to the impacted WAC chapters.

Hearing Location(s): On September 13, 2023, at 10 a.m., at 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: September 13, 2023.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email Lacey.ledford@cjtc.wa.gov, by September 10, 2023.

Assistance for Persons with Disabilities: Contact Lacey Ledford, phone 206-670-5813, email Lacey.Ledford@cjtc.wa.gov, by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating Title 139 WAC due to state legislative changes to chapter 43.101 RCW to include limited authority officers, who have the powers of arrest and carry a firearm, under the requirements of peace officers in chapter 43.101 RCW. The impacted sections are WAC 139-01-310, 139-05-200, 139-05-210, 139-06-020, 139-06-040, 139-06-050, 139-06-070, and 139-06-100.

Reasons Supporting Proposal: The WAC specified above need updated due to recent RCW changes to include limited authority peace officers, who have the powers of arrest and carry a firearm, to be defined as peace officers under chapter 43.101 WAC.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.080.

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

Name of Agency Personnel Responsible for Drafting: Chad Arceneaux and Valerie Weaver, 19010 1st Avenue South, Burien, WA 98148, 206-835-7368; Implementation: Valerie Weaver, 19010 1st Avenue South, Burien, WA 98148, 206-835-7368; and Enforcement: Chad Arceneaux, 19010 1st Avenue South, Burien, WA 98148, 206-835-7368.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).
Scope of exemption for rule proposal:
Is fully exempt.

July 26, 2023
Derek Zable
Records Manager

OTS-4790.1

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-01-310 Definitions for Title 139 WAC. The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified limited authority peace officer** means any limited authority Washington peace officer as defined in subsection (22) of this section who as a normal part of their duties has powers of arrest and carries a firearm.

(4) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, certified limited authority peace officer, certified tribal police officer (~~(with a recognized certified tribe)~~), and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

~~((4))~~ (5) **Certified tribal law enforcement agency** means any tribal law enforcement agency in Washington who has signed a tribal certification agreement with the commission as outlined in WAC 139-06-015 and who is currently in good standing.

(6) Certified tribal police officer means any police officer employed by a certified tribal law enforcement agency who has completed the requirements of certification.

(7) Commission means the Washington state criminal justice training commission.

~~((5))~~ (8) Conclusion means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

~~((6))~~ (9) Day means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

~~((7))~~ (10) Denial means a commission decision to refuse to grant certification to a prospective certified officer.

~~((8))~~ (11) Discipline means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

~~((9))~~ (12) Executive means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

~~((10))~~ (13) Expired certification means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

~~((11))~~ (14) Extremist organization means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

~~((12))~~ (15) Final disposition means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

~~((13))~~ (16) Findings or findings of fact and conclusion of law means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

~~((14))~~ (17) General authority Washington law enforcement agency means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

~~((15))~~ (18) General authority Washington peace officer means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

~~((16))~~ (19) Lapsed certification means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

~~((17))~~ (20) Law enforcement personnel means any person elected, appointed, or employed as a general authority Washington peace officer or certified limited authority peace officer.

(21) Limited authority Washington law enforcement agency means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services, the state gambling commission, the state department of corrections, and the office of independent investigations.

~~((18))~~ (22) Limited authority Washington peace officer means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

~~((19))~~ (23) Peace officer means any officer of general authority or certified limited authority as defined in subsections (18) and (22) of this section respectively.

(24) Petitioner means the commission's certification division.

~~((20))~~ (25) Probationary periods or probationary terms means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

~~((21))~~ (26) Recruit means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

~~((22))~~ (27) Reserve officer means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

~~((23))~~ (28) Respondent means the certified officer against whom the petitioner has filed a statement of charges.

~~((24))~~ (29) Retraining means the teaching or reteaching of skills and conduct required to succeed as a certified officer and im-

posed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

~~((25))~~ **(30) Revocation** means to cancel a certified officer's certification.

~~((26))~~ **(31) Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

~~((27))~~ **(32) Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

~~((28))~~ **(33) Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

~~((29))~~ **(34) Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-01-310, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-01-310, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-4791.2

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-05-200 Requirement of basic law enforcement training for officers. (1) A peace officer or tribal police officer whose certification has been denied, revoked ~~((or))~~, suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy diploma.

(2) (a) As a condition of continued employment, unless exempted by the commission, all general authority peace officers must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial six-month period of employment and then successfully complete the training.

(b) As a condition of continued employment, unless exempted by the commission, all limited authority peace officers subject to certification whose employment commences on or after July 1, 2023, must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial 12-month period of employment and then successfully complete the training.

(c) As a condition of continued certification, all certified limited authority peace officers whose employment commenced prior to

July 1, 2023, must submit to the commission documentation of any prior training received and complete any supplemental training deemed necessary by the commission by December 31, 2024, unless otherwise waived or extended by the commission.

(3) Law enforcement personnel exempted from the requirements of subsection (2) of this section include commissioned personnel:

(a) Who have met the training requirements in subsection (2) of this section and who have been employed with no break in service in this state for more than 24 months.

(b) Who have met the training requirements of subsection (2) of this section and within 24 months of completion are employed as a peace or tribal officer (~~with a general authority law enforcement agency~~). This includes any limited authority personnel as defined in RCW 10.93.020 and in the definitions of this chapter.

(4) Law enforcement agencies must use an approved form to immediately notify the commission when an officer subject to certification begins ongoing regular employment with the agency.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-200, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-036, § 139-05-200, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 06-17-021, § 139-05-200, filed 8/7/06, effective 9/7/06; WSR 05-20-029, § 139-05-200, filed 9/28/05, effective 10/29/05; WSR 03-19-123, § 139-05-200, filed 9/17/03, effective 10/18/03; WSR 00-17-017, § 139-05-200, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 89-13-024 (Order 14D), § 139-05-200, filed 6/13/89; WSR 87-19-104 (Order 14-D), § 139-05-200, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-05-200, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-05-210 Process for equivalency. (1) (~~(A)~~) A peace officer, tribal police officer, or corrections officer whose certification, commission, or licensing has been revoked or suspended, or is under review by this state or any other state or territory is not eligible to receive certification through an equivalency academy, regardless of the officer's prior years of service.

(2) A diploma of equivalent basic law enforcement academy or corrections officers academy is issued to recruits who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (9) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

(b) Fully commissioned officers of a general authority, limited authority, or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy;

(c) Fully commissioned officers who have been certified by completing a basic training program in Washington or another state;

(d) Limited authority officers who have been certified by completing a basic training program in Washington or another state;

(e) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

~~((e))~~ (f) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

~~((f))~~ (g) Persons who have not attained commissioned officer status but have successfully completed a basic law enforcement academy recognized as fully equivalent to Washington's basic law enforcement academy by the commission and within 12 months of the date of completion has received a conditional offer of employment as a fully commissioned, or certified limited authority, officer in Washington state.

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) Recruits who must participate in the equivalency academy to become a certified officer must attend an academy within six months of hire as a condition of employment.

(6) It is the responsibility of a recruit's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner and all requirements within this section are met.

(7) The decision to request an officer's participation in the equivalency process is at the discretion of the sheriff or chief of the officer's employing agency who must advise the commission of that decision. The commission has final approval of the officer's acceptance into the equivalency academy.

(8) The commission shall have authority to approve a recruit for participation in the equivalency process.

(9) The recruit's employing agency must submit to the commission the following documentation as a condition of participating in the equivalency process:

(a) A statement of the recruit's health and physical condition including a physician signature;

(b) A liability release agreement by the recruit;

(c) Previous employment agencies with dates of employment;

(d) Documentation of completion of the previous training program;

(e) Written syllabus detailing specific areas of training and hours of training;

(f) Documentation of current certification status; and

(g) For peace and tribal officers:

(i) A record of the recruit's firearms qualification; and

(ii) Verification of comparable emergency vehicle operations (EVO) training ~~((EVOC))~~.

If this has not been completed previously, the recruit must complete the commission's current basic law enforcement ~~((EVOC))~~ EVO training, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

(10) Upon completion of the equivalency process and review and evaluation of the recruit's performance, the commission shall issue a diploma and a certificate of certification.

(11) If the recruit has not met the qualifications to satisfactorily complete an equivalency academy, the commission shall:

- (a) Issue a diploma and certificate of certification upon satisfactory completion of any required additional training; or
- (b) Require the recruit to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-05-210, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-210, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

OTS-4792.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-020 Agency reporting requirements—Force, separation, and investigation. (1) Within 15 days the employing agency of either a certified officer or reserve officer shall use an approved form to notify the commission of the following occurrences:

(a) When a certified officer or reserve officer is separated from the agency for any reason;

(b) When the agency first learns of a use of force by a certified officer or reserve officer, including canine bites, that caused serious injury or death;

(c) When the agency first learns that a certified officer or reserve officer has been charged with a crime. An employing agency shall have written policies that require a certified officer or reserve officer to immediately report any pending criminal charges and any conviction, plea, or other case disposition to their agency; and

(d) When the agency makes an initial disciplinary decision for alleged misconduct by a certified officer or reserve officer that is noncriminal and may constitute misconduct within RCW 43.101.105.

(2) An employing agency shall provide timely updates to the commission on the status of a reported internal investigation until the investigation concludes.

(3) If the employing agency accepts a certified officer's or reserve officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission including the findings from any internal or external investigations into alleged misconduct.

(4) If the totality of the circumstances supports a conclusion that a certified officer or reserve officer resigned or retired in anticipation of discipline, the agency who employed the officer at the

time of the misconduct shall timely conduct and complete an internal investigation and provide all relevant information to the commission as it would if the ((~~certified~~)) officer were still employed by the agency, regardless of whether the misconduct was discovered at the time:

(a) When such discipline if carried forward would more likely than not have led to discharge; or

(b) If the certified officer or reserve officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the ((~~certified~~)) officer's suspension or discharge.

(5) Within 15 days of the conclusion of its internal investigation, the agency shall provide the commission with a summary of findings.

(a) If sustained misconduct results in separation, then a commission separation form is also required.

(b) The commission will review the separation form and may request investigative files for review of certification misconduct.

(6) The agency shall, upon request by the commission, provide any records and information the commission deems necessary to determine whether the certified officer committed misconduct that falls within RCW 43.101.105.

(7) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by a certified officer, reserve officer, or an employing agency to timely and accurately report information pursuant to this section.

(8) Pursuant to RCW 43.101.135(7) an employing agency may not enter into any agreement or contract with a certified officer, reserve officer, or labor union that:

(a) Agrees not to report conduct, or to delay reporting, or to preclude disclosure of any relevant information to the commission, including any promise not to inform the commission that a certified officer or reserve officer may have committed misconduct in exchange for allowing that ((~~certified~~)) officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer or reserve officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-020, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-020, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-040 Investigation and appeal—Procedures for misconduct. (1) Commission investigations are to determine whether there is

preponderance of the evidence to believe the certified officer's certification should be denied, revoked, or suspended.

(2) Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint per WAC 139-17-010.

(3) The commission may conduct its investigation before, during, or after any internal or criminal investigation by another agency, except in cases where a revocation decision requires a finding that the certified officer's conduct violated policy or law under RCW 43.101.105 (2) or (3).

(4) The commission may investigate any instance where there is a pattern of acts by a certified officer that may have not resulted in formal adjudication of wrongdoing but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or (3).

(5) The commission may initiate a certification hearing by preparing a statement of charges regardless of the status or posture of any internal disciplinary action by the employing agency.

(6) Upon a determination by the commission that there is a preponderance of the evidence to believe that a certified officer's certification should be denied, revoked, or suspended, the commission shall prepare a statement of charges and commence proceedings under RCW 43.101.155.

(7) Upon a determination by the commission that there is not preponderance of the evidence to revoke, suspend, or deny the certified officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the decision, shall be furnished to the certified officer's employing agency and the complainant, if any.

(8) The certified officer's employing agency, or the complainant, if any, may request a review by the executive director of the commission, or their designee, of a determination that there is not preponderance of the evidence to revoke or suspend the certified officer's certification, by making such request in writing within 14 days of the receipt of written notification of the decision not to proceed.

(9) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

(10) The commission shall maintain all records obtained during an investigation in a permanent file in accordance with the retention schedule provided in RCW 43.101.400.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-040, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-040, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-050 Statement of charges and notification for hearing. (1) The commission shall prepare a statement of charges providing the grounds for denial, suspension, or revocation of the certified officer's certification under RCW 43.101.105.

(a) The statement of charges shall include a notice informing the certified officer that they are entitled to a hearing on the denial,

suspension, or revocation of their certification, the steps to request a hearing, and that failure to request or attend a hearing will cause their certification to be denied or revoked.

(b) The statement of charges shall be sent to the certified officer and to the agency that employed the certified officer at the time of the alleged misconduct. If the certified officer is employed by a different law enforcement agency at the time the statement of charges is issued, that agency shall also be sent a copy of the statement of charges.

(2) A request for a hearing on the potential denial, suspension, or revocation of certification must be made by the certified officer on an approved form and received by the commission within 60 days from the date of sending the statement of charges.

(a) If a hearing is requested, the officer must provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission.

(b) If a hearing is requested, the first prehearing conference shall be held within 14 days of receipt of the hearing request form. The hearing shall occur within 90 days of the first prehearing conference.

(c) Any date related to the hearing schedule including, but not limited to, the dates of prehearing and status conferences, due dates for pleadings, briefings, and exhibits and the date of the hearing itself may be extended upon mutual agreement of the parties or for good cause.

(3) Failure by the certified officer to request a hearing within 60 days of sending of the statement of charges, or failure by the certified officer or their counsel to appear at any prehearing or status conference, shall constitute default and the commission shall enter an order of default and final order under RCW 34.05.440.

(4) Failure of the certified officer to appear at the scheduled hearing shall constitute default and the hearing panel shall enter an order of default and final order under RCW 34.05.440.

(5) The certified officer may waive the right to a hearing on an approved form. By waiving the right to a hearing, the certified officer acknowledges that their certification will be revoked, suspended, or denied and that the commission shall enter an order of default and a final order under RCW 34.05.440.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-050, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-070 Conference and hearings procedures. (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14

days unless that time is extended by mutual agreement of the parties or for good cause.

(a) Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference. The notice will contain the date and time for the first prehearing conference as well as sign-on information and the names of the hearing panel members for the hearing.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the administrative law judge (ALJ) may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the agreements made by the parties.

(5) The purpose of the second prehearing conference will be to address any objections to the parties' witnesses and exhibits and ascertain the parties' readiness to proceed to hearing. During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to (~~witness~~) witnesses or exhibits, and any remaining motions.

(a) The ALJ will make any necessary rulings on motions and objections to witnesses and exhibits.

(b) An order shall be issued by the ALJ within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing (~~teleconference~~) conference, the panel members will be provided with all materials admitted into evidence, to include witness list and copies of the statement of charges, as well as all briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. The admitted exhibits binder shall be used by both parties to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any exhibits or any versions of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. Respondents who fail to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. Respondents who fail to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-070, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-070, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-06-100 Outcomes for determinations of misconduct—Denial, suspension, ((probation)) revocation, retraining, or dismissal of the statement of charges. (1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension(~~((, probation))~~), revocation of certification, remedial training, or dismissal of the statement of charges. In determining an appropriate outcome following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

(a) Information provided by the complainant(s), if any;

(b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;

(c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;

(d) Any information obtained by the commission through its own investigation or research;

(e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and

(f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension or probation by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-06-100, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-100, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

WSR 23-16-067
WITHDRAWAL OF PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed July 27, 2023, 12:10 p.m.]

The board of registration for professional engineers and land surveyors requests withdrawal of the proposed rule making filed as WSR 23-14-108, WAC 196-29-110. The CR-102 was filed on July 3, 2023, and appeared in issue 23-14 of the State Register. This document serves as the official notification of our withdrawal.

Ken Fuller, PE
Director

WSR 23-16-070

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 27, 2023, 2:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-113.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for pharmacists and pharmacy technicians, WAC 246-945-178 and 246-945-220. The pharmacy quality assurance commission (commission) is proposing amendments to WAC 246-945-178 and 246-945-220 to establish health equity CE requirements to implement ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On October 19, 2023, at 10:30 a.m., at the Labor and Industries Building, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. Please download and import the following iCalendar (.ics) fields to your calendar system. Daily: <https://us02web.zoom.us/join/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile, US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available: <https://us02web.zoom.us/join/88256001236>

icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf; Topic: PQAC Business Meeting 2023. To access the meeting on October 19, 2023, at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile, US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available: <https://us02web.zoom.us/join/88256001236>

Date of Intended Adoption: October 19, 2023.

Submit Written Comments to: Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by October 5, 2023.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by October 12, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the commission must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The commission is proposing amending WAC 246-945-178 and 246-945-220 to implement ESSB 5229. The commission is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for pharmacists and pharmacy technicians to comply with RCW 43.70.613.

The proposed rule adds one hour of health equity education every two years, coinciding with the license renewal cycles for both pharmacists and pharmacy technicians. This satisfies the minimum requirements established in the model rules, which states that two hours of

health equity CE must be completed as part of the current CE requirements every four years. The proposed rule does not change total CE hours but requires two hours in health equity CE every four years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings include implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifests as health inequities.

Health equity CE training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 43.70.613, 18.64.005, and 18.64A.020.

Statute Being Implemented: ESSB 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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 Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 27, 2023

Ken Kenyon, PharmD, MBA, Chair
Pharmacy Quality Assurance Commission

OTS-4710.1

AMENDATORY SECTION (Amending WSR 21-04-145, filed 2/3/21, effective 12/1/21)

WAC 246-945-178 Pharmacist continuing education. (1) As part of the process to renew a pharmacist license, a pharmacist shall complete ((CPE)) continuing education in compliance with this section.

(2) A pharmacist shall complete the equivalent of ~~((3.0 of CPE hours (equal to thirty contact hours) administered by an ACPE accredited provider each license renewal cycle))~~ 30 hours of continuing education each license renewal cycle. The 30 hours of continuing education must be delivered by a continuing education provider accredited by ACPE, except as provided for in subsections (4) and (5) of this section.

(3) A pharmacist shall register with a program designated by the commission for tracking completed CPE hours.

(4) A pharmacist shall complete a one-time training in suicide screening and referral by the end of the first full renewal cycle after initial licensure. The training must meet the following requirements:

(a) Be at least three hours long;

(b) Be from the ~~((department of health's))~~ department's model list of approved suicide prevention training programs, and include content related to imminent harm via lethal means; and

(c) The hours spent completing the training in this subsection may count toward meeting CPE requirements.

(5) ~~((CPE))~~ A pharmacist shall complete at least one hour of health equity training as described in WAC 246-12-830 each license renewal cycle.

(a) Health equity training may be provided by a continuing education provider accredited by ACPE or by a health equity training program contained on the department's list of approved health equity training programs.

(b) The hours spent completing health equity training will count toward meeting continuing education requirements.

(6) Continuing education hours cannot be carried over to the next renewal cycle.

[Statutory Authority: RCW 18.64.005 and 18.64A.020. WSR 21-04-145, § 246-945-178, filed 2/3/21, effective 12/1/21. Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-178, filed 6/1/20, effective 3/1/21.]

AMENDATORY SECTION (Amending WSR 21-04-145, filed 2/3/21, effective 12/1/21)

WAC 246-945-220 Pharmacy technician—Continuing education. (1) As part of the process to renew a pharmacy technician license, a pharmacy technician shall complete continuing ~~((pharmacy))~~ education ~~((CPE))~~ in compliance with this section.

(2) A pharmacy technician shall complete (~~(2.0 CPE)~~) 20 hours (~~((equal to twenty contact hours) administered by an ACPE accredited program each certification renewal period.~~

~~(3))~~ of continuing education each certification renewal cycle. The 20 hours of continuing education must be presented by a continuing education provider accredited by ACPE, except as provided in subsection (3) of this section.

(3) A pharmacy technician shall complete at least one hour of health equity training as described in WAC 246-12-830 each certification renewal period.

(a) Health equity training may be provided by a continuing education provider accredited by ACPE or by a health equity training program contained on the department's list of approved health equity training programs.

(b) The hours spent completing health equity training will count toward meeting continuing education requirements.

(4) A pharmacy technician shall register with a program designated by the commission for tracking completed CPE hours.

~~((4) CPE)~~ (5) Continuing education hours cannot be carried over to the next renewal cycle.

[Statutory Authority: RCW 18.64.005 and 18.64A.020. WSR 21-04-145, § 246-945-220, filed 2/3/21, effective 12/1/21. Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-220, filed 6/1/20, effective 3/1/21.]

WSR 23-16-071

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 27, 2023, 2:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-123.

Title of Rule and Other Identifying Information: Increasing access to medications used for the treatment of opioid use disorder (OUD) or its symptoms using remote dispensing sites. The pharmacy quality assurance commission (commission) is proposing a new section in chapter 246-945 WAC for the implementation of SSB 6086 (chapter 244, Laws of 2020), an act relating to increasing access to medications for OUD. Creating new WAC 246-945-457 Remote dispensing sites for opioid use disorder medications.

Hearing Location(s): On October 19, 2023, at 9:20 a.m., at the Labor and Industries Building, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. Please download and import the following iCalendar (.ics) fields to your calendar system. Daily: https://us02web.zoom.us/join?pwd=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf;Topic=PQAC+Business+Meeting+2023. To access the meeting on October 19, 2023, at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile, US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available: <https://us02web.zoom.us/j/88256001236>.

icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf; Topic: PQAC Business Meeting 2023. To access the meeting on October 19, 2023, at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile, US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available: <https://us02web.zoom.us/j/88256001236>.

Date of Intended Adoption: October 19, 2023.

Submit Written Comments to: Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by October 5, 2023.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by October 12, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature passed SSB 6086, an act relating to increasing access to medications for people with OUD. This law allows a pharmacy to extend its pharmacy license to a remote dispensing site where technology is used to dispense medications used for the treatment of OUD or its symptoms.

SSB 6086 requires the commission to adopt rules that establish the minimum standards for OUD medication remote dispensing sites. The minimum standards must address who may access medications at the remote dispensing site pursuant to a valid prescription or chart order. The minimum standards must also require that the pharmacy is responsible for stocking and maintaining a perpetual inventory of the OUD medications stored in or at the remote dispensing site (referred to as the "supplying pharmacy" in the rule language).

Current rules in chapter 246-945 WAC cover requirements for drugs stored outside of a pharmacy but restrict their location to a facility that is otherwise able to store and possess drugs (i.e., a licensed

pharmaceutical firm). The proposed rules are necessary to establish enforceable minimum standards as directed by SSB 6086 for OUD medication remote dispensing sites. As the statute specifically requires rule making, no other alternatives were considered.

Reasons Supporting Proposal: The commission is required by SSB 6086 to establish minimum standards for remote OUD medication dispensing sites. OUD is a public health crisis and remote dispensing sites registered under this provision have the potential for increased access to treatment and patient care for individuals experiencing OUD.

Statutory Authority for Adoption: RCW 18.64.005; and SSB 6086 (chapter 244, Laws of 2020), codified as RCW 18.64.600.

Statute Being Implemented: SSB 6086 (chapter 244, Laws of 2020), codified as RCW 18.64.600.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joshua Monroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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 Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

A brief description of the proposed rule, including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The Washington state legislature passed SSB 6086, an act relating to increasing access to medications for people with OUD. This law allows a pharmacy to extend its pharmacy license to a remote dispensing site where technology is used to dispense medications used for the treatment of OUD or its symptoms.

The commission completed a two-and-a-half-year process to consolidate and streamline all rules under its authority related to the practice of pharmacy, effective July 1, 2020. In this rewrite, the commission sought to create a set of rules more adaptable to the future of the practice of pharmacy and the technologies it may employ. As a part of this goal, the new chapter (chapter 246-945 WAC) includes rules related to remote dispensing more generally (see WAC 246-945-430 and 246-945-455). However, under current law, the remote dispensing site would need to hold a license as a pharmaceutical firm (i.e., a pharmacy or health care entity). A pharmacy license is a license of location and extending it to a remote dispensing site was not permitted prior to the enactment of SSB 6086 and therefore the existing rules cannot be applied to this new registration.

SSB 6086 requires the commission to adopt rules establishing the minimum standards for OUD medication remote dispensing sites. The minimum standards must include, but are not limited to, specifying who may retrieve the OUD medications stored in or at the dispensing site and requiring the pharmacy be responsible for stocking and maintaining a perpetual inventory of the OUD medications stored in or at the remote dispensing site.

The proposed rule achieves these minimum standards set in the bill by requiring pharmacies to comply with the following, in addition to all applicable regulations in Title 21 C.F.R.:

(1) The supplying pharmacy must separately register each remote dispensing site with the commission by completing and returning an application form supplied by the commission and pay applicable fees established by the secretary.

(2) Medications stored in registered remote dispensing sites shall remain under the control of, and be routinely monitored by, the supplying pharmacy.

(3) The supplying pharmacy shall develop and implement policies and procedures to:

(a) Prevent and detect unauthorized access to the registered remote dispensing site;

(b) Document medications used, returned, and wasted from the registered remote dispensing site;

(c) Require the supplying pharmacy to perform a perpetual inventory of medications stored at the registered remote dispensing site; and

(d) Ensure that only the supplying pharmacy is stocking medications stored at a registered remote dispensing site.

(4) Access and retrieval of medications from the registered remote dispensing site, other than by the supplying pharmacy, must be:

(a) Pursuant to a valid prescription or chart order; and

(b) Limited to health care professionals licensed under the chapters specified in RCW 18.130.040, who are acting within their scope of practice, and nursing students, as provided in WAC 246-945-450.

(5) The supplying pharmacy shall ensure the registered remote dispensing site is appropriately equipped to secure and protect medications from diversion or tampering.

Pharmacies that choose to participate in the program must secure and regularly monitor medications stored in remote dispensing sites. Supplying pharmacies must also develop and implement policies establishing their own security, documentation, and inventory standards. Finally, these pharmacies must also provide security measures to protect medications from diversion or tampering in line with their own security policies and procedures.

The application to register an OUD medication remote dispensing site has been available since July 1, 2020, accompanied by a policy statement outlining the commission's expectations for compliance, but the proposed rule is necessary to codify the minimum standards applicable to OUD medication remote dispensing sites so that the requirements are enforceable.

After the commission approved the proposed rule language for remote OUD dispensing sites, the Washington legislature passed 2E2SSB 5536 (chapter 1, Laws of 2023, 1st special session). 2E2SSB 5536 amended RCW 18.64.600 to update the phrase "medications approved by the United States food and drug administration for the treatment of opioid use disorder" to "medications used for the treatment of opioid use disorder or its symptoms." Commission staff updated the proposed re-

mote OUD dispensing site rule language draft and presented it on June 15, 2023, at a commission business meeting. The commission moved to accept the updated language.

Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

SBEIS Table 1. Summary of Businesses Required to Comply to the Proposed Rule:

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold = 1% of Average Annual Payroll
44611	Pharmacies	885	\$5,794.56

The NAICS code provided for pharmacies in Washington state is the code from 2017. While an updated code exists as of 2022 (456110), there is not yet data to establish a minor cost threshold for the 2022 code. As a result, the next most recent code from 2017 was used for the purpose of providing accurate minor cost thresholds which pulls payroll and gross business income data from 2020.

Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.

WAC 246-945-247 Remote dispensing sites for opioid use disorder medications.

Description: The proposed rule provides a regulatory framework in which pharmacies may choose to use a remote dispensing site to make medications to treat OUD and its symptoms available to the public. Participating pharmacies will need to acquire and maintain a dispensing machine or structure, provide security for said machine or structure, develop policies and procedures for managing the remote OUD dispensing site, and maintain a perpetual inventory of the OUD medications stored in or at the dispensing site.

Cost(s): For a business to implement an OUD remote dispensing site registered under SSB 6086 and in compliance with WAC 246-945-457, there may be both initial one-time costs as well as annual recurring costs. One-time costs are defined as costs that occur only once. Annual recurring costs are costs that are anticipated to repeat every year.

One-time costs: In order to dispense OUD medications remotely, the proposed rule requires a dispensing machine or structure where the medications are stored. Dispensing systems vary widely and range in one-time cost from \$1,000 to \$38,000^{1,2} due to the amount of technology incorporated into the dispensing function. The dispensing system technology is used to dispense designated medication and can be as simple as a secure storage container or cabinet which authorized personnel can retrieve medications from or could be a fully automated system including automated dispensing. Recent installations of vending machines in Eastern Washington capable of dispensing naloxone specifically priced the machines at \$5,000 each.³ Another option is to rent a dispensing system, which range in cost from \$50 to \$150⁴ in recurrent monthly costs (or a recurrent annual cost of \$600 to \$1,800) and would not be a one-time cost but a recurrent cost.

1 Smith, A. (2021). *How much does a vending machine service cost?* Costowl.com <https://www.costowl.com/b2b/office-vending-machine-service-cost.html>.

2 ModeSens. (2021). *Moet & Chandon*. Modesens.com. https://modesens.com/product/moet-and-chandon-mo-and-eumlt-and-chandon-champagne-vending-machine-30102308/?country=us&language=en&refinfo=gSH_ggfMoetChanduh-HoGaKiDi30102308.

- 3 Narcan vending machines? Moses Lake and Wenatchee now have them; Omak is next | Columbia Basin | ifiberone.com.
 4 Smith, A. (2021). *How much does a vending machine service cost?* Costowl.com <https://www.costowl.com/b2b/office-vending-machine-service-cost.html>.

The physical location and security of remote OUD dispensing devices could result in different costs for each business. It is the responsibility of the supplying pharmacy to ensure that the location and the level of security are appropriate to the drugs that are being stored. As an example for naloxone, some entities implementing remote OUD dispensing devices placed and may place these devices immediately outside of public buildings⁵ or even in the lobbies of buildings where there is an access need for such substances⁶. Individual businesses may choose to keep their own dispensing devices outside and/or further away from their physical business site. While devices solely dispensing naloxone would not need a license from the commission, but devices registered under this credential may include naloxone among other medications used for the treatment of OUD or its symptoms.

- 5 Philadelphia opioid use: New program provides access to free Narcan in vending machines - 6abc Philadelphia.
 6 Naloxone vending machines make life-saving medication easily available in Michigan jails and communities - Center for Behavioral Health and Justice - Wayne State University.

Remote placement could result in more comprehensive security measures to comply with WAC 246-945-457(2) which states that pharmacies using remote OUD dispensing sites must ensure medications stored on those sites "remain under the control of, and be routinely monitored by, the supplying pharmacy." The means of monitoring the sites is not specified in rule, meaning that pharmacies may elect to use security camera systems, which cost about \$200 on average for an outdoor camera system⁷ (not including upkeep costs), or even additional security personnel to comply with the proposed rule.

- 7 How Much Do Security Cameras Cost on Average in 2022.

Staff time will be needed to comply with the proposed rule to develop policies and procedures. This work would likely be done by the responsible pharmacy manager. The median salary for pharmacists (who serve as pharmacy managers) is approximately \$80/hour in Washington state⁸. The commission estimates that writing these policies and procedures will take between three and 10 hours, assuming the pharmacy has other policies and procedures in place that they can base the new ones on. The commission estimates that writing all policy and procedures documents would range in cost from \$240 to \$800.

- 8 Salary.com (2021, October 29). *Pharmacy Manager salary in Washington*. Salary.com. <https://www.salary.com/research/salary/benchmark/pharmacist-manager-salary/wa>. Salary figures determined from selecting the occupation and searching by annual salaries in Washington state, reporting median.

The commission assumes there are potential unknown one-time costs related to the security needs of the remote dispensing site, security cameras and/or locks, as required by the statute and proposed rule. These costs would be largely dependent on the type of dispensing system used and how much security is already incorporated into the dispensing machine or structure where the medications are stored.

Annual Recurring costs: The commission estimates that completing the registration form will take one hour per year and will be completed by the responsible pharmacy manager (who earns approximately \$80/hour in Washington state).

Staff time will be needed to maintain and stock the remote dispensing site. The commission estimates this task could take one to two hours each month, or 12 to 24 hours per year. As this is a nondiscretionary task, it may be delegated per WAC 246-945-315 and performed either by a pharmacist or by a pharmacy intern or technician under the immediate supervision of a pharmacist.

The median salary for pharmacy interns and pharmacy technicians in Washington state is \$19/hour⁹. The median salary for pharmacists is \$80/hour in Washington state¹⁰. The commission estimates this could cost between \$228 to \$2,184 annually. The upper end of the estimated range accounts for the possibility that the pharmacy technician is working concurrently with the supervising pharmacist on maintenance and stocking, requiring a sum of both positions' median wages.

9 Salary.com (2021, October 29). *Pharmacy Technician salary in Washington*. Salary.com. <https://www.salary.com/research/salary/benchmark/pharmacy-technician-i-salary/wa>. Salary figures determined from selecting the occupation and searching by annual salaries in Washington state, reporting median.

10 Salary.com (2021, October 29). *Pharmacist salary in Washington*. Salary.com. <https://www.salary.com/research/salary/benchmark/pharmacist-salary/wa>. Salary figures determined from selecting the occupation and searching by annual salaries in Washington state, reporting median.

Subsection (4) of the proposed language focuses on patient access to the remote OUD site and retrieval of medications held and dispensed at that site. There are no anticipated additional costs to the patient, as the access and retrieval of OUD medications would not be different between visiting a remote dispensing site and a pharmacy site.

Summary of all Cost(s) :

SBEIS Table 2. Summary of Section 3 Probable Cost(s) :

WAC Section and Title	Probable Cost(s)
WAC 246-945-457 Remote dispensing sites for opioid use disorder medications	<ul style="list-style-type: none"> • One-time costs: <ul style="list-style-type: none"> o Dispensing device (purchase): \$1,000 - \$38,000 o Policies and procedures: \$240 - \$800 o Security (cameras and locks): \$200 • Annual recurring costs: <ul style="list-style-type: none"> o Registration form (time): \$80 o Stocking and maintaining (time): \$228 - \$2,184 o Dispensing device (rental): \$600 - \$1,800

* Table columns are not intended to be summed as some costs are duplicative (e.g., dispensing device (purchase) and dispensing device (rental fee)).

The commission does not anticipate compliance with the proposed rule will cause businesses to lose any sales or revenue. The commission believes that by allowing a pharmacy to choose (by way of this proposed rule) to extend their licenses to register OUD medication remote dispensing sites, both sales and revenue could potentially increase.

Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated. The estimated costs of the proposed rule may exceed the minor cost threshold for businesses.

Summary of how the costs were calculated: The minor cost threshold for pharmacies as of 2020 is \$5,794.56, based on one percent of average annual payroll as calculated by data collected by the United States Bureau of Labor Statistics (SBEIS Table 1). SBEIS Table 3 is a summary of first-year costs per business.

SBEIS Table 3. Summary of Probable Costs Per Business:

	Probable Minimum Cost	Probable Maximum Cost
One-time costs (not including dispensing device)	\$240	\$800
Annual recurring costs (not including dispensing device)	\$308	\$2,264
Dispensing device options		
Dispensing device (purchase); total cost	\$1,000	\$38,000
Dispensing device (purchase); depreciated* annual cost (12 years) ¹¹	\$83	\$3,167
Dispensing device (purchase); depreciated* annual cost (24 years)	\$42	\$1,583

	Probable Minimum Cost	Probable Maximum Cost
Dispensing device (annual rental)	\$600	\$1,800
First year costs		
Probable first year costs** with PURCHASE of dispensing device (12 years)	\$631	\$6,231
Probable first year costs** with PURCHASE of dispensing device (24 years)	\$590	\$4,647
Probable first year costs** with RENTAL of dispensing device	\$1,148	\$4,864

* Straightline depreciation for equipment purchase was conducted by (device purchase cost – salvage value)/useful life years to get the annual depreciation. Salvage value was assumed at \$0. After calculating, figures were rounded up to the nearest dollar. Purchase price does not include the cost of maintenance or repair.

** First year costs were calculated by adding the one-time costs + one year of annual recurring costs + dispensing device option specified.

11 Vendsoft. "most vending machines last 12 to 24 years," accessed July 18, 2022. 10 mistakes of a novice vending machine operator - VendSoft.

Based on the cost analysis conducted above (SBEIS Table 2 and SBEIS Table 3), it is possible (although the commission believes unlikely) that pharmacies may exceed the minor cost threshold of \$5,794.56 if they decide to purchase a dispensing device that has a life expectancy of 12 years, which [will] result in \$6,231 in the first year, to comply with the proposed rule.

Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: Based on the reported cost range for securing the OUD dispensing unit and providing security for that unit, we believe the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Explanation of the determination: The commission acknowledges that, as with any regulatory proposal that features some financial cost, there could be additional impacts on smaller businesses due to factors such as community need, geographical location¹², and demands on pharmacy personnel to ensure compliance. The costs of acquiring dispensing units have a broad range and the commission feels it is unlikely that pharmacies would need to pursue the more costly options in terms of unit acquisition and security measures. However, some smaller businesses may determine that they must explore the higher cost options for the purpose of complying with the regulations established by the commission in order to guarantee the integrity of the dispensing unit and ensure the medications are kept secure for individuals that would benefit from the service.

12 Nearly half a million Washingtonians live in pharmacy deserts | Urban@UW.

If the proposed rule has a disproportionate impact on small businesses, the following steps have been identified and taken to reduce the costs of the rule on small businesses:

1. Reducing, modifying, or eliminating substantive regulatory requirements;
2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
3. Reducing the frequency of inspections;
4. Delaying compliance timetables;
5. Reducing or modifying fine schedules for noncompliance; or
6. Any other mitigation techniques including those suggested by small businesses or small business advocates.

If costs cannot be reduced, an explanation has been provided below about why the costs cannot be reduced.

(1) The regulatory requirements established both by the passage of SSB 6086 and the commission cannot be reduced, modified, or eliminated. Doing so would either violate statute or negatively affect the safety, integrity, and security of the OUD medications to be provided by this rule making.

(2) The recordkeeping and reporting requirements are necessary to register and track participating pharmacies. The costs incurred by filing paperwork and establishing policies and procedures represent a small percentage of the reported costs. Compliance with the commission's rules also facilitate compliance with Drug Enforcement Administration requirements for these sites. Additionally, the requirement for the pharmacy to maintain a perpetual inventory for the remote dispensing site is in the statute and the commission's rule cannot loosen that requirement.

(3) Inspection frequency cannot be reduced but the inspection time and costs would not change by any notable amount for participating pharmacies. Inspections are based on the pharmacy itself and the remote OUD site is technically part of that pharmacy due to the licensing requirements. Delaying inspections of the site would mean delaying inspections of the pharmacy which would negatively impact patient safety.

(4) Compliance timetables are not a concern for the commission considering the OUD dispensing site program is voluntary and pharmacies may choose to participate at a time of their convenience.

(5) There are no plans to reduce or modify fine schedules for noncompliance. The commission's ability to impose fines is limited by statute.

(6) The majority of the commission's identified mitigation techniques involve communicating to licensees that the financial cost for compliance in the remote OUD dispensing site program is tied to providing both a dispensing unit and security for that unit. The commission could then inform smaller businesses about more cost-effective options for dispensing unit and security prices that would fall well under the minor cost threshold reported in Section 2 of this document.

The commission will not take action against licensees solely on the amount of financial investment undertaken by the licensee to establish the units. Inspectors will value compliance with the rule equally, regardless of the cost the licensee took on to comply. Inspectors will also provide technical assistance on how to comply with the rule through various means.

It is also important to let licensees know that, as reported in a prior section, the type of dispensing device does not affect the quality of the product delivered to individuals. Inspectors may also provide technical assistance to help pharmacies with compliance matters as needed.

Description of how small businesses were involved in the development of the proposed rule: The commission conducted an initial rules workshop for interested parties at the October 1, 2020, business meeting. In the weeks preceding the workshop, the commission sent public notice to interested parties via GovDelivery, soliciting preliminary feedback prior to the October meeting. One comment in general support of the rule making was received by the Olympia Bupe Clinic, the entity that helped develop the language for SSB 6086.

The estimated number of jobs that will be created or lost as a result of the compliance with the proposed rule: The proposed rule is about remote dispensing sites where technology is used to dispense OUD medications, so the commission does not anticipate pharmacies adding

or removing jobs at existing pharmacies. This rule does allow pharmacies to add a remote dispensing site where technology is used to dispense medications for the treatment of OUD and its symptoms. If a pharmacy elects to add one of these sites, they may be able to dispense these medications with less staff persons than through alternate license pathways.

A copy of the statement may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

July 27, 2023

Kenneth Kenyon, PharmD, MBA, Chair
Pharmacy Quality Assurance Commission

OTS-3060.3

NEW SECTION

WAC 246-945-457 Remote dispensing sites for opioid use disorder medications. A pharmacy may extend its license to register a remote dispensing site where technology is used to dispense medications used for treatment of opioid use disorder or its symptoms. A pharmacy using this registration is the supplying pharmacy and must comply with subsections (1) through (5) of this section and all applicable regulations in Title 21 of the Code of Federal Regulations.

(1) The supplying pharmacy must separately register each remote dispensing site with the commission by completing and returning an application form supplied by the commission and pay applicable fees established by the secretary.

(2) Medications stored in registered remote dispensing sites shall remain under the control of, and be routinely monitored by, the supplying pharmacy.

(3) The supplying pharmacy shall develop and implement policies and procedures to:

(a) Prevent and detect unauthorized access to the registered remote dispensing site;

(b) Document medications used, returned, and wasted from the registered remote dispensing site;

(c) Require the supplying pharmacy to perform a perpetual inventory of medications stored at the registered remote dispensing site; and

(d) Ensure that only the supplying pharmacy is stocking medications stored at a registered remote dispensing site.

(4) Access and retrieval of medications from the registered remote dispensing site, other than by the supplying pharmacy, must be:

(a) Pursuant to a valid prescription or chart order; and

(b) Limited to health care professionals licensed under the chapters specified in RCW 18.130.040 who are acting within their scope of practice, and nursing students as provided in WAC 246-945-450.

(5) The supplying pharmacy shall ensure the registered remote dispensing site is appropriately equipped to secure and protect medications from diversion or tampering.

[]

WSR 23-16-072

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed July 27, 2023, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-046.

Title of Rule and Other Identifying Information: Updating rules about the health profession monitoring program for the optometry profession, WAC 246-851-440 through 246-851-470. The board of optometry (board) is proposing amendments to update terms and make technical corrections regarding the health professional monitoring program terminology to update language changes made by SSB 5496 (chapter 43, Laws of 2022).

Hearing Location(s): On September 8, 2023, at 9:00 a.m., at Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501; or virtual meeting via Microsoft Teams. Join on your computer, mobile app, or room device, [https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLThiODctMmVkJDU3ZmE2OTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d, Meeting ID 286 469 743 295, Passcode BLEXQT; or call in \(audio only\) +1 564-999-2000,,893212425# United States, Olympia 833-322-1218,,893212425# United States \(toll-free\), Phone Conference ID 893 212 425#](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLThiODctMmVkJDU3ZmE2OTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d, Meeting ID 286 469 743 295, Passcode BLEXQT; or call in (audio only) +1 564-999-2000,,893212425# United States, Olympia 833-322-1218,,893212425# United States (toll-free), Phone Conference ID 893 212 425#)

Date of Intended Adoption: September 8, 2023.

Submit Written Comments to: Kristina Bell, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, website <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 1, 2023.

Assistance for Persons with Disabilities: Contact Kristina Bell, phone 360-236-4841, fax 360-236-2901, TTY 711, email Kristina.bell@doh.wa.gov, by August 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For clarity, the proposed rules make technical amendments to conform existing rule language with the changes made by SSB 5496. Amendments include terminology and definitions for currently accepted language and replacing "substance abuse" with "substance use disorder." The board is also proposing amendments to correct citations and make other general housekeeping changes.

Reasons Supporting Proposal: The proposed amendments are required to update the rule to match the terminology changes in SSB 5496. The changes would not affect overall licensure requirements.

Statutory Authority for Adoption: RCW 18.54.070, 18.130.050, 18.130.175, and 18.130.186.

Statute Being Implemented: RCW 18.54.070, 18.130.050, 18.130.175, and 18.130.186.

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

Name of Proponent: Board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Bell, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4841.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. It does not change the effect of the rule as is exempt under RCW 34.05.328 (5)(b)(iii) and (iv).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. Changes include removing the term "impaired" and replacing "substance abuse" with "substance use disorder."

Scope of exemption for rule proposal:

Is fully exempt.

March 10, 2023
William Prothero, OD, Chair
Board of Optometry

OTS-4449.1

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-440 Philosophy governing voluntary substance ((abuse)) use disorder monitoring programs. The board recognizes the need to establish a means of proactively providing early recognition and treatment options for optometrists whose competency may be impaired due to ~~((the abuse of drugs or alcohol))~~ substance use disorder. The board intends that such optometrists be treated, and their treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the board shall approve voluntary substance ~~((abuse))~~ use disorder monitoring programs and shall refer optometrists impaired by substance ~~((abuse))~~ use disorder to approved programs as an alternative to instituting disciplinary proceedings as defined in RCW 18.130.160.

[Statutory Authority: RCW 18.54.070, 18.130.050 and 18.130.186. WSR 92-06-030 (Order 248B), § 246-851-440, filed 2/26/92, effective 3/28/92.]

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-450 ~~((Terms used in WAC 246-851-440 through 246-851-470.))~~ Definitions. The definitions in this section apply in WAC 246-851-440 through 246-851-470 unless the context clearly requires otherwise.

(1) "Aftercare" means that period of time after intensive treatment that provides the optometrist and the optometrist's family with

group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

~~(2)~~ "Approved substance ((abuse)) use disorder monitoring program" or "approved monitoring program" ((is)) means a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-851-460 which enters into a contract with optometrists who have substance ((abuse)) use disorder problems regarding the required components of the optometrist's recovery activity and oversees the optometrist's compliance with these requirements. Substance ((abuse)) use disorder monitoring programs do not provide evaluation or treatment to participating optometrists.

~~((2))~~ (3) "Approved treatment facility" means a facility recognized as such according to RCW 18.130.175(1).

~~(4)~~ "Contract" ((is)) means a comprehensive, structured agreement between the recovering optometrist and the approved monitoring program stipulating the optometrist's consent to comply with the monitoring program and its required components of the optometrist's recovery activity.

~~((3) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(2) or 69.54.030 to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020(2) or 69.54.030.~~

~~(4))~~ (5) "Health care professional" means an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.

(6) "Impaired" or "impairment" means the inability to practice optometry with reasonable skill and safety to patients by reason of a health condition.

(7) "Random drug screens" means laboratory tests to detect the presence related to a substance use disorder in body fluids which are performed at irregular intervals not known in advance by the person being tested.

(8) "Substance ((abuse)) use disorder" means the impairment, as determined by the board, of an optometrist's professional services by any addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

~~((5) "Aftercare" is that period of time after intensive treatment that provides the optometrist and the optometrist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.~~

~~(6))~~ (9) "Support group" ((is)) means a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which optometrists may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

~~((7))~~ (10) "Twelve step groups" ((are)) means groups such as alcoholics anonymous, narcotics anonymous and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

~~((8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person being tested.~~

~~(9) "Health care professional" is an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.)~~

[Statutory Authority: RCW 18.54.070, 18.130.050 and 18.130.186. WSR 92-06-030 (Order 248B), § 246-851-450, filed 2/26/92, effective 3/28/92.]

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-460 Approval of ~~((substance abuse))~~ monitoring programs. The board shall approve the monitoring program ~~((s))~~ which shall participate in the board's substance ~~((abuse))~~ use disorder monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

(1) The approved monitoring program shall not provide evaluation or treatment to the participating optometrists.

(2) The approved monitoring program staff shall have the qualifications and knowledge of both substance ~~((abuse))~~ use disorder and the practice of optometry as defined in this chapter to be able to evaluate:

- (a) Clinical laboratories;
- (b) Laboratory results;
- (c) Providers of substance ~~((abuse))~~ use disorder treatment, both individuals and facilities;
- (d) Support groups;
- (e) The optometry work environment; and
- (f) The ability of the optometrist to practice with reasonable skill and safety.

(3) The approved monitoring program shall enter into a contract with the optometrist and the board to oversee the optometrist's compliance with the requirements of the program.

(4) The approved monitoring program may make exceptions to individual components of the contract on an individual basis.

(5) The approved monitoring program staff shall determine, on an individual basis, whether an optometrist will be prohibited from engaging in the practice of optometry for a period of time and what restrictions, if any, are placed on the optometrist's practice.

(6) The approved monitoring program shall maintain records on participants.

(7) The approved monitoring program shall be responsible for providing feedback to the optometrist as to whether treatment progress is acceptable.

(8) The approved monitoring program shall report to the board any optometrist who fails to comply with the requirement of the monitoring program.

(9) The approved monitoring program shall receive from the board guidelines on treatment, monitoring, and limitations on the practice of optometry for those participating in the program.

[Statutory Authority: RCW 18.54.070, 18.130.050 and 18.130.186. WSR 92-06-030 (Order 248B), § 246-851-460, filed 2/26/92, effective 3/28/92.]

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-470 Participation in approved ~~((substance abuse))~~ monitoring program. (1) In lieu of disciplinary action, the optometrist may accept board referral into the approved ~~((substance abuse))~~ monitoring program or voluntary substance use disorder monitoring program.

(a) The optometrist shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care ~~((professional(s)))~~ professionals with expertise in chemical dependency. ~~((The person(s) performing the evaluation shall not also be the provider of the recommended treatment.))~~

(b) The optometrist shall enter into a contract with the board and the approved ~~((substance abuse))~~ monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The optometrist shall undergo intensive substance ~~((abuse))~~ use disorder treatment in an approved treatment facility.

(ii) The optometrist shall agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber as defined in RCW 69.41.030 and 69.50.101.

(iii) The optometrist shall complete the prescribed aftercare program of the intensive treatment facility, which may include individual ~~((and/or))~~ or group psychotherapy.

(iv) The optometrist shall cause the treatment counselor ~~((s))~~ to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis, and goals.

(v) The optometrist shall submit to random drug screening as specified by the approved monitoring program.

(vi) The optometrist shall attend support groups facilitated by a health care professional ~~((and/or twelve))~~ or 12 step group meetings as specified by the contract.

(vii) The optometrist shall comply with specified employment conditions and restrictions as defined by the contract.

(viii) The optometrist shall sign a waiver allowing the approved monitoring program to release information to the board if the optometrist does not comply with the requirements of this contract.

(c) The optometrist is responsible for paying the costs of the physical and psychosocial evaluation, substance ~~((abuse))~~ use disorder treatment, and random drug screens.

(d) The optometrist may be subject to disciplinary action under RCW 18.130.160 if the optometrist does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.

(2) An optometrist who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance ~~((abuse))~~ use disorder may voluntarily participate in the approved substance ~~((abuse))~~ use disorder monitoring pro-

gram without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance ~~((abuse))~~ use disorder, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program:

(a) The optometrist shall undergo a complete physical and psychological evaluation before entering the approved monitoring program. This evaluation shall be performed by health care ~~((professional(s)))~~ professionals with expertise in chemical dependency. ~~((The person(s) performing the evaluation shall not also be the provider of the recommended treatment.))~~

(b) The optometrist shall enter into a contract with the approved substance ~~((abuse))~~ use disorder monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The optometrist shall undergo intensive substance ~~((abuse))~~ use disorder treatment in an approved treatment facility.

(ii) The optometrist shall agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The optometrist shall complete the prescribed aftercare program of the intensive treatment facility, which may include individual ~~((and/or))~~ or group psychotherapy.

(iv) The optometrist shall cause the treatment counselor ~~((s))~~ to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis, and goals.

(v) The optometrist shall submit to random drug screening as specified by the approved monitoring program.

(vi) The optometrist shall attend support groups facilitated by a health care professional ~~((and/or twelve))~~ or 12 step group meetings as specified by the contract.

(vii) The optometrist shall comply with employment conditions and restrictions as defined by the contract.

(viii) The optometrist shall sign a waiver allowing the approved monitoring program to release information to the board if the optometrist does not comply with the requirements of this contract.

(c) The optometrist is responsible for paying the costs of the physical and psychosocial evaluation, substance ~~((abuse))~~ use disorder treatment, and random drug screens.

(3) ~~((The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsections (1) and (2) of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.))~~ Treatment and pretreatment records shall be confidential as provided by law in chapters 42.56 and 42.17A RCW.

[Statutory Authority: RCW 18.54.070, 18.130.050 and 18.130.186. WSR 92-06-030 (Order 248B), § 246-851-470, filed 2/26/92, effective 3/28/92.]

WSR 23-16-074
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS
[Filed July 28, 2023, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-088.

Title of Rule and Other Identifying Information: WAC 363-116-078
Training program.

Hearing Location(s): On September 21, 2023, at 10:00 a.m., at 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121; and via [Microsoft] Teams. Contact Jaimie Bever for [Microsoft] Teams link to join the meeting virtually or to call in.

Date of Intended Adoption: September 21, 2023.

Submit Written Comments to: Jaimie Bever, Executive Director, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by August 9, 2023.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by August 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule language is to decouple the training stipend from training program job requirements, to implement existing practices into the WAC language, restructure certain sections for clarity and flow, and conduct minor housekeeping in preparation for the upcoming 2024 marine pilot exam and training of the successful applicants.

Decoupling the stipend from training program requirements will be beneficial in the following ways: Responds to lasting COVID[-19] complications at the USCG, Regional Exam Center (REC), National Maritime Center (NMC), and beyond; prevents trainees from entering Evaluation too early and ensures the preestablished psychometrically sound process for evaluation; keeps trainees focused on valuable training opportunities versus taking a job just for stipend credit; increases options for training with senior and training evaluation committee (TEC) pilots; creates more opportunities for tethered escort observations and trainings with adverse wind and currents, and allows trainees sooner opportunities to train and learn fundamental piloting skills at open berths; allows trainees to choose areas to focus on and better customize the training program to their needs based on the experiences they bring to the program; provides long-term simplification of the training matrix, which increases security for TEC and easier vetting, as well as more efficient onboarding of trainees; and fosters an equitable training program for candidates coming to Washington state for the first time.

The trainee will be required to show measurable progress in the training program, as well as meet time constraints, completing the program within the preexisting required 36-month time frame for Puget Sound and 30-month time frame for Grays Harbor.

Reasons Supporting Proposal: Allow more efficient progress through the training program, respond to NMC/REC challenges, and create better alignment with the psychometric training process and evaluation.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board of pilotage commissioners (BPC) received a recommendation from the TEC favoring implementation of the proposed language based on the benefits listed above. TEC develops and monitors the pilot license upgrade program. The language was also reviewed by BPC's assistant attorney general.

Name of Proponent: BPC, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie Bever, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: BPC, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3904.

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 rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

July 28, 2023
Jaimie C. Bever
Executive Director

OTS-4789.1

AMENDATORY SECTION (Amending WSR 19-03-141, filed 1/22/19, effective 2/22/19)

WAC 363-116-078 Pilot training program. After ~~((passing))~~ successful completion of the ~~((written))~~ pilot examination ~~((and simulator evaluation))~~ as required by RCW 88.16.090, pilot candidates pursuing a pilot license are positioned on a ranked list for the applicable pilotage district(s) and must enter and successfully complete a training program specified by the board before consideration for licensure. Pilot candidates shall be ranked for entry into the training program in accordance with RCW 88.16.090(4) and as provided below.

(1) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board of pilotage commissioners (board). The TEC shall include at a minimum:

(a) Three active licensed Washington state pilots who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license, and at least one of whom shall be a member of the board;

(b) One representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and

(c) One other member of the board who is not a pilot.

The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete assigned tasks. In the event that the TEC cannot reach consensus with regard to any issue, it shall report both majority and minority opinions to the board. The TEC is an advisory body and shall have no policy or rule-making authority, nor shall the TEC be authorized to act on behalf of the board, conduct hearings, or take testimony or public comment.

(2) Notification. Pilot candidates on a list as described in ((subsection (2) of)) this section ((7)) and waiting to enter a training program shall provide the board with the best address for notification to enter into a training program. In addition, a pilot candidate shall provide the board with other means of contact such as postal mailing or electronic mail (email) address, phone number, and/or fax number. The email address with a read receipt request, however, will be considered the primary means of notification by the board. It will be the responsibility of the pilot candidate to ensure the board has current contact information at all times. If a pilot candidate cannot personally receive postal or ((electronic mail)) email at the address(es) provided to the board for any period of time, another person may be designated in writing as having power of attorney specifically to act ((in)) on the pilot candidate's behalf regarding such notice. If notice for entry into a training program sent to the email address provided by the pilot candidate is not acknowledged after three attempts and within 30 calendar days or if notice sent via certified mail is returned after three attempts to deliver, that pilot candidate will be skipped and the next pilot candidate on the list will be contacted for entry into a training program. A person so skipped will ((remain next)) retain their position on the list, except that a pilot candidate who is skipped more than once under this subsection shall be moved to the bottom of the list. If a pilot candidate or ((his/her)) their designated attorney-in-fact ((shall)) does not respond within ((fifteen)) 15 calendar days of receipt of notification to accept, refuse, or request a delayed entry into a training program, the pilot candidate shall be skipped and will retain their position on the list, except that a pilot candidate who is skipped more than once under this subsection shall be moved to the bottom of the list.

((2)) (3) Entry. At such time that the board chooses to start a pilot candidate ((or candidates)) in a training program for either pilotage district, notification shall be given as provided in subsection ((1) of this section. Pilot candidates shall be ranked in accordance with a point system established by the board based on overall performance on the written examination and simulator evaluation. Candidates shall be eligible to enter a training program for a pilotage district in the order of such rankings or as otherwise may be determined by the board)) (2) of this section. A pilot candidate who refuses entry into a program will be removed from the waiting list ((with no further obligation by the board to offer a position in that district's training program to such pilot candidate)). However, if the pilot candidate refuses entry into a program in one district, but indicated interest in the other pilotage district on the application for the written examination, the candidate shall remain available for that other district's training program in accordance with ((his/her)) their position on that list.

(a) Delayed entry with board consent. A pilot candidate who is not able to start a training program within two months of the board's specified entry date may, with written consent of the board, delay en-

try into that training program. When a pilot candidate delays entry into a training program by more than two months, the board gives notice to the next pilot candidate on the list for that pilotage district to enter a training program. The pilot candidate who delays entry shall remain eligible for the next position in that district provided that the next position becomes available within the earlier of:

(i) Four years from the pilot candidate's taking the written examination; or

(ii) The date ~~((scheduled for))~~ of the next ~~((pilotage))~~ written examination for the district.

Provided, that a pilot candidate who delays entry into a pilotage district in which the candidate has previously been granted a delay under this subsection, may be moved to the bottom of the list for that district.

(b) Delayed entry without board consent. A pilot candidate not able to start in a training program within two months of the board's specified entry date and who does not obtain the board's written consent to delay entry into a training program shall no longer be eligible for that district's training program ~~((without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077))~~. Nothing in this subsection prohibits a no-longer eligible pilot candidate from applying for the pilot examination at a later time, in which case the pilot candidate shall be evaluated as if they were a new applicant.

~~((3))~~ (c) Effect of accepting training program. A pilot candidate who accepts entry into a training program in a pilotage district shall not be eligible to enter into a training program in the other pilotage district and shall be removed from the list for that district.

(4) Training license. All training licenses shall be signed by the chairperson or their designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program. Prior to receiving a training license pilot candidates must:

(a) Pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot candidates. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot candidate's fitness to pilot. The physical examination must be taken not more than ~~((ninety))~~ 90 days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ~~((ninety))~~ 90 days prior to the anniversary date of that training license. Training license physical examinations will be at the expense of the pilot candidate ~~((All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.~~

~~(4) Development.))~~; and

(b) Receive a verified negative drug test from a laboratory specified by the board. Drug tests will be at the expense of the pilot candidate and will be carried out according to a process specified by the board.

(5) Development. As soon as practical after receiving notification of eligibility for entry into a training program as set forth in this section, the pilot candidate shall provide a completed experience

questionnaire to the trainee evaluation committee (TEC) (~~(, a committee)~~) created per subsection ~~((11))~~ (1) of this section. ~~((The training program consists of three phases: Observation trips, training trips, and evaluation trips, and such other forms of learning and instruction that may be designated.))~~ The TEC shall recommend a training program for adoption by the board. After adoption by the board, ~~((it))~~ the training program will be presented to the pilot candidate. If the pilot candidate agrees in writing to the training program, the board shall issue a training license to the pilot candidate, which ~~((license))~~ shall authorize the pilot candidate to take such actions as are contained in the training program. If the pilot candidate does not agree to the terms of a training program, in writing, within ~~((fifteen))~~ 15 business days of it being received by certified mail return receipt, or by email read receipt requested, that pilot candidate shall no longer be eligible for entry into that pilotage district's training program and the board may give notice to the next available pilot candidate that ~~((he/she is))~~ they are eligible for entry into a training program pursuant to the terms in subsections ~~((1))~~ (2) and ~~((2))~~ (3) of this section.

~~((5) Initial assigned route.))~~

(6) Length of training program. For the Puget Sound district, the length of the program shall not exceed 36 months.

For the Grays Harbor district, the length of the program shall not exceed 30 months.

(7) Familiarization program in the Puget Sound pilotage district.

(a) The TEC shall assign ~~((an initial route))~~ familiarization observations to each trainee at the beginning of ~~((his/her))~~ their training program between ~~((a))~~ commonly navigated ports or terminals and the seaward boundary of the pilotage district.

(b) Unless an extension of time is granted by the board, within eight months of the beginning of the training program if the trainee is continuously on stipend, plus an additional month for every month a trainee is off stipend (up to a maximum of ~~((fifteen))~~ 15 months), the trainee must:

(i) Possess a first class pilotage endorsement without tonnage or other restrictions on their United States Coast Guard license to pilot on six federal pilotage chartlets.

(ii) Take ~~((and pass with a minimum score of eighty percent))~~ all conning and familiarization quizzes provided by the board ~~((applicable to the initial assigned route as described))~~ as outlined in subsection ~~((8))~~ (9) of this section and pass with a minimum score of 80 percent; and

(iii) Take all local knowledge examination(s) provided by the board and pass with a minimum score of 85 percent.

(8) Specification of requirements. To the extent possible, a training program shall provide a wide variety of assigned requirements consisting of observation, training, and evaluation. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, weather conditions, day or night, stern or bow first, draft, size of ship, and any other relevant factors. The board may designate specific shipboard requirements that shall be accomplished with supervising pilots or with the pilot members of the TEC or with pilots designated by the TEC. The total number of requirements in a training program shall be established by the board based on the recommendation of the TEC. The TEC shall design a training program and assign requirements based on factors including, but not limited to, the availa-

bility of vessels and timelines for pilot trainees to complete the program. The board will ensure that during a training program, the pilot trainee will get significant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC. The TEC, at the discretion of the board, may assign or specify training program requirements among multiple pilot trainees. Generally, the pilot trainee who entered their training program earlier has the right of first refusal of training program requirements provided that the TEC may, with approval by the board, allocate or assign training requirements differently as follows:

(a) When it is necessary to equalize training opportunities; or

(b) When it is necessary to spread hard-to-get requirements among pilot trainees so that as many trainees as possible complete requirements on time.

(9) Local knowledge conning and familiarization quizzes and local knowledge exams.

(a) A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which they are applying.

(b) After a trainee has successfully passed a conning or familiarization quiz on a main channel route or a port and approach, they will be eligible to take the conn on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. These quizzes may be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed within the time period specified in subsection (7)(b) of this ((subsection)) section; and

((ii) Take and pass with a minimum score of eighty-five percent the local knowledge examination(s) provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These examinations can be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States Coast Guard license to pilot on the initial assigned route.

(6) Specification of trips. To the extent possible, a training program shall provide a wide variety of assigned requirements in three phases: Observation, training, and evaluation trips. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the TEC or with pilots designated by the TEC. In the Puget Sound pilotage district, pilot trainees shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot trainees in the Grays Harbor pilotage district. The total number of trips in a training program shall be established by the board based on the recommendation of the TEC. The board will ensure that during a training program the pilot trainee will get signif-

icant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC.

~~(7) Length of training program. For the Puget Sound district the length of the program shall not exceed thirty-six months. For the Grays Harbor district the length of the program will be determined at the time the training program is written.~~

~~(8) Local knowledge conning quizzes and local knowledge exams. A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying.)~~ (c) Each conning and familiarization quiz will be organized by main channel routes, ports, and approaches. A conning or familiarization quiz is not intended to replace a local knowledge exam as specified in subsection ~~((5)(b)(ii))~~ (7)(b)(iii) of this section, but there will be some overlap of subject matter. (A) In order for a pilot trainee to progress into the training section of the training program, the pilot trainee shall pass all familiarization quizzes and/or all associated conning quizzes for all routes, ports, and/or approaches for which the pilot trainee ~~((shall pass a conning quiz or quizzes related to the route or harbor area to move from the observation phase to the training phase of his/her training program for that route or harbor area. After a trainee has successfully passed a conning quiz on a main channel route or a port and approach, he/she will be eligible to take))~~ will have the conn ~~((on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. The local knowledge exam for the initial route must be completed within eight months of the training start date if the trainee is taking the stipend. For each month the trainee is off stipend, an additional month is added up to a maximum of fifteen months to successfully pass the appropriate local knowledge exam. The final local knowledge exam must be completed before consideration for licensing and must be successfully passed before the expiration date of the training program. The conning))~~ during any section of the training program.

~~(d) The conning and familiarization quizzes and local knowledge exams will be administered at the ((offices of))~~ location and by the method prescribed by the board of pilotage commissioners. ~~((Eighty percent is the passing grade for conning quizzes, and eighty-five percent is required for the local knowledge exams.))~~ If a trainee fails a conning or familiarization quiz or local knowledge exam, it may be re-taken after seven days, but must be passed within the timing deadlines discussed above.

(e) The local knowledge required of a pilot trainee and the local knowledge familiarization quiz, conning quizzes, and examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- ~~((a))~~ (i) Area geography;
- ~~((b))~~ (ii) Waterway configurations including channel depths, widths and other characteristics;
- ~~((c))~~ (iii) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- ~~((d))~~ (iv) Tides and currents;
- ~~((e))~~ (v) Winds and weather;
- ~~((f))~~ (vi) Local aids to navigation;
- ~~((g))~~ (vii) Bottom composition;

~~((h))~~ (viii) Local docks, berths and other marine facilities including length, least depths and other characteristics;
~~((i))~~ (ix) Mooring line procedures;
~~((j))~~ (x) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
~~((k))~~ (xi) Vessel traffic system;
~~((l))~~ (xii) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
~~((m))~~ (xiii) Air draft and keel clearances;
~~((n))~~ (xiv) Submerged cable and pipeline areas;
~~((o))~~ (xv) Overhead cable areas and clearances;
~~((p))~~ (xvi) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
~~((q))~~ (xvii) Lock characteristics, rules and regulations;
~~((r))~~ (xviii) Commonly used anchorage areas;
~~((s))~~ (xix) Danger zone and restricted area regulations;
~~((t))~~ (xx) Regulated navigation areas;
~~((u))~~ (xxi) Naval operation area regulations;
~~((v))~~ (xxii) Local ship assist and escort tug characteristics;
~~((w))~~ (xxiii) Tanker escort rules - State and federal;
~~((x))~~ (xxiv) Use of anchors and knowledge of ground tackle;
~~((y))~~ (xxv) Applicable federal and state marine and environmental safety law requirements;
~~((z))~~ (xxvi) Marine security and safety zone concerns;
~~((aa))~~ (xxvii) Harbor safety plan and harbor regulations;
~~((bb))~~ (xxviii) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; ~~(and~~
~~((cc))~~ (xxix) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes;
(xxx) Pilot transfer arrangements;
(xxxi) Rest rules; and
(xxxii) Other pertinent information the board deems necessary.
(f) The TEC will define areas that are considered to be hard-to-get, which may differ for trainees depending on vessel traffic while in the training program. It is the pilot trainee's responsibility to make all available hard-to-get shipboard requirements, as defined and assigned by the TEC.
~~((9))~~ (10) Rest. It is the responsibility of the pilot trainee to obtain adequate rest. Pilot trainees shall observe the rest rules for pilots in place by federal or state law or regulation and rules established in the applicable pilotage district in which they will train, ~~((e))~~ in addition to any other rest requirements contained in a training program.
~~((10))~~ (11) Stipend.
(a) At the initial meeting with the TEC the pilot trainee shall indicate whether ~~((he/she wishes))~~ they wish to receive a stipend during their training program. ~~((In the Puget Sound pilotage district,))~~ As a condition of receiving such stipend, pilot trainees will agree to forego ~~((during their training program))~~ other full- or part-time employment ~~((which prevents them from devoting themselves on a full-time basis to the completion of their training program. With the consent of the TEC,))~~ during their training program.

(b) Pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during their training program (provided that). Any such change request (is) must be provided to the board in writing (from) by the trainee. If (the) a pilot trainee (intends) requests to change to a nonstipend status as provided, such change shall be effective for a minimum nonstipend status of at least for an entire calendar month commencing at the beginning of a month. The requirement for designated hard-to-get requirements is waived during the time the pilot trainee is authorized to be in nonstipend status (more than four).

If the trainee does not complete any shipboard training program requirement as defined in subsection (17)(f) of this section within three consecutive months, (his/her) their particular training program may be constructed to provide recency and/or a change in seniority placement prior to resuming the training program.

(c) In the Puget Sound pilotage district, the stipend paid to pilot trainees shall be a maximum of (six thousand dollars) \$8,000 per month (or such other amount as may be set by the board from time to time), shall be contingent upon the (board's) utilities and transportation commission's setting of a (training) tariff surcharge in the tariffs levied pursuant to (WAC 363-116-300) chapter 81.116 RCW sufficient to cover the expense of the stipend, and shall be paid from a pilot training account as directed by the board. In the Grays Harbor pilotage district, the stipend paid to pilot trainees, if a pilot trainee chooses to take stipend, shall be determined by the board and shall be contingent upon the board's receipt of funds, from any party collecting the tariff or providing funds, sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board.

(d) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation (of trips) will be submitted to the board by the (third) first day of the following month. (Proration of) The stipend payable under this subsection shall be (allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(i)) prorated on a daily basis for the first and last months of a training program (unless the training program starts on the first or ends on the last day of a month.) (or

(ii) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month.

(b) In the Puget Sound pilotage district a minimum of twelve trips are required each month for eligibility to receive the minimum stipend amount as set by the board, or eighteen trips to receive the maximum stipend amount as set by the board. A trainee may make more than eighteen trips in a calendar month, but no further stipend will be earned for doing so. In the Grays Harbor pilotage district the minimum number of trips each month for eligibility to receive the stipend is seventy percent or such number or percentage of trips that may be set by the board of the total number of vessel movements occurring in this district during that month. Only trips required by the training program can be used to satisfy these minimums. Trips will be documented at the end of each month.

(c) The TEC will define areas that are considered to be hard-to-get, which many differ for trainees depending on their date of entry. It is the pilot trainee's responsibility to make all available hard-to-get trips, as defined and assigned by the TEC. The board may elect

~~not to pay the stipend if the missing trips were available to the pilot trainee but not taken.~~

~~(d) The TEC, with approval by the board may allocate, assign or specify training program trips among multiple pilot trainees. Generally, the pilot trainee who entered his/her training program earlier has the right of first refusal of training program trips provided that the TEC may, with approval by the board, allocate or assign training trips differently as follows:~~

~~(i) When it is necessary to accommodate any pilot trainee's initial route;~~

~~(ii) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the TEC, that trip will not be considered "available" under (c) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;~~

~~(e) If a pilot trainee elects to engage in any full or part-time employment, the terms and conditions of such employment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."~~

~~(f) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days beginning at the beginning of a month, provided that before any change takes effect, a request is made to the TEC in writing. The requirement for designated hard-to-get trips is waived during the time the pilot trainee is authorized to be in nonstipend status.~~

~~(g)) (e) Any approved pilot association or other organization collecting the pilotage tariff levied by ((WAC 363-116-185 or 363-116-300)) the utilities and transportation commission shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. In the Grays Harbor pilotage district, if there is no separate training surcharge in the tariff or other arrangement, any organization collecting the pilotage tariff levied by ((WAC 363-116-185)) the utilities and transportation commission shall transfer sufficient funds to pay the stipend to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a monthly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.~~

~~((11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The TEC shall include at a minimum: Three active li-~~

censed Washington state pilots, who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the TEC cannot reach consensus with regard to any issue it shall report both majority and minority opinions to)) With the exception of observation, all trainees shall be under the supervision of a supervising pilot whenever performing a shipboard training requirement as part of a training program under this section. All supervising pilots shall hold a valid Washington state pilotage license and shall follow all applicable state and federal laws and regulations, as well as the directives of the board.

(12) Supervising pilots. The board shall designate as supervising pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Supervising pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of supervising pilots available for public inspection at all times. All pilot members of the TEC shall also be supervising pilots.

(a) Volunteer status. Supervising pilots shall be considered as nonemployee volunteers and shall not be entitled to wages or remuneration for their activities in support of the training program, except that supervising pilots may, at the board's discretion, receive reimbursement for actual expenses incurred. Supervising pilots may choose whether to accept any pilot trainees on a given assignment. In no event shall supervising pilots be deemed as, or hold themselves out as employees or representatives of the board or the state.

(b) Role of supervising pilots and pilot trainees. The responsibilities of supervising pilots and pilot trainees shall vary by section of the training program as follows:

(i) During observation, the pilot shall have control of the vessel at all times during any shipboard training requirement. The pilot trainee may observe and interact with the pilot.

(ii) During training, the supervising pilot shall allow the pilot trainee to perform some or all of the tasks required of a pilot under this chapter and chapter 88.16 RCW. The supervising pilot may interact with and coach the pilot trainee by providing guidance and advice. The supervising pilot may, at their discretion, demonstrate certain tasks for the pilot trainee.

(iii) During evaluation, the trainee shall perform all tasks without any guidance or interaction from the supervising pilot, except that a supervising pilot may intervene as provided in subsection (17)(c) of this section. The supervising pilot shall be responsible for evaluating the performance of the pilot trainee in order to determine if they can pilot a vessel safely and independently and perform other tasks required of a pilot.

(c) Responsibilities and expectations. Supervising pilots, as well as licensed pilots performing shipboard observation training requirements with pilot trainees, shall abide by this chapter, chapter 88.16 RCW, and all other applicable state or federal laws or regulations, as well as the directives of the board. Supervising or licensed

pilots shall use those procedures and/or forms prescribed by the board for evaluating pilot trainees.

(13) ~~((Training program trip))~~ Shipboard reports. After each shipboard training program ~~((trip))~~ requirement, the licensed or supervising pilot shall complete a ~~((training program trip))~~ shipboard report form ~~((TPTR))~~ provided by the board. ~~((Training program trip))~~ Shipboard report forms prepared by licensed pilots who are supervising pilots ~~((shall))~~ may be used by the TEC and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee, and for making alterations to a training program. ~~((Licensed pilots who are not supervising pilots may only have trainees on board for observation trips. All trip report forms))~~ All training and evaluation shipboard reports shall be delivered or mailed by the licensed or supervising pilot to a location as determined by the board. They shall not be given to the pilot trainee. The licensed or supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. Observation shipboard reports may be sent directly to the board by the pilot trainee. The TEC shall review these ~~((training program trip report))~~ shipboard reports forms from time to time, and the chairperson of the TEC shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the TEC may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the number of ~~((trips))~~ assignments in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the trainee removed from a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090 for the duration of the training program;

(b) Conviction of an offense involving drugs ~~((or))~~, involving the personal consumption of alcohol, or involving sexual abuse or sexual harassment;

(c) Failure to devote full time to training ~~((in the Puget Sound pilotage district))~~ while receiving a stipend;

(d) The pilot trainee is not physically fit to pilot, as determined by a board-designated physician;

(e) Failure to ~~((make satisfactory))~~ meet the required progress timelines as determined by the board toward ~~((timely))~~ completion of the program ~~((or timely meeting of interim performance requirements in a training program));~~

(f) Inadequate performance on examinations or other actions required by a training program;

(g) Failure to complete the ~~((initial route requirements))~~ familiarization program as specified in subsection ~~((5))~~ (7) of this section within the time periods specified;

(h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training program ~~((trips))~~ requirement(s) as determined by the supervising pilots, the TEC, and/or the board; ~~((or))~~

(i) Upon the fourth intervention during evaluation; or

(j) Violation of a training program requirement, state or federal law ~~((or))~~ or regulation, or directive of the board.

(15) Completion of a training program shall include the requirements that the pilot trainee:

(a) Successfully complete all requirements set forth in the training program including any addendum(s) to the program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on ((his/her)) their United States government license to pilot in all of the waters of the pilotage district in which the pilot candidate seeks a license; and

(c) Complete portable piloting unit (PPU) training as defined by the TEC.

(16) Unanticipated events.

(a) Whenever a local or state government or agency, or the federal government, declares a state of emergency, or if the board determines that there is immediate need to act for the preservation of public health, safety, or general welfare and that there is a threat to trainees, pilots, vessel crews, or members of the public, then notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the pilot training program.

(b) The TEC may further consider additional nonshipboard pilot training including, but not limited to, distance learning.

(c) The TEC, with approval by the board, may alter stipend requirements, maximum duration of the training program, or other parts of the training program where, in the board's sole discretion, such alterations are required in order to accommodate such circumstances that render a trainee unable to timely complete any requirement of the training program, and that could not have been reasonably foreseen at the beginning of the training program.

(17) Definitions. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chartlet" means a geographic examination subarea as defined by the U.S. Coast Guard for federal first class pilotage within a Washington state pilotage district. Successful completion of a chartlet shall be defined as the endorsement of an individual's master mariner credential for a route within an individual chartlet area. The completion of this requirement may include, but is not limited to, chart sketches, route descriptions, light lists, or any other examination requirements of the U.S. Coast Guard. A qualifying chartlet for this section shall be one within the pilotage district for which a pilot trainee is currently training.

(b) "Examination process" or "pilot examination" means the written examination, simulator evaluation, and any other requirements as determined by the board to evaluate and rank potential applicants for entry into a training program, under RCW 88.16.090.

(c) "Intervention" means when a supervising pilot chooses to interject (including, but not limited to, providing verbal advice or suggestions, or taking control of the vessel from the pilot trainee) during a shipboard requirement in the evaluation section of the training program:

(i) In order to avoid, in the sole opinion of the pilot, an incident as defined in WAC 363-116-200 including, but not limited to, an actual or apparent collision, allision, or grounding; and/or

(ii) In order to avoid, in the sole opinion of the pilot, a navigational or marine safety occurrence which may result in actual or apparent personal injury or property damage or environmental damage as defined in WAC 363-116-200.

(iii) Exception. An intervention shall not be deemed to have occurred, notwithstanding a supervising pilot assuming control of the vessel for the reasons described in (c) (i) and (ii) of this subsection, where, in the discretion of the supervising pilot and the TEC, the pilot trainee was not at fault for the circumstances requiring the supervising pilot to assume control. A pilot trainee is not at fault

where a newly licensed pilot of reasonable skill could not have foreseen or prevented the circumstances requiring the supervising pilot to assume control, such as in the event of an unforeseeable environmental hazard or a mechanical failure. The supervising pilot's action shall be verbalized to the pilot trainee and the bridge team, and noted in the comments section of the shipboard reports.

(d) "Newly licensed" means first year of licensure.

(e) "Requirement" means all items listed in the pilot trainee's training program requirements document and agreement.

(f) "Shipboard" means training program requirements that shall be completed on a vessel.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-03-141, § 363-116-078, filed 1/22/19, effective 2/22/19; WSR 13-08-025, § 363-116-078, filed 3/27/13, effective 4/27/13; WSR 12-05-064, § 363-116-078, filed 2/15/12, effective 3/17/12; WSR 10-04-100, § 363-116-078, filed 2/3/10, effective 3/6/10. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-078, filed 7/21/08, effective 8/21/08. Statutory Authority: RCW 88.16.105. WSR 06-20-107, § 363-116-078, filed 10/4/06, effective 11/4/06. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-078, filed 8/29/05, effective 10/1/05.]

WSR 23-16-075

PROPOSED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed July 28, 2023, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-045.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for the veterinarian and veterinary technician profession; WAC 246-933-437 Veterinarian health equity continuing education training requirements, and 246-935-307 Veterinary technician health equity continuing education training requirements. The veterinary board of governors (board) is proposing new sections for licensed veterinarians and veterinary technicians to establish health equity CE to implement ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On September 11, 2023, at 9:05 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S118/119, Tumwater, WA 98501; or virtual option. Join on your computer, mobile app, or room device https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_ODMxYTFhNmUtNWE50C000TBhLTk3OTktM2Q3OTRkMmE1NTc1%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%2522b0a413cc-861e-438f-ad33-52df6d9a4283%2522%257d&data=05%7C01%7CJennifer.Santiago%40doh.wa.gov%7Ce8161d9810ee400d922208daa180f1a7%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C637999872425229961%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=2tr7BMYchw6UAcdfBBWdYWM4tiNH15zLf7Ouc1YUYjE%3D&reserved=0

Date of Intended Adoption: September 11, 2023.

Submit Written Comments to: Melissa Green, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by August 28, 2023.

Assistance for Persons with Disabilities: Contact Melissa Green, phone 360-236-2905, fax 360-236-2901, TTY 711, email melissa.green@doh.wa.gov, by August 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing new WAC 246-933-437 and 246-935-307 to implement ESSB 5229 requiring health equity CE hours. The board is proposing to adopt the health equity model rules in WAC 246-12-800 through 246-12-830 for veterinarians and veterinary technicians to comply with RCW 43.70.613. The proposed rule adds two hours of health equity education to be completed as part of the current CE requirements every four years without changing the existing total number of required CE hours.

Reasons Supporting Proposal: RCW 43.70.613 directs the rule-making authority for each health profession licensed under Title 18 RCW, subject to CE, to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department to establish model rules creating minimum standards for health equity CE training programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the board must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The goal of health equity CE training is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes instruction on skills to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Statutory Authority for Adoption: RCW 18.92.030, 18.130.040, 43.70.040, and 43.70.613.

Statute Being Implemented: RCW 43.70.613.

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

Name of Proponent: Veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2985; Implementation and Enforcement: Melissa Green, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2905.

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 Melissa Green, P.O. Box 47852, Olympia, WA 98504, phone 360-236-2905, fax 360-236-2901, TTY 711, email melissa.green@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 27, 2023

Dordor Vang, DVM, Chair
Veterinary Board of Governors

OTS-4446.1

NEW SECTION

WAC 246-933-437 Veterinarians health equity continuing education training requirements. (1) Veterinarians must complete a minimum of two hours in health equity continuing education training every four years by complying with WAC 246-12-800 through 246-12-830.

(2) This training must be completed by the end of the second full continuing education reporting period after January 1, 2024, or the second full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing health equity continuing education under this section count toward meeting applicable continuing education requirements for veterinarian license renewal.

(4) The board may randomly audit up to 25 percent of licensed veterinarians every two years for compliance after the license is renewed as allowed by WAC 246-12-190.

[]

OTS-4447.1

NEW SECTION

WAC 246-935-307 Veterinary technicians health equity continuing education training requirements. (1) Veterinary technicians must complete a minimum of two hours in health equity continuing education training every four years by complying with WAC 246-12-800 through 246-12-830.

(2) This training must be completed by the end of the second full continuing education reporting period after January 1, 2024, or the second full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing health equity continuing education under this section count toward meeting applicable continuing education requirements for veterinary technician license renewal.

(4) The board may randomly audit up to 25 percent of licensed veterinary technicians every two years for compliance after the license is renewed as allowed by WAC 246-12-190.

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WSR 23-16-098

PROPOSED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed July 31, 2023, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-048.

Title of Rule and Other Identifying Information: Physician health monitoring programs for substance use disorders of veterinarian professions. WAC 246-933-601 through 246-933-630 physician health monitoring. The veterinary board of governors (board) is proposing rule amendments to the physician health substance use disorder monitoring program to update language changes made by SSB 5496 (chapter 43, Laws of 2022).

Hearing Location(s): On September 11, 2023, at 9:05 a.m., at Department of Labor and Industries, 7273 Linderson Way S.W., Room S118/119, Tumwater, WA 98501; or virtual option. Join on your computer, mobile app, or room device https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_ODMxYTFhNmUtNWE5OC000TBhLTk3OTktM2Q3OTRkMmE1NTc1%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%2522b0a413cc-861e-438f-ad33-52df6d9a4283%2522%257d&data=05%7C01%7CJennifer.Santiago%40doh.wa.gov%7Ce8161d9810ee400d922208daa180f1a7%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C637999872425229961%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=2tr7BMYchw6UAcdfBBWdYWM4tiNH15zLf7Ouc1YUYjE%3D&reserved=0

Date of Intended Adoption: September 11, 2023.

Submit Written Comments to: Melissa Green, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 11, 2023.

Assistance for Persons with Disabilities: Contact Melissa Green, phone 360-236-2905, fax 360-236-2901, TTY 711, email melissa.green@doh.wa.gov, by September 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For clarity, the proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. Amendments include terminology and definitions for currently accepted language and replacing "substance abuse" with "substance use disorder." The board is also proposing amendments to correct citations and make other general housekeeping changes.

Reasons Supporting Proposal: For clarity, the proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. The changes would not affect licensure requirements.

Statutory Authority for Adoption: RCW 18.92.030, 18.130.050, 18.130.175, and 18.130.186.

Statute Being Implemented: RCW 18.92.047, 18.130.050, 18.130.175, and 18.130.186.

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

Name of Proponent: Veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2985; Imple-

mentation and Enforcement: Melissa Green, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2905.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. It does not change the effect of the rule as it is exempt under RCW 34.05.328 (5)(b)(iii) and (iv).

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).

Explanation of exemptions: The proposed rule amendments incorporate SSB 5496 terminology changes and clarify existing rule language without changing the effect of the rule.

Scope of exemption for rule proposal:

Is fully exempt.

July 28, 2023

Dordor Vang, DVM, Chair
Veterinary Board of Governors

OTS-4675.1

((SUBSTANCE ABUSE)) PHYSICIAN HEALTH MONITORING

**Participation in Approved Physician Health or Substance Use Disorder
Monitoring Program**

AMENDATORY SECTION (Amending WSR 91-02-060, filed 12/28/90, effective 1/31/91)

WAC 246-933-601 Intent. It is the intent of the legislature that the veterinary board of governors seek ways to identify and support the rehabilitation of veterinarians (~~(where practice or competency may be impaired due to the abuse of drugs or alcohol)~~) who have a health condition that may impair their ability to practice. The legislature intends that these veterinarians be treated so that they can return to or continue to practice veterinary medicine (~~(in a way which~~

~~safeguards the public~~) safely and competently. The legislature specifically intends that the veterinary board of governors establish an alternate program to the traditional administrative proceedings against such veterinarians.

In lieu of disciplinary action under RCW 18.130.160 and if the veterinary board of governors determines that the unprofessional conduct may be the result of ~~((substance abuse))~~ an impairing health condition, the veterinary board of governors may refer the license holder to a ~~((voluntary substance abuse monitoring program approved by the veterinary board of governors))~~ monitoring program.

[Statutory Authority: RCW 18.92.030. WSR 91-02-060 (Order 108B), recodified as § 246-933-601, filed 12/28/90, effective 1/31/91. Statutory Authority: RCW 18.130.175. WSR 90-21-029 (Order 93), § 308-158-010, filed 10/9/90, effective 11/10/90.]

AMENDATORY SECTION (Amending WSR 91-02-060, filed 10/9/90, effective 11/10/90)

WAC 246-933-610 Definitions. ~~((As used in this chapter:~~

(1) ~~"Approved substance abuse monitoring program" or "approved monitoring program" is a program, complying with applicable state law and approved by the board, which oversees a veterinarian's compliance with a contractually prescribed substance abuse recovery program. Substance abuse monitoring programs may provide evaluation and/or treatment to participating veterinarians.~~

(2) ~~"Contract" is a comprehensive, structured agreement between the recovering veterinarian and the approved monitoring program wherein the veterinarian consents to comply with the monitoring program and the required components for the veterinarian's recovery activity.~~

(3) ~~"Approved treatment facility" is a facility recognized as such according to RCW 18.130.175(1).~~

(4) ~~"Substance abuse" means the impairment, as determined by the board, of a veterinarian's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, controlled substances, or other addictive drugs.~~

(5) ~~"Aftercare" is that period of time after intensive treatment that provides the veterinarian or the veterinarian's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment and/or monitoring program staff.~~

(6) ~~"Veterinarian support group" is a group of veterinarians and/or other health professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.~~

(7) ~~"Twelve-steps groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, peer group association, and self-help.~~

(8) ~~"Random drug screens" are the observed collection of specified bodily fluids together with laboratory tests to detect the presence of drugs of abuse in bodily fluids. Collection must occur at irregular intervals not known in advance by the person to be tested.~~

(9) ~~"Veterinarian" means an impaired practitioner.)~~

The definitions in this section apply in WAC 246-933-601 through 246-933-630 unless the context clearly requires otherwise.

(1) "Continuing care" means ongoing treatment and other supports recommended by treatment providers following a period of intensive treatment or illness stabilization, typically at a lower level of care or service intensity.

(2) "Health professional monitoring group" means a group of veterinarians and other health professionals meeting regularly to support the health and well-being of its members. The group provides a confidential setting in which participants may safely discuss impairing or potentially impairing health conditions with a trained and experienced facilitator.

(3) "Impaired" or "impairment" means an inability to practice veterinary medicine with reasonable skill and safety due to a health condition.

(4) "Monitoring agreement" means a comprehensive, structured set of written expectations between the recovering veterinarian and the monitoring program wherein the veterinarian consents to comply with the expectations and elements of monitoring as required by the program.

(5) "Monitoring program" means a physician health program or voluntary substance use disorder monitoring program, which complies with applicable state law and is approved by the board. Such programs oversee a veterinarian's compliance with program requirements and may provide recommendations for approved evaluators or treatment providers.

(6) "Mutual support group" means a group within a 12-step or other organization approved by the monitoring program that promotes a philosophy of personal growth and change through peer support.

(7) "Random drug screens" means the collection of specified bodily fluids together with laboratory tests to detect the presence of drugs related to a substance use. Collection must occur at irregular intervals not known in advance by the veterinarian.

(8) "Substance use disorder" means continued use of substances and related behaviors that continue despite negative consequences.

(9) "Veterinarian" means an impaired or potentially impaired practitioner.

[Statutory Authority: RCW 18.92.030. WSR 91-02-060 (Order 108B), recodified as § 246-933-610, file 12/28/90, effective 1/31/91. Statutory Authority: RCW 18.130.175. WSR 90-21-029 (Order 93), § 308-158-020, filed 10/9/90, effective 11/10/90.]

AMENDATORY SECTION (Amending WSR 91-24-098, filed 12/4/91, effective 1/4/92)

WAC 246-933-620 Approval of ((~~substance abuse~~) monitoring program((s))). The board shall approve the monitoring program((~~s~~)) which shall participate in the ((~~recovery~~)) rehabilitation of veterinarians. The board shall enter ((~~into~~)) a contract with the ((~~approved substance abuse~~)) monitoring program((~~s~~)) on an annual basis.

(1) ((~~An approved~~)) A monitoring program may provide referrals for evaluations ((~~and/or~~)) or treatment to the participating veterinarians.

(2) ((~~An approved~~)) Monitoring program ((~~staff~~)) shall have ((~~the~~)) staff with qualifications and knowledge ((~~of both substance~~

~~abuse as defined in this chapter and the practice of veterinary medicine to be able)) commensurate with the scope of health conditions monitored by the program and the practice of veterinary medicine. At a minimum, program staff should be qualified to evaluate:~~

- ~~(a) ((Drug screening laboratories)) Toxicology testing results;~~
- ~~(b) Laboratory results;~~
- ~~(c) ((Providers of substance abuse treatment, both individual and facilities)) The qualifications, work products, and recommendations of evaluators and treatment providers who serve program participants;~~
- ~~(d) ((Veterinarians' support)) Facilitator reports from health professional monitoring group((s));~~
- ~~(e) The ((veterinarians')) veterinarian's work environment; and~~
- ~~(f) The ability of the veterinarian to practice with reasonable skill and safety.~~

~~(3) ((An approved monitoring program shall enter into a contract with the veterinarian and the board to oversee the veterinarian's compliance with the requirements of the program.~~

~~(4) An approved)) Monitoring program staff shall ((evaluate and recommend to the board, on an individual basis,)) determine whether a veterinarian ((will be prohibited from engaging in the practice of)) should refrain from practicing veterinary medicine for a period ((of time and restrictions, if any, on the veterinarian's access to controlled substances in the work place.~~

~~(5) An approved monitoring program shall maintain records on participants.~~

~~(6) An approved monitoring program shall be responsible for providing feedback to the veterinarian as to whether treatment progress is acceptable.~~

~~(7) An approved monitoring program shall report to the board any veterinarian who fails to comply with the requirements of the monitoring program.~~

~~(8) An approved monitoring program shall provide the board with a statistical report on the program, including progress of participants, at least annually, or more frequently as requested by the board. Progress reports shall not include names or any identifying information regarding voluntary participants.~~

~~(9)) pending further evaluation or treatment and whether the veterinarian's access to controlled substances, or other workplace accommodations, are recommended to protect the health and well-being of the participant and their patients. Refusal to comply with recommended voluntary practice cessation, practice restrictions, or workplace accommodations will be reported to the board.~~

~~(4) A monitoring program shall:~~

~~(a) Enter an agreement with the veterinarian and the board to oversee the veterinarian's compliance with program requirements;~~

~~(b) Maintain records on participants;~~

~~(c) Provide feedback to the veterinarian if the treatment progress is acceptable;~~

~~(d) Report to the board any veterinarian who fails to comply with the requirements of the program;~~

~~(e) Provide the board with a statistical report on the program and relevant program updates, at least annually, or as requested by the board. Reports shall not include any identifying information regarding voluntary participants;~~

~~(f) Provide the board with a complete financial breakdown of cost for each veterinary participant by usage as required by the contract;~~

(g) Provide the board with a complete annual audited financial statement.

(5) The board shall approve and provide the monitoring program guidelines on treatment, monitoring, ~~((and/or))~~ or limitations on the practice of veterinary medicine for ~~((those participating in the program))~~ participants.

~~((10) An approved monitoring program shall provide for the board a complete financial breakdown of cost for each individual veterinary participant by usage at an interval determined by the board in the annual contract.~~

~~((11) An approved monitoring program shall provide for the board a complete annual audited financial statement.))~~

[Statutory Authority: RCW 18.92.030 and 18.130.050. WSR 91-24-098 (Order 221B), § 246-933-620, filed 12/4/91, effective 1/4/92. Statutory Authority: RCW 18.92.030. WSR 91-02-060 (Order 108B), recodified as § 246-933-620, filed 12/28/90, effective 1/31/91. Statutory Authority: RCW 18.130.175. WSR 90-21-029 (Order 93), § 308-158-030, filed 10/9/90, effective 11/10/90.]

AMENDATORY SECTION (Amending WSR 91-24-098, filed 12/4/91, effective 1/4/92)

WAC 246-933-630 Participation in approved ~~((substance abuse))~~ monitoring programs.

(1) In lieu of disciplinary action, the veterinarian may accept board referral into ~~((an approved substance abuse))~~ a monitoring program.

~~((a) ((The veterinarian shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professionals with expertise in chemical dependency.))~~ Before entering the program, the veterinarian shall undergo evaluation(s) by experts approved by the program as a condition of program participation.

~~((b) The veterinarian shall enter into ((a contract))~~ an agreement with the ((approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to the following)) program that identifies program requirements. The veterinarian shall:

~~((i) ((The veterinarian shall agree to))~~ Remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101, when specified by the monitoring program agreement.

~~((ii) ((The veterinarian shall))~~ Submit to initial and random ((drug screening as)) toxicology testing when specified by the ((approved)) monitoring program.

~~((iii) ((The veterinarian shall))~~ Sign a waiver allowing the ((approved monitoring)) program to release information to the board if the veterinarian does not comply with the ((requirements of this contract)) program or monitoring agreement.

~~((iv) The veterinarian shall undergo approved substance abuse treatment in an approved treatment facility.~~

~~((v) The veterinarian shall complete the prescribed aftercare program of the approved treatment facility, which may include individual and/or group psychotherapy.~~

~~(vi) The veterinarian shall cause the treatment counselor(s) to provide))~~ (iv) Complete continuing care as recommended by the treatment providers.

~~(v) Ensure that treatment provider(s) send reports to the ((approved monitoring)) program at specified intervals. Reports shall include treatment ((prognosis and goals))~~ adherence and progress.

~~((vii) The veterinarian shall attend veterinarians' support groups and/or twelve-step group meetings as specified by the contract.~~

~~(viii) The veterinarian shall))~~ (vi) Attend health professional monitoring groups and mutual support groups as recommended by the program.

(vii) Comply with ((specified)) practice conditions and restrictions ((as defined by the contract)).

(viii) Comply with other conditions in the agreement.

~~(ix) Except for (b)(i) through (iii) of this subsection, ((an approved monitoring)) a program may make an exception to the foregoing requirements ((on)) of individual ((contracts)) agreements.~~

~~(c) The veterinarian is responsible for paying the costs of ((the physical and psychosocial evaluation, substance abuse treatment, random drug screens, and therapeutic group sessions))~~ evaluation, treatment, toxicology testing, and monitoring program fees.

~~(d) The veterinarian may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the veterinarian ((does not consent to be referred)) refuses referral to the ((approved)) monitoring program, does not comply with specified practice restrictions or modifications, or does not successfully complete the program.~~

~~(2) A veterinarian who is not being investigated or monitored by the board for ((substance abuse)) an impairing health condition and who is not currently the subject of ((current)) disciplinary action, may voluntarily participate in the ((approved)) monitoring program without ((being referred)) referral by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their ((substance abuse)) health condition, and shall not have their participation made known to the board if they meet the requirements of the ((approved monitoring)) program:~~

~~(a) Before entering the program, the veterinarian shall undergo ((a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation shall be performed by health care professional(s) with expertise in chemical dependency.~~

~~(b) The veterinarian shall enter into a contract with the approved substance abuse monitoring program to comply with the requirements of the program which may include, but not be limited to the following:~~

~~(i) The veterinarian shall undergo approved substance abuse treatment in an approved treatment facility.~~

~~(ii) The veterinarian shall agree to)) evaluation(s) by experts approved by the program as a condition of program participation.~~

~~(b) The veterinarian shall enter into an agreement with the program that identifies program requirements. The veterinarian shall:~~

~~(i) Remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101, when specified by the monitoring program agreement.~~

~~((iii) The veterinarian shall complete the prescribed aftercare program of the approved treatment facility, which may include individual and/or group psychotherapy.~~

~~(iv) The veterinarian shall cause the treatment counselor(s) to provide))~~ (ii) Complete continuing care as recommended by the treatment providers.

~~(iii) Ensure the treatment provider(s) send reports to the ((approved monitoring)) program at specified intervals. Reports shall include treatment ((prognosis and goals.~~

~~(v) The veterinarian shall submit to random observed drug screening as specified by the approved monitoring program.~~

~~(vi) The veterinarian shall attend veterinarians' support groups and/or twelve-step group meetings as specified by the contract.~~

~~(vii) The veterinarian shall))~~ adherence and progress.

~~(iv) Submit to initial and random toxicology testing when specified by the program.~~

~~(v) Attend health professional monitoring groups and mutual support groups as recommended by the program.~~

~~(vi) Comply with practice conditions and restrictions ((as defined by the contract)).~~

~~((viii) The veterinarian shall))~~ (vii) Sign a waiver allowing the ((approved monitoring)) program to release information to the board if the veterinarian does not comply with the ((requirements of this contract)) agreement.

~~(viii) Comply with other conditions in the agreement.~~

~~(ix) Except for (b)(ii) through (iii) of this subsection, ((an approved monitoring)) a program may make an exception to the foregoing requirements ((on)) of individual ((contracts)) agreements.~~

~~(c) The veterinarian is responsible for paying the costs of ((the physical and psychosocial evaluation, substance abuse treatment, random drug screens, and therapeutic group sessions)) evaluation, treatment, toxicology testing, and monitoring program fees.~~

~~(3) ((Treatment and pretreatment))~~ Monitoring program records shall be confidential as provided by law.

[Statutory Authority: RCW 18.92.030 and 18.130.050. WSR 91-24-098 (Order 221B), § 246-933-630, filed 12/4/91, effective 1/4/92. Statutory Authority: RCW 18.92.030. WSR 91-02-060 (Order 108B), recodified as § 246-933-630, filed 12/28/90, effective 1/31/91. Statutory Authority: RCW 18.130.175. WSR 90-21-029 (Order 93), § 308-158-040, filed 10/9/90, effective 11/10/90.]

WSR 23-16-099
PROPOSED RULES
SECRETARY OF STATE
[Filed July 31, 2023, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-009.

Title of Rule and Other Identifying Information: Ballot signature verification.

Hearing Location(s): On December 8, 2023, at 3:00 - 4:00 p.m., at Washington Secretary of State, Legislative Building, 416 Sid Snyder Avenue S.W., Olympia, WA 98504-0220. The hearing will be conducted using Microsoft Teams. To join the hearing, a person can phone 1-206-899-2560 and enter the conference ID 160 989 358#. People will be able to listen to the hearing and comment.

Date of Intended Adoption: May 1, 2024.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email Sheryl.moss@sos.wa.gov, fax 360-664-4619, 360-902-4172, by September 4, 2023.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4172, fax 260-664-4619 [360-664-4619], email Sheryl.moss@sos.wa.gov, by August 31, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the process and standards for verifying ballot declaration signatures in a manner that reduces and ensures consistency in counties throughout the state. The rule is expected to result in fewer mistaken rejections of valid ballots.

Reasons Supporting Proposal: The signature verification process ensures that only valid ballots are counted in elections. At times, valid ballots are not accepted because the signatures do not appear to match. The reason for the adoption of this rule is to ensure that valid ballots are not mistakenly rejected while also ensuring that the signature verification process prevents the acceptance of invalid ballots.

Statutory Authority for Adoption: RCW 29A.04.525, 29A.04.611.

Statute Being Implemented: RCW 29A.40.110, 29A.40.160, 29A.60.165, 29A.60.195.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, 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.

Scope of exemption for rule proposal:

Is fully exempt.

July 31, 2023
Randy Bolerjack
Deputy Secretary of State

OTS-4842.1

AMENDATORY SECTION (Amending WSR 20-14-035, filed 6/24/20, effective 7/25/20)

WAC 434-250-120 Verification of the signature and return date.

(1) A ballot shall be counted if:

(a) The voter has not already cast a ballot that has been accepted in the election;

(b) The voter signed the ballot declaration (~~(is signed)~~) with a valid signature (~~(. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter:~~

~~(i) If the voter is unable to sign their name, the voter may make a mark or symbol with two witnesses' signatures. A signature stamp accompanied by two witness signatures is an acceptable mark;~~

~~(ii) A power of attorney cannot be used as a signature for a voter.~~

~~(c) The signature has been verified by the county of current registration pursuant to WAC 434-379-020; and~~

~~(d))~~, as determined by WAC 434-261-051 through 434-261-053, or the voter has provided identification at a voting center;

(c) The envelope is returned in one of the following methods:

(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The mailing date of a ballot sent through a commercial mailing service, such as FedEx or UPS, may be considered a postmark. The postmark on the envelope is the official date of mailing. If there are two postmarks, the earlier postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) Consistent with WAC 434-250-080, the voter's current ballot and signed declaration shall be accepted for initial processing; ballots previously or subsequently received for the same voter are not counted nor rejected by the county canvassing board. Such ballots (~~(shall be)~~) are invalid and categorized as informational only.

(a) If the first ballot received is identical to the voter's current ballot because the voter submitted a replacement ballot, the re-

placement ballot shall be referred to signature verification for initial processing.

(b) If the first ballot received is suspended because of a voter registration update, the suspended ballot shall be held by the county of current registration. The county of registration may choose to manually check the suspended ballot for signature issues and send a cure form, while allowing time for the current ballot to be received and accepted.

~~(4) ((The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on))~~ A ballot ((declaration)) may not be rejected merely because the ((signature)) ballot is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. ~~((The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of their duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.))~~

(5) For service and overseas ballots returned by fax or email, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or in multiple emails.

(a) Service and overseas ballots returned by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(b) Only service and overseas voters are eligible to return a ballot electronically. For electronic ballots received from voters who are not service or overseas voters the county auditor must:

(i) Contact the voter immediately if a fax or email ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.

(ii) Count only the ballot received by mail or ballot drop box if the voter returns both an electronic ballot and a ballot by mail or ballot drop box.

(iii) Send the electronic ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.

~~((6) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.))~~

[Statutory Authority: RCW 29A.04.611. WSR 20-14-035, § 434-250-120, filed 6/24/20, effective 7/25/20; WSR 19-12-115, § 434-250-120, filed 6/5/19, effective 7/6/19; WSR 19-05-041, § 434-250-120, filed 2/14/19, effective 3/17/19; WSR 18-10-003, § 434-250-120, filed 4/19/18, effective

tive 5/20/18; WSR 14-06-040, § 434-250-120, filed 2/26/14, effective 3/29/14; WSR 12-14-074, § 434-250-120, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-250-120, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.08.420, 29A.24.131, 29A.40.110, 29A.46.020, and 29A.80.041. WSR 10-14-091, § 434-250-120, filed 7/6/10, effective 8/6/10. Statutory Authority: RCW 29A.04.611, 29A.04.530. WSR 06-02-028, § 434-250-120, filed 12/28/05, effective 1/28/06. Statutory Authority: RCW 29A.04.611. WSR 05-17-145, § 434-250-120, filed 8/19/05, effective 9/19/05.]

OTS-4827.2

NEW SECTION

WAC 434-261-051 Standards for verifying ballot declaration signatures. (1) This regulation, together with WAC 434-261-052 and 434-261-053, describes the process for verifying that a signature on the ballot declaration is the voter's registration signature.

(2) At each stage of the signature verification process, there is a presumption that the signature on the ballot declaration is the voter's signature.

(3) When reviewing ballot declaration signatures, staff assigned to verify signatures shall consider the following criteria:

(a) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

(b) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;

(c) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

(d) Agreement of the most distinctive, unusual traits of the signatures;

(e) The ballot declaration signature is in the same format as the voter registration signatures, such as printed, in cursive, or another form;

(f) Agreement of individual characteristics, such as how "t's" are crossed, "i's" are dotted, or loops are made on letters;

(g) Agreement of initial strokes and connecting strokes of the signature;

(h) Agreement of similar endings, such as an abrupt end, a long tail, or loop back around;

(i) Agreement of presence or absence of pen lifts;

(j) Agreement in the way names are spelled; and

(k) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

(4) When reviewing ballot declaration signatures that appear to contain discrepancies, staff verifying signatures should accept signatures if the seeming discrepancy can reasonably be explained by the following:

(a) A shaky signature that could be health-related or the result of aging;

(b) The voter's use of a variation of the voter's full name, such as the use of initials, including or omitting a middle name, or substituting a middle name for a first name;

(c) A change in the voter's signature over time;

(d) A signature written in haste;

(e) A signature in the voter's registration file that was written with a stylus pen or other electronic signature tool, which may result in a thick or fuzzy quality;

(f) A writing surface that was hard, soft, uneven, or unstable;

(g) The voter is a first-time voter;

(h) Any other reasonable factor.

(5) An agent, including someone acting under a power of attorney, cannot sign a ballot declaration on behalf of their principal.

(6) If a voter inadvertently signs another voter's ballot declaration, but elections personnel can identify the correct voter and verify that voter's signature, the signature and the ballot must be accepted for the voter that signed the ballot declaration.

(7) All staff verifying ballot declaration signatures must receive training on these signature verification standards before verifying ballot declaration signatures. They must attend the training at least once every two years. This applies to, but is not necessarily limited to, individuals performing the initial review, secondary review, and review of signatures as part of the cure process. Members of the county canvassing board are required to receive training except as exempted by RCW 29A.04.540.

(8) The canvassing board may designate the county auditor or the county auditor's staff to perform the signature verification function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of their duties.

(9) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

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NEW SECTION

WAC 434-261-052 Initial and secondary review of ballot declaration signatures. (1) When conducting an initial review of a ballot declaration signature, the county auditor must accept the signature under the following conditions:

(a) The county auditor must accept the signature unless, considering the criteria in WAC 434-261-051 (3) and (4), the signature on the ballot envelope has multiple, significant, and obvious discrepancies from all signatures in the voter's registration file;

(b) If the voter is unable to sign their name as they are registered to vote, the signature must be accepted so long as the voter has made a mark, symbol, or signature stamp, and the ballot declaration includes two witness signatures.

(2) If the signature is not accepted following the initial review, the ballot declaration signature must be referred to a second review.

(a) A different person who has received signature verification training under WAC 434-261-051(7) must conduct the second review of the signature.

(b) If, considering the criteria in WAC 434-261-051 (3) and (4), the second reviewer determines that there are multiple, significant, obvious discrepancies from all signatures in the voter's registration file, the voter must be notified of the process to cure the signature;

(3) The county auditor or staff designated by the county auditor may conduct additional reviews of ballot declaration signatures that have not yet been accepted. For example, if the county auditor or designated staff become aware of reasonable explanations that should be considered under WAC 434-261-051(4), an additional review may be appropriate.

(4) Even if the ballot declaration signature appears to match the signature in the voter registration file, and notwithstanding any other provision, a ballot may be referred to the canvassing board if there is clear, objective evidence, beyond the signature itself, that a ballot signature is fraudulent. This provision is intended to apply only very rarely, such as in instances of confessed forgery or similar circumstances. A person verifying signatures may refer a ballot to the county auditor, and, if satisfied that the standard is met, the county auditor may refer the ballot to the canvassing board. The county auditor and the canvassing board may refer the matter to law enforcement.

(5) The county auditor may conduct the initial signature review by using an automated verification system approved by the secretary of state. If a signature is not accepted by the automated verification system, the county auditor must manually use the process described in this section.

(6) If two ballots are returned in one return envelope, ballots may be accepted in the following manner. In all other circumstances, the ballots must be referred to the canvassing board for rejection.

(a) If there is only one valid signature on the ballot declaration and the races and measures voted are the same on both ballots, one ballot may be accepted;

(b) If there are two valid signatures on the ballot declaration, both ballots may be counted in their entirety;

(c) If there is one valid signature on the ballot declaration and the envelope contains one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.

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NEW SECTION

WAC 434-261-053 Ballot declaration signature cure process. (1)

If a ballot signature is not accepted following secondary review of the ballot declaration signature, the voter used a mark or signature stamp but did not include witnesses, or if the ballot declaration was not signed, the ballot cannot be counted until the voter cures their signature. The voter identified on the ballot return envelope must be notified as soon as possible of the procedure for curing their signature by:

(a) A notice letter sent by first class mail with a signature update form or a missing signature form. The forms must include the ballot declaration required by WAC 434-230-015. The notice letter must

also include a prepaid envelope in which to return a completed signature update or missing signature form. The notice letter must:

(i) Be in substantially the same form as the sample notice letter created by the secretary of state; and

(ii) Be available in all languages required by the Department of Justice.

(b) Phone (if the voter has provided a phone number);

(c) Text message (if the voter has opted into text message notifications); and

(d) Email (if the voter has provided an email address).

(2) The voter may cure their ballot signature no later than the day before the election is certified.

(3) A voter may cure a missing signature by:

(a) Returning a missing signature form. The signature on the form must be compared to the voter's signature in the voter registration record using the process described in WAC 434-261-052;

(b) Appearing in person and signing the ballot declaration. The signature on the ballot declaration must be compared to the voter's signature in the voter registration record using the process described in WAC 434-261-052.

(4) A voter using a mark may cure a failure to have two witnesses attest to the signature by returning a missing signature form. The form must contain the voter's mark and the signatures of two witnesses.

(5) A voter may cure a nonmatching signature by:

(a) Returning a signature update form or appearing in person and signing a new registration form.

(i) The signature on the form becomes a signature in the voter registration record for the current and future elections;

(ii) The signature on the form must be compared to the signature on the ballot declaration using the process described in WAC 434-261-052.

(b) Providing valid secondary identity verification. The county auditor must verify the secondary identification is for the voter who signed the ballot declaration. Secondary identification may be:

(i) The last four digits of the voter's Social Security number or the voter's full driver's license number or state identity card number;

(ii) Photo identification, valid enrollment card of a federally recognized Indian tribe in Washington state, copy of a current utility bill or current bank statement, copy of a current government check, copy of a current paycheck, or a government document, other than a voter registration card, that shows both the name and address of the voter;

(iii) A multifactor authentication code, from a system approved by the secretary of state, the county auditor sent to the voter's phone number or email address that has previously been provided by the voter.

If a voter successfully provides secondary identity verification and confirms, orally or in writing, that the voter in fact returned the ballot, the ballot must be accepted unless two persons who have received signature verification training under WAC 434-261-051(7) conclude beyond a reasonable doubt that a person other than the voter signed the ballot declaration. This conclusion may be based on evidence including, but not limited to, other ballots in the same election bearing the same signature.

(6) If the registered voter asserts that the signature on the ballot declaration is not his or her signature prior to 8:00 p.m. on election day, the voter may vote a provisional ballot.

(7) If the voter does not successfully cure their signature by the day before certification of the election, the ballot must be sent to the canvassing board.

(8) A record must be kept of the process used to cure ballots with missing and mismatched signatures. The record must contain the date on which each voter was contacted, or the notice was mailed, as well as the date on which each voter subsequently submitted a signature to cure the missing or mismatched signature.

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OTS-4843.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1)

The disposition of provisional ballots is governed by WAC 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) ~~((Where two voted ballots are returned together:~~

~~(i) If the two ballots are returned with only one valid signature on the ballot declaration, the races and measures voted the same on both ballots may be counted once;~~

~~(ii) If the two ballots are returned with two valid signatures on the ballot declaration, both ballots may be counted in their entirety;~~

~~(iii) If two ballots are returned with one valid signature on the ballot declaration, one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.~~

~~(b))~~ Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

~~((e))~~ (b) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

~~((d))~~ (c) Where the voter has overvoted;

~~((e))~~ (d) Where the ballot was created for a prior election;

(e) Where a ballot was submitted with a fraudulent signature;

(f) Where the ballot signature did not match the voter registration signature or the signature was missing and the voter did not cure the signature by the day before the election was certified.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-262-031, filed 6/10/20, effective 7/11/20; WSR 19-12-115, § 434-262-031, filed 6/5/19, effective 7/6/19. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-262-031, filed 6/13/16, effective

7/14/16. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-262-031, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-262-031, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 09-12-078, § 434-262-031, filed 5/29/09, effective 6/29/09; WSR 08-15-052, § 434-262-031, filed 7/11/08, effective 8/11/08; WSR 07-20-074, § 434-262-031, filed 10/1/07, effective 11/1/07; WSR 07-02-100, § 434-262-031, filed 1/3/07, effective 2/3/07; WSR 06-14-049, § 434-262-031, filed 6/28/06, effective 7/29/06; WSR 05-17-145, § 434-262-031, filed 8/19/05, effective 9/19/05.]

OTS-4841.1

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-262-032 Provisional ballots—Disposition. Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the county auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election. A voted ballot received from an unregistered voter, other than a service, overseas, or conditionally registered voter, is considered a provisional ballot. A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record. Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If the voter was previously registered and later canceled and the auditor determines that the cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(2) If the voter was previously registered and later canceled and the auditor determines that the cancellation was not in error, register the voter and count the ballot.

(3) If a registered voter has voted a ballot for a previous address, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(4) If the voter is registered in another county, the auditor shall immediately forward the ballot to the elections official for the jurisdiction in which the voter is registered. The provisional ballot must be forwarded within seven calendar days after a primary or special election and (~~fourteen~~) 14 calendar days after a general election, and as soon as possible if past that date.

(5) If the voter voted a regular ballot and a provisional ballot, the provisional ballot is not counted if the regular ballot has already been counted. The regular ballot is not counted if the provisional ballot has already been counted.

(6) If the voter voted a provisional ballot because he or she failed to produce identification at a voting center, the ballot is counted if the signature on the envelope matches the signature in the voter registration record, using the standards and process set forth in WAC 434-261-051 through 434-261-053.

(7) If the voter voted a provisional ballot because the voter is provisionally registered and the voter's registration record is still flagged as requiring verification of identity, the provisional ballot is not counted.

(8) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

[Statutory Authority: RCW 29A.04.611. WSR 19-12-115, § 434-262-032, filed 6/5/19, effective 7/6/19. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-262-032, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-262-032, filed 12/6/11, effective 1/6/12.]

OTS-4845.1

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-264-010 Recount. (1) A recount is the process for retabulating the votes, including write-ins, for a specific office or issue on all valid ballots cast in a primary or election.

(2) All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) Prior to beginning the recount, the county auditor shall exercise due diligence to confirm that all returned ballots have been identified and reconciled, and that no ballots have been erroneously omitted from the original count.

~~((4))~~ (5) If any ballots or votes are discovered during the recount process that were erroneously not counted or canvassed during the original count or during a previous recount, the ballots shall be presented to the county canvassing board in accordance with RCW 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

[Statutory Authority: RCW 29A.04.611. WSR 12-14-074, § 434-264-010, filed 7/2/12, effective 8/2/12; WSR 10-03-072, § 434-264-010, filed 1/18/10, effective 2/18/10; WSR 07-12-032, § 434-264-010, filed 5/30/07, effective 6/30/07.]

OTS-4844.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel their own voter registration by submitting a signed written notification to the auditor for the county in which the voter is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC (~~(434-379-020)~~) 434-261-051. A county auditor may not process a voluntary cancellation between the deadline in RCW 29A.08.140 for updating a registration and certification of the primary or election.

A participant in the future voter program established under RCW 29A.08.170 may be removed from the program by submitting a signed written notification to the auditor for the county in which they live. The auditor shall process the notification in the same manner as other voluntary cancellations.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-111, filed 6/10/20, effective 7/11/20; WSR 14-06-040, § 434-324-111, filed 2/26/14, effective 3/29/14; WSR 05-24-039, § 434-324-111, filed 11/30/05, effective 12/31/05.]

OTS-4846.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-050 Unsigned ballot declaration or
 mismatched signatures.

WSR 23-16-101

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed July 31, 2023, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-069.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for osteopathic physicians. WAC 246-853-075 Health equity continuing education training requirements. The board of osteopathic medicine and surgery (board) is proposing a new section of rule to establish health equity CE requirements to implement ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On September 15, 2023, at 9:30 a.m., at Umpqua Bank Renton, 333 S.W. 7th Street, Renton, WA 98057; or virtual. You may register in advance for the virtual portion of the hearing. After registering, you will receive a confirmation email containing information about joining the webinar. Join on your computer, mobile app, or room device https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F1%2Fmeetup-join%2F19%3Ameeting_ZTVjNmFhOWQtMTFkYy00ZTM1LWFhZGZEtNWNkYTdlNjIjZGJi%40thread.v%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%25223f147261-e44e-4696-9d68-1ecb58823a4d%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=904a872e-a804-4e7b-af18-1bb96aecb5fd&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true; or call in (audio only) +1 564-999-2000,,129247932# United States, Olympia, (833) 322-1218,,129247932# United States (toll-free), Phone Conference ID 129 247 932#.

Date of Intended Adoption: September 15, 2023.

Submit Written Comments to: Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2850, by September 8, 2023.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov, by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directed the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the board must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The board is proposing new WAC 246-853-075 to implement ESSB 5229. The board is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for osteopathic physicians to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every four years. The proposed rule does not change total CE hours but requires two hours in health equity CE every four years which is absorbed into the existing number of CE hours required. The

health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifests as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 43.70.613, 18.57.005, and 18.130.050.

Statute Being Implemented: ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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 Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 31, 2023

U. James Chaney

Executive Director

Board of Osteopathic Medicine and Surgery

OTS-4641.1

NEW SECTION

WAC 246-853-075 Health equity continuing education training requirements. (1) An osteopathic physician must complete two hours of

health equity continuing education training every four years as described in WAC 246-12-800 through 246-12-830.

(2) The two hours of health equity continuing education an osteopathic physician completes count toward meeting applicable continuing education requirements.

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WSR 23-16-103
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Division of Developmental Disabilities)
[Filed July 31, 2023, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-057.

Title of Rule and Other Identifying Information: WAC 388-823-1095
What are a person's rights as a DDA client or eligible person?, and
388-823-1096 What requirements must a home or community-based service
setting meet?

Hearing Location(s): On September 5, 2023, at 10:00 a.m., virtual
via Microsoft Teams or call in. Hearings are being held virtually.
Please see the department of social and health services (DSHS) website
for the most up-to-date information.

Date of Intended Adoption: Not earlier than September 6, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box
45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov,
fax 360-664-6185, by 5:00 p.m. on September 5, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza,
phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email
shelley.tencza@dshs.wa.gov, by 5:00 p.m. on August 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The developmental disabilities adminis-
tration (DDA) is amending WAC 388-823-1096 to add the federal medicaid
requirements for integrated settings directly into DDA's rules. DDA is
amending WAC 388-823-1095 to clarify that the integrated settings re-
quirements establish rights in addition to those established under
chapter 71A.26 RCW.

Reasons Supporting Proposal: These amendments are intended to
distinguish more clearly between client rights guaranteed by Washing-
ton statute (codified in WAC 388-823-1095) and federal medicaid re-
quirements (codified in WAC 388-823-1096) for delivering home and com-
munity-based services in integrated settings.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.26.040.

Statute Being Implemented: RCW 71A.26.010.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Di-
az, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementa-
tion and Enforcement: Ryan Hilton, P.O. Box 45310, Olympia, WA
98504-5310, 360-407-1500.

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.
These rules incorporate a state statute and a federal regulation with-
out material change.

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: 42 C.F.R. 441.301.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.
 Scope of exemption for rule proposal:
 Is fully exempt.

July 25, 2023
 Katherine I. Vasquez
 Rules Coordinator

SHS-4979.3

AMENDATORY SECTION (Amending WSR 21-03-003, filed 1/7/21, effective 2/7/21)

WAC 388-823-1095 What are a person's rights as a DDA client or eligible person? (1) The following definitions apply to this section:

(a) "Administration" means the division of the department responsible for providing services to eligible persons, but does not include the division of the department responsible for the licensing and certification of services and facilities for eligible persons.

(b) "Assessment" has the same meaning as defined in RCW 71A.10.020.

(c) "Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and has been determined to be eligible to receive services under chapter 71A.16 RCW.

(d) "Department" means the department of social and health services.

(e) "Developmental disabilities ombuds" means the office created under chapter 43.382 RCW.

(f) "Eligible person" has the same meaning as defined in RCW 71A.10.020.

(g) "Legal representative" means a parent of a client under age ((eighteen)) 18, a court-appointed guardian or limited guardian under Title 11 RCW if the subject matter is within the scope of the guardianship order, or any other person authorized by law to act for the client.

(h) "Necessary supplemental accommodation representative" means an individual who receives copies of administration correspondence to help a client or eligible person understand the documents and exercise the client or eligible person's rights. The necessary supplemental accommodation representative is identified by the client or eligible person when the client or eligible person does not have a legal guardian and is requesting or receiving services from the administration.

(i) "Provider" means an individual, a facility, or an agency that is one or more of the following: Licensed, certified, contracted by the department, or state operated to provide services to administration clients.

(j) "Restraint" includes:

(i) Physical restraint, which is a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the client's body that restricts freedom of movement or access to the client's body, is used for discipline or convenience, and is not required to treat the client's medical symptoms; and

(ii) Chemical restraint, which is a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the client's medical symptoms.

(k) "Restriction" means a limitation on the client's use or enjoyment of property, social activities, or engagement in the community.

(1) "Service plan" means any plan required by the department to deliver the services authorized by the administration to the client.

(2) The rights set forth in this section are the minimal rights guaranteed to all clients of the administration, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights.

(3) The administration must notify the individual and the individual's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon determining the individual is an eligible person. The notification the administration provides must be in written form. The administration must document the date that the notification required in this subsection was provided.

(4) The administration must notify a client and a client's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon conducting a client's assessment. The notification the administration provides must be in written form. The administration must document the date it provided the notification required in this subsection.

(5) The client has the right to exercise autonomy and choice free from provider interference. This includes the client's right to:

(a) Be free from sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(b) Be free from discrimination based on race, color, creed, national origin, religion, sex, age, disability, marital and family status, gender identity, or sexual orientation;

(c) Make choices regarding the type of food available within the client's resources and service plan;

(d) Have visitors at the client's home and associate with persons of the client's choosing and subject to limitations as negotiated with the client's housemates;

(e) Control the client's schedule and choose activities, schedules, and health care that meet the client's needs;

(f) Information about the treatment ordered by the client's health care provider and help plan how the treatment will be implemented;

(g) Be free from unnecessary medication, restraints, and restrictions;

(h) Vote, participate in the democratic process, and help people with getting elected to office;

(i) Manage the client's money or choose a person to assist;

(j) Be part of the community;

(k) Make choices about the client's life;

(l) Choose the clothes and hairstyle the client wears;

(m) Furnish and decorate the client's bedroom to the client's preferences or furnish and decorate the client's home to the client's preferences subject to agreement with the client's housemates;

(n) Seek paid employment;

(o) Receive the services that the client agrees to receive;

(p) Decide whether or not to participate in research after the research has been explained to the client, and after the client or the

client's legal representative gives written consent for the client to participate in the research; and

(q) Be free from financial exploitation.

(6) The client has the right to participate in the administration's service planning. This includes the client's right to:

(a) Be present and provide input on the client's service plans written by the administration and providers;

(b) Have meaningful opportunities to lead planning processes;

(c) Have the client's visions for a meaningful life and the client's goals for education, employment, housing, relationships, and recreation included in the planning process;

(d) Choose an advocate to attend the planning processes with the client; and

(e) Have access to current and accurate information about recreation, education, and employment opportunities available in the client's community.

(7) The client has the right to access information about services and health care. This includes the client's right to:

(a) View a copy of all of the client's service plans;

(b) Possess full copies of the client's current service plans;

(c) Review copies of the policies and procedures for any service the client receives, at any time. This includes policies and procedures about how the client may file a complaint to providers and the department;

(d) Examine the results of the department's most recent survey or inspection conducted by state surveyors or inspectors, statements of deficiency, and plans of correction in effect with respect to the client's provider and the client's residence. The client's service provider must assist the client with locating and accessing this information upon the client's request; and

(e) Receive written notification of enforcement actions taken by the department against the client's provider. The administration's case manager or designee must provide notification to the client and the client's legal representative or necessary supplemental accommodation representative within (~~twenty~~) 20 days, excluding weekends and holidays, of the date of enforcement. For purposes of this subsection, a "provider" means an entity that provides residential services received by a client that is operated by or contracted through the administration. An enforcement action that requires this notification includes:

(i) Conditions placed on the provider certification or license;

(ii) Suspension or limited suspension of referrals or admissions;

(iii) Imposition of provisional certification or decertification;

or

(iv) Denial, suspension, or revocation of a license or certification.

(8) The client has the right to file complaints and grievances, and to request appeals. This includes the client's right to:

(a) Appeal any decision by the department that denies, reduces, or terminates the client's eligibility, services, or choice of provider as defined in federal medicaid law and state public assistance laws;

(b) Submit grievances to the client's provider about the client's services or other concerns. This includes, but is not limited to, concerns about the behavior of other people where the client lives. The provider must maintain a written policy on the grievance process that includes timelines and possible remedies. If a grievance is unre-

solved, the provider must provide the client with information on how to submit the grievance to the department;

(c) File complaints and grievances, and request appeals without penalty or retaliation by the department or providers; and

(d) Receive information about how to obtain accommodation for disability in the appeal process.

(9) The client has the right to privacy and confidentiality. This includes the client's right to:

(a) Personal privacy and confidentiality of the client's personal records;

(b) Communicate privately, including the right to send and receive mail and email, and the right to use a telephone in an area where calls can be made without being overheard; and

(c) Meet with and talk privately with the client's friends and family.

(10) The client has rights during discharge, transfer, and termination of services as set forth in this subsection.

(a) Clients who are residents of a long-term care facility that is licensed under chapter 18.20, 72.36, or 70.128 RCW have the rights set forth in RCW 70.129.110.

(b) Clients who receive certified community residential services have the right to:

(i) Remain with the client's provider. Services must not be terminated unless the provider determines and documents that:

(A) The provider cannot meet the needs of the client;

(B) The client's safety or the safety of other individuals in the facility or residence is endangered;

(C) The client's health or the health of other individuals in the facility or residence would otherwise be endangered; or

(D) The provider ceases to operate.

(ii) Receive written notice from the provider of any potential termination of services at least (~~thirty~~) 30 days before such termination, except when there is a health and safety emergency that requires termination of service, in which case notice must be provided at least (~~seventy-two~~) 72 hours before the date of termination. The notice must be provided to the client and the client's legal representative or necessary supplemental accommodation representative. The notice must include:

(A) The reason for termination of services; and

(B) The effective date of termination of services.

(iii) Receive a transition plan at least two days before the effective date of the termination of services, or if the termination was based on a health and safety emergency receive a transition plan within two days of the administration's receipt of notice for emergency termination. The administration must provide the client and the client's legal representative or necessary supplemental accommodation representative with the plan. The plan must include:

(A) The location where the client will be transferred;

(B) The mode of transportation to the new location; and

(C) The name, address, and telephone number of the developmental disabilities ombuds.

(c) A provider that provides services to clients in a residence owned by the provider must exhaust the procedures for termination of services prior to the commencement of any unlawful detainer action under RCW 59.12.030.

(11) The client has the right to access advocates. The client has the right to receive information from agencies acting as client advo-

cates, and be afforded the opportunity to contact these agencies. The provider must not interfere with the client's access to any of the following:

- (a) Any representative of the state;
- (b) The resident's individual physician;
- (c) The developmental disabilities ombuds; or
- (d) Any representative of the organization designated to implement the protection and advocacy program pursuant to RCW 71A.10.080.

(12) If a client is subject to a guardianship order pursuant to chapter ~~((11.88))~~ 11.130 RCW, the rights of the client under this section are exercised by the client's guardian if the subject matter is within the scope of the guardianship order.

(13) In addition to the rights in this section, clients who receive home and community-based services are entitled to receive those services in an integrated setting as described in WAC 388-823-1096.

[Statutory Authority: RCW 71A.12.030 and 71A.26.030. WSR 21-03-003, § 388-823-1095, filed 1/7/21, effective 2/7/21. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-1095, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-1095, filed 6/1/05, effective 7/2/05.]

AMENDATORY SECTION (Amending WSR 18-10-071, filed 4/30/18, effective 5/31/18)

WAC 388-823-1096 What requirements must ((my)) a home or community-based service setting meet? ~~((If you receive home or community-based services under 42 C.F.R. Section 440.180, the setting must meet requirements under 42 C.F.R. Section 441.301 (c)(4).))~~

(1) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities based on the needs of the HCBS participant as indicated in their person-centered service plan:

(a) The setting is integrated in and supports full access of HCBS participants receiving home and community-based services under 42 C.F.R. Section 440.180 ("HCBS") to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as people not receiving HCBS.

(b) The setting is selected by the HCBS participant from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the HCBS participant's needs, preferences, and, for residential settings, resources available for room and board.

(c) Ensures the HCBS participant's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(d) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

(e) Facilitates individual choice regarding services and supports, and who provides them.

(2) **Provider-owned or controlled residential settings.** In a provider-owned or controlled residential setting, in addition to the qualities under subsection (1) of this section, the following additional conditions must be met:

(a) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the HCBS participant, and the HCBS participant has, at a minimum, the same responsibilities and protections from eviction that tenants have under the Washington State Residential Landlord-Tenant Act, and other applicable county or city tenant protections. For settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

(b) Each HCBS participant has privacy in their sleeping or living unit:

(i) Units have entrance doors lockable by the HCBS participant, with only appropriate staff having keys to doors.

(ii) HCBS participants sharing units have a choice of roommates in that setting.

(iii) HCBS participants have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(c) HCBS participants have the freedom and support to control their own schedules and activities, and have access to food at any time.

(d) HCBS participants are able to have visitors of their choosing at any time.

(e) The setting is physically accessible to the HCBS participant.

(3) **Modifications.** Any modification of the additional conditions, under subsection (2) (a) through (2) (d) of this section, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(a) A specific and individualized assessed need.

(b) The positive interventions and supports used prior to any modifications to the person-centered service plan.

(c) Less intrusive methods of meeting the need that have been tried but did not work.

(d) A clear description of the condition that is directly proportionate to the specific assessed need.

(e) Regular collection and review of data to measure the ongoing effectiveness of the modification.

(f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(g) The informed consent of the HCBS participant.

(h) An assurance that interventions and supports will cause no harm to the HCBS participant.

(4) **Settings that are not Home and Community-Based.** Home and community-based settings do not include the following:

(a) A nursing facility;

(b) An institution for mental diseases;

(c) An intermediate care facility for individuals with intellectual disabilities;

(d) A hospital; or

(e) Any other locations that have qualities of an institutional setting as determined by the Centers for Medicare and Medicaid Services (CMS). Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating HCBS participants from the broader community of people not receiving HCBS will be presumed to be a setting that has the qualities of an institution unless CMS determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

[Statutory Authority: RCW 71A.12.030 and 42 C.F.R. § 441.301 (c)(4). WSR 18-10-071, § 388-823-1096, filed 4/30/18, effective 5/31/18.]

WSR 23-16-108

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed July 31, 2023, 3:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-089.

Title of Rule and Other Identifying Information: WAC 246-817-701 through 246-817-790 for administration of anesthetic agents for dental procedures. The dental quality assurance commission (commission) is proposing rule amendments to establish new and update requirements for the administration of anesthetic agents for dental procedures.

Hearing Location(s): On September 8, 2023, at 10:00 a.m., at Olympia Parks, Arts and Recreation, Meeting Room 103, 222 Columbia Street N.W., Olympia, WA 98501; or virtual <https://us02web.zoom.us/join/9131200755>.

Date of Intended Adoption: September 8, 2023.

Submit Written Comments to: Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, email dental@doh.wa.gov, fax 360-236-2901, by August 24, 2023.

Assistance for Persons with Disabilities: Contact Amber Freeberg, phone 360-236-4893, fax 360-236-2901, TTY 711, email dental@doh.wa.gov, by August 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission filed an initial proposed rule on November 10, 2022, as WSR 22-23-076. The commission withdrew the original CR-102 on December 21, 2022, because of comments received from interested parties that could result in substantive changes to the rules as they were drafted. The commission decided to further contemplate the suggested changes to amend the rules to best ensure patient safety. The original proposal included 24 hour on-call availability, updates to basic life support (BLS) education, added requirements for emergency protocols and training, clarified recordkeeping and emergency medications, established self-inspections for all dentists when anesthetic is administered, updated on-site inspections for dentists with moderate sedation with parenteral agents or general anesthesia permits, and created a pediatric sedation endorsement. This proposal continues to include these amendments. However, this second proposal also makes the following changes to the originally proposed rules:

- Requires vital sign monitoring for pediatric patients. Obtaining vital signs on American Society of Anesthesiologist (ASA) classification ASA 1 age 13 and under will be at the dentist's discretion (WAC 246-817-724).
- Removes "other inhalation sedation agents" from the intro to WAC 246-817-740(4) as it is required in WAC 246-817-740 (4)(b).
- Reverts the continuing education (CE) requirement for minimal sedation and minimal sedation with nitrous oxide back to a five year interval as written in current rule. The initial proposal had increased it to every three years along with other procedures (WAC 246-817-740 and 246-817-745).
- Clarifies that prescribing for patient dosage prior to the appointment includes a single oral agent in a dose that is not to exceed the manufacturer's maximum recommended dose for home use (WAC 246-817-745).

- Specifies that EKG monitoring is not required when a pediatric patient is uncooperative or the emotional condition means monitoring is not possible or the patient does not tolerate the monitoring pads (WAC 246-817-760).

Reasons Supporting Proposal: Standards of care have changed since the current rule was adopted and a complete review was necessary. Creating a pediatric sedation endorsement is necessary to provide safeguards for the unique sedation needs of pediatric patients. Interested parties have expressed concern with lack of 24-hour on-call availability after dental procedures. Although current rule requires 24-hour on-call availability when anesthesia is used, there are complex dental procedures that do not involve anesthesia and on-call availability is necessary. Self-inspections are needed to ensure all dentists are prepared for dental emergencies when any type of anesthetic is administered during a dental procedure. Current rule requires on-site inspections for dentists holding general anesthesia permits; the proposed rule amendment adds moderate sedation with parenteral agents permits and creates standards for the on-site inspections to ensure patient safety.

Additional amendments were necessary because after further consideration it was determined that:

- Vital sign monitoring for pediatric patients is necessary to maintain patient safety.
- Removes "other inhalation sedation agents" from the intro to WAC 246-817-740(4) as it is required in WAC 246-817-740 (4)(b).
- A change in intervals for CE for minimal sedation and minimal sedation with nitrous oxide is not necessary because it was determined that the current rule meets standard of care for training requirements.
- A clarification was needed for prescribing patient dosage prior to the appointment.
- Provider judgment should be allowed for EKG monitoring of pediatric patients in order to provide the best patient care for these more vulnerable patients.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.
Statute Being Implemented: RCW 18.32.640.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amber Freeberg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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 Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 711, email dental@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: WAC 246-817-730 and 246-817-771 are both exempt under RCW 34.05.310 (4) (d) as the proposed rules in both clarify current requirements without material change.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: See explanation above.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Businesses that are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are:

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	# of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
621210	Offices of dentists	3551	$[(1,212,689 * 1000) / 3551] * (0.01)$ = \$ 3,415	

Analysis of the probable cost of compliance. The probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue: There are costs for licensed dentists to comply with the proposed rules. Costs are associated with 14 sections of the proposed rules. Cost estimates are for the average dental office. There is no anticipation of loss of sales or revenue to comply with the proposed rules. Costs and time associated with complying with the proposed rules were gathered through various sources including:

- Bureau of Labor Statistics;
- Dental health care providers direct comments;
- Dental supply vendors; and
- Dental education providers.

WAC 246-817-701 Administration of anesthetic agents for dental procedures: The existing rule excludes procedures using only local anesthesia. The proposed rule amendment modifies 24-hour availability to include local anesthetic and adds options to meet requirements for availability.

The commission anticipates that for a dentist to establish a pre-arranged agreement with another provider for immediate care to a patient will take 15 to 30 minutes. The average hourly salary of a dentist is \$79.00¹. Therefore, the anticipated cost of compliance to the proposed rule is \$40.00.

¹ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

WAC 246-817-720 Basic life support requirements: The existing rule requires health care provider basic life support certification requirements for dental staff. The proposed rule amendment adds a hands-on component for initial and renewal of health care provider BLS certification and education standards.

The commission anticipates no new cost to obtain health care provider BLS certification with a hands-on component as dentists are currently required to have health care provider BLS certification. There are a variety of courses and locations available to obtain health care provider BLS certification. The cost of a seven hour in-person course

through American Red Cross is \$120² and there is no difference in cost in a health care provider BLS certification course with and without a hands-on component.

² Search | Classes, Products, Articles | Red Cross.

WAC 246-817-722 Defibrillator: The existing rule requires a licensed dentist providing anesthetic agents to ensure a defibrillator or automated external defibrillator is accessible to all staff within 60 seconds and excludes local anesthesia from this requirement. The proposed rule amendment adds this requirement when local anesthetic is administered.

There is a new cost for dentists that do not already have a defibrillator or AED in office. It is not always possible to predict how a patient is going to respond to anesthetic agents and practitioners need to be able to rescue that patient. A defibrillator or AED average price range is \$1200 to \$1900³. There are a variety of types, models, and distributors available to obtain a defibrillator or AED. There are a variety of courses and locations to obtain defibrillator or AED training.

³ AED Machine for Sale | AED Superstore AEDs.

WAC 246-817-724 Recordkeeping, equipment, and emergency medications or drugs: The existing rule requires specific patient record documentation, equipment, emergency drugs, and excludes minimal sedation by inhalation. The proposed rule amendments include the following:

- Adds requirement for written emergency protocols, training, and annual review;
- Details recordkeeping requirements;
- Clarifies these requirements when anesthetics of any kind are administered, to include local anesthetic;
- Adds exception for all pediatric patients receiving any anesthetic agent including local anesthesia or minimal sedation with nitrous oxide;
- Adds obtaining vital signs on ASA 1 age 13 and under to be at the dentist's discretion;
- Updates examples of emergency drugs; and
- Adds requirement to have equipment calibrated to manufacturer instructions.

There is a cost to develop and maintain written emergency protocols. There is an additional cost for staff training and documenting the annual review. Costs greatly differ depending on whether the dentist and staff establish their own written infection prevention policies and training or if the dentist determines to use an outside organization to develop policies and training.

The commission assumes that an average staff makeup in a dental office includes one dentist, two hygienists, two dental assistants, and one administrator. Salaries based on the Bureau of Labor Statistics are:

- Dentist - \$79 hourly wage⁴
- Dental Hygienist - \$38 hourly wage⁵
- Dental Assistant - \$19 hourly wage⁶
- Office Administrator - \$48 hourly wage⁷

⁴ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

⁵ Dental Hygienists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

6 Dental Assistants: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

7 Administrative Services and Facilities Managers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

The commission assumes that either a staff person in the dental office or the dentist will develop, maintain, and provide training for emergency protocols. The time spent is estimated at 20 hours for initial development. It is estimated that two hours of initial training will be needed for all staff, and one-hour annual training for all staff.

- The cost for developing policies and procedures for 20 hours ranges from \$372 (for a dental assistant) to \$1570 (for a dentist) depending on who prepares and revises policies.
- The initial cost for two hours of training is \$477 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.
- The cost for one-hour annual training is \$239 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.
- It is assumed time to document annual review is 15 minutes. The cost for the dentist to document is \$20 annually.

By using straight-line depreciation (spreading the cost of an asset evenly over the asset's useful life) and assuming a five-year useful life (defined as the estimated time that an asset provides value) costs to comply with this section are provided below⁸:

8 Resch S, Menzies N, Portnoy A, Clarke-Deelder E, O’Keeffe L, Suharlim C, Brenzel L. How to cost immunization programs: a practical guide on primary data collection and analysis. 2020. Cambridge, MA: immunizationeconomics.org/ Harvard T.H. Chan School of Public Health. Page 39. 7.3.5 Training "Initial training...should be treated as a capital cost and allocated over a multi-year time horizon. ...training would be a capital cost with a useful life of five years." Page 40. 7.4 Annualization of capital costs. Also includes definitions of useful life (page 40) and straight-line depreciation (page 41). https://msh.org/wp-content/uploads/2021/06/howtocost_digital_12.24.20.pdf.

	Initial/First year cost	Two - Five year total cost/annually
Initial policy development	\$372 - \$1570	\$0/\$0
Initial two-hour training	\$477	\$0/\$0
Documenting training	\$20	\$80/\$20
Annual training	\$0	\$956/\$239

WAC 246-817-740 Minimal sedation with nitrous oxide: The existing rule provides minimum requirements for a licensed dentist to administer (inhalation) minimal sedation. The proposed rule amendments include the following:

- Changes the title of the section and the term inhalation to nitrous oxide;
- Clarifies specific acceptable training requirements;
- Updates recordkeeping requirement when nitrous oxide and oxygen is administered including removing "other inhalation sedation agents" from the introduction to WAC 246-817-740(4) as it is required in WAC 246-817-740 (4) (b);
- Adds requirement for BLS certification; and
- Moves CE requirements to new section WAC 246-817-773.

The commission anticipates there are no new additional costs for a dentist to comply with training requirements, recordkeeping, or BLS certification as none of the proposed amendments add additional time for a dentist to comply. Clarification for training requirements is consistent with American Dental Association's *Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students*⁹.

⁹ American Dental Association. (2021). Guidance for teaching pain control and sedation to dentists and dental students. Chicago: ADA https://www.ada.org/-/media/project/ada-organization/ada/ada-org/files/resources/research/oral-health-topics/ada_guidelines_teaching_pediatric_sedation.pdf?rev=86a7c539ce9d4025bc2b291223f35328&hash=395FF38AD1E42109BC021760194CAC89.

WAC 246-817-745 Minimal sedation: The existing rule identifies the minimum requirements for a licensed dentist to administer a single dose or agent for minimal sedation with or without nitrous oxide. The proposed rule amendments include the following:

- Reduces initial education and training from 21 to 16 hours;
- Removes delineation of single agent versus combined or multiple agents;
- Clarifies specific acceptable training requirements;
- Adds patient evaluation requirement;
- Adds reference to the requirements for recordkeeping, necessary equipment, and required emergency medications or drugs as identified in WAC 246-817-724;
- Clarifies detailed recordkeeping requirement when nitrous oxide is administered;
- Adds requirement for BLS certification; and
- Moves CE requirements to new section WAC 246-817-773.

The commission anticipated that there is a potential cost savings by reducing the initial education and training hours from 21 to 16 hours. The average two-hour CE course offered by University of Washington, School of Dentistry is \$69¹⁰. There are no new costs for a dentist to comply with training requirements, recordkeeping, or BLS certification as none of the proposed amendments add additional time for a dentist to comply. Reduction and clarification for training requirements are consistent with American Dental Association guidelines for teaching pain control and sedation to dentists and dental students.

¹⁰ CDE Requirements - UW School of Dentistry (washington.edu).

The commission anticipated that there is minimal or no additional cost for a dentist to complete a patient evaluation as patient evaluation is a standard of care currently expected. The proposed rule identifies the ASA patient classification requirements¹¹.

¹¹ American Society of Anesthesiologists. (2020). ASA physical status classification system. <https://www.asahq.org/standards-and-guidelines/asa-physical-status-classification-system>.

WAC 246-817-755 Moderate sedation with enteral agents: The existing rule identifies the training and administration requirements a licensed dentist must comply with to administer moderate sedation. The proposed rule amendments include the following:

- Clarifies title as "Moderate sedation with enteral agents";
- Increases education and training from 28 to 37 total hours;
- Adds specific acceptable training requirements;
- Adds hands-on skill training requirements;
- Adds patient evaluation requirement;
- Clarifies requirement for BLS certification;
- Moves CE requirements to new section WAC 246-817-773; and
- Increases CE requirement of seven hours from every five years to every three years.

The commission does not anticipate additional costs for the proposed rule increasing training hours and hands-on skill training. The proposed increase in hours and clarification for training requirements are consistent with American Dental Association guidelines for teaching pain control and sedation to dentists and dental students. The

proposed increase of 37 hours of education and training from 28 hours includes the education of 16 hours required for minimal sedation proposed in WAC 246-817-745. The remaining proposed 21 hours of education and training must be in moderate sedation. There is a net increase by four hours between these two rules. These additional hours are routinely provided in sedation related available courses. Increased initial training costs range from \$0 to \$138¹². The commission has reasonable belief that a dentist can comply with the proposed rule change at no cost for the increased training hours; therefore, the commission does not anticipate an additional cost to comply with the rule.

¹² CDE Requirements - UW School of Dentistry (washington.edu).

The commission anticipated that there is minimal or no additional cost for a dentist to complete a patient evaluation as patient evaluation is a standard of care currently expected. The proposed rule identifies the ASA patient classification requirements.

The costs for CE change from every five years to every three years is provided in WAC 246-817-755 analysis.

WAC 246-817-760 Moderate sedation with parenteral agents: The existing rule identifies the training requirements a licensed dentist must complete to administer moderate sedation with parenteral agents. The proposed rule amendments include the following:

- Increases initial education requirement from 15 patients to 20 patients of supervised experience;
- Adds hands-on skill training requirements;
- Changes term "minor" to "pediatric";
- Adds list of prohibited drugs;
- Adds patient evaluation requirement;
- Clarifies anesthesia monitor requirement;
- Increases pulse oximetry and respiratory recording to every five minutes from every 15 minutes;
- Adds requirement to have equipment calibrated to manufacturer instructions;
- Adds operating theater, table or chair, and lighting system requirements;
- Adds laryngeal mask airway equipment requirement;
- Adds electrocardiographic monitor equipment requirement with carve out for pediatric patients who are uncooperative, have emotional conditions such that monitoring is not possible or who do not tolerate the monitor pads or wiring;
- Clarifies monitoring requirements;
- Updates examples of emergency drugs;
- Adds bronchodilator agent, advanced cardiovascular life support (ACLS) emergency drugs, and anti-hypoglycemic agent to emergency drugs;
- Adds requirement for written contract requirement if providing sedation in another practitioner's dental office;
- Clarifies requirement for ACLS certification;
- Moves CE requirements to new WAC 246-817-773;
- Reduces CE requirement from 18 hours to 14 hours every three years; and
- Adds authorization to provide lower level of sedation.

The commission anticipates additional costs of the proposed rule to increase supervised patient experience from 15 to 20 patients. Supervised patient experience is obtained during training, most programs already provide at least 20 patient experiences as this is a require-

ment under American Dental Association guidelines for teaching pain control and sedation to dentists and dental students. DOCS education provides IV sedation training for dentists at a cost of \$23,495¹³. This is not a new cost and not an increase in cost. Additionally, education and training costs may be higher than the documented range due to proposed added requirement that the training must include hands-on skills training. Although most training courses already include hands-on skills, there are several courses that have not incorporated this component as the rule has not previously required it.

¹³ IV Sedation Certification | DOCS Education.

The commission does not anticipate additional costs for clarifying language and terms, listing prohibited drugs, adding a patient evaluation requirement, clarifying monitoring requirements, updating examples of emergency drugs, clarifying ACLS certification, or adding authorization for lower-level sedation administration, because standard of care for dentists include all these standards.

The commission anticipates a negligible cost to increase pulse oximetry and respiratory recording from every 15 minutes to every five minutes. Costs are associated with dentist and staff time. The commission anticipates the average staff assisting in a sedation procedure is one dentist and two dental assistants. Salaries based on the Bureau of Labor Statistics are dentist - \$79¹⁴ hourly wage and dental assistant - \$19¹⁵ hourly wage. The proposed rule adds an additional two recordings are required every 15 minutes. Approximately 30 seconds is needed to view the monitor and to record, that is 60 seconds of increased time spent every 15 minutes for a dentist or dental assistant during a sedation procedure; approximately four minutes per hour. An average sedation procedure is one hour. The commission believes this proposed time increase for monitoring and recording during a sedation procedure is negligible for this reason.

¹⁴ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

¹⁵ Dental Assistants (bls.gov).

The commission anticipates no new costs to have equipment calibrated, adding requirements for operating theater, table or chair, lighting system requirements, and additional emergency drugs. Existing standard of care currently includes ensuring offices where sedation is administered be appropriate for sedating patients and equipment is maintained and in good working order. Office and equipment standards are recommended by the American Association of Oral and Maxillofacial Surgeons¹⁶.

¹⁶ Practice Resources | AAOMS.

The commission anticipates an added cost to purchase additional emergency equipment for laryngeal mask airway and electrocardiographic equipment if the office does not already own them. There are many distributors of emergency equipment. Grayline Medical offers a laryngeal mask at \$35¹⁷. Discount Cardiology offers an electrocardiographic monitor for \$1095¹⁸.

¹⁷ laryngeal mask\ - Grayline Medical.

¹⁸ Certified Pre-Owned | EKG Machines | Patient Monitors (discountcardiology.com).

The commission anticipates an additional cost for requiring a written contract when providing sedation in another practitioner's dental office. Costs include time spent developing and managing a written contract. There is a one-time cost developing standard contract language. The commission also anticipates additional costs when

executing a contract with individual practitioners. The commission estimates up to one hour of both office administrator and dentist time to develop a standard contract and an additional one hour of time for the dentist to execute an individual contract. Salaries based on the Bureau of Labor Statistics are dentist - \$79¹⁹ hourly wage and office administrator - \$48²⁰ hourly wage. The probable one-time costs to develop standard contract language include dentist and administrator time of \$127. The probable cost to execute a contract is estimated at \$79.

¹⁹ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

²⁰ Administrative Services and Facilities Managers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

The commission anticipates a potential cost savings for proposed CE reducing hours from 18 to 14 hours every three years (reduction of four hours every three years). CE costs vary dramatically depending on number of hours obtaining, where, and method of obtaining CE. The average two hour CE course offered by University of Washington, School of Dentistry is \$69²¹. The commission anticipates that a potential savings could be between \$0 - \$138 every three years.

²¹ CDE Requirements - UW School of Dentistry (washington.edu).

New WAC 246-817-765 Pediatric sedation endorsement: The proposed new section establishes a new pediatric endorsement requirement for a dentist to administer sedation to a pediatric patient when using moderate sedation with enteral and moderate sedation with parenteral permit holders. The proposed rule allows delayed implementation, allowance of administration of intranasal midazolam using moderate sedation with enteral agent permit authorization, clarifies administration of intranasal drugs, requires moderate sedation with parenteral agents permit for patients over age of 12, includes education and training requirements and BLS and pediatric advanced life support (PALS) requirement to obtain and maintenance of BLS and PALS certification, and establishes a CE requirement.

The commission anticipates additional costs to comply with this proposed rule for dentists who sedate pediatric patients. Not all dentists administer sedation nor do all dentists sedate pediatric patients. Pediatric dentists who are specialists obtain additional education and training as part of their national specialty certification provided in the proposed rule. The proposed rule is consistent with the American Academy of Pediatric Dentistry guidelines. The commission assumes most, if not all, dentists providing pediatric sedation already meet these standards. It is proposed that dentists without pediatric specialty training must complete an additional 14 hours in pediatric sedation education. Costs for this education ranges from \$1500 to \$2505²².

²² Pediatric Sedation CE Courses for Dentists - Academy of Dental and Medical Anesthesia (admatraining.org).

The commission anticipates potential costs for adding 14 hours of CE every three years for a dentist who obtains the pediatric endorsement. The commission anticipates that the cost for complying to the proposed additional CE is \$483²³ every three years. Several acceptable ways to complete CE is proposed in new section WAC 246-817-773 and can be achieved at no cost, therefore the commission believes that there are no additional costs for a dentist to comply with this rule.

²³ CDE Requirements - UW School of Dentistry (washington.edu).

WAC 246-817-770 General anesthesia and deep sedation: The existing rule establishes deep sedation and general anesthesia standards

that must be met before administering. The proposed rule amendments include the following:

- Clarifies training requirements and removes outdated language;
- Adds patient evaluation requirements;
- Adds electrocardiograph continuous display requirement;
- Adds requirement of three personnel, anesthesia provider, anesthesia monitor, and dental assistant;
- Clarifies appropriate credentialed personnel;
- Changes respiratory recording to every five minutes from every 15 minutes;
- Adds requirement to have equipment calibrated to manufacturer instructions;
- Changes AED or defibrillator requirement to reference WAC 246-817-722;
- Updates examples of emergency drugs;
- Adds ACLS or PALS emergency drugs;
- Adds requirement for written contract requirement if providing sedation in another practitioner's dental office;
- Moves CE requirements to new section WAC 246-817-773;
- Clarifies requirement for maintaining ACLS certification; and
- Adds authorization to provide lower level of sedation.

There are no costs for clarifying language and terms, listing prohibited drugs, adding patient evaluation requirement, clarifying monitoring requirements, updating examples of emergency drugs, clarifying ACLS certification, adding authorization for lower-level sedation administration, updating AED requirements, and moving CE requirements to new section.

The costs to have equipment calibrated, adding requirements for operating theater, table or chair, lighting system requirements, and additional emergency drugs is provided in WAC 246-817-760 analysis.

The commission anticipates no new additional cost to the proposed addition ACLS or PALS emergency drugs as existing standard of care includes ensuring the office is prepared for an emergency.

The cost for requiring a written contract when providing sedation in another practitioner's dental office is provided in WAC 246-817-760 analysis.

The commission anticipates an additional cost of one additional assistant when administering anesthesia. Based on the Bureau of Labor Statistics, the hourly wage for a dentist is \$79 and \$19 an hour for a dental assistant. An average sedation procedure is one hour, the anticipated additional cost is \$19 per sedation procedure.

The cost to increase respiratory recording from every 15 minutes to every five minutes is provided in WAC 246-817-760 analysis.

WAC 246-817-772 Requirements for anesthesia monitor: The existing rule provides anesthesia monitor training requirements and identifies when a licensed dentist administering anesthesia must also have an additional appropriately trained individual monitoring the patient. The proposed rule amendments include:

- Adding a requirement that an anesthesia monitor is required when a dentist administers moderate sedation with parenteral agents;
- Clarifying that an anesthesia monitor may not also perform dental assisting tasks during general anesthesia procedures, another individual is necessary to perform dental assistant tasks;
- Clarifying on-site, or in-office as acceptable training for an anesthesia monitor; and

- Requiring dentists to maintain anesthesia monitor training documentation.

The commission anticipates a cost to obtain additional anesthesia monitoring. Anesthesia monitoring education and training can be obtained through an education course or in-office training by the dentist. An education course provided through American Association of Oral and Maxillofacial Surgeon Dental Anesthesia Assistant National Certification Examination costs \$545²⁴. In-office training is estimated to cost \$1,372 based on average hourly wage for a dentist at \$79²⁵ hourly wage and dental assistant at \$19²⁶ hourly wage for 14 hours each.

²⁴ daance_handbook.pdf (aaoms.org).

²⁵ Dentists : Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

²⁶ Dental Assistants : Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

New WAC 246-817-773 Continuing education for dentists administering sedation: The proposed new section consolidates all sedation permit CE requirements into one section, provides for content of CE, methods to complete CE, and allows delayed implementation to comply with new requirements.

The commission anticipates additional costs for the proposed CE change from every five years to every three years. Costs to comply with this section is provided in WAC 246-817-755, 246-817-760, and 246-817-765 analysis. The commission concludes that there is no additional cost to consolidate CE requirements into one section.

WAC 246-817-774 Permitting and renewal requirements: The existing rule identifies the requirements to receive and renew a permit to administer moderate sedation oral or parenteral or general anesthesia, including deep sedation. The proposed rule amendments include the following:

- Adds a pediatric endorsement;
- Adds requirement of on-site inspection from commission discretion to every five years to renew sedation permit and maintenance of on-site inspection reports;
- Adds requirement of 12 emergency drill scenarios, performed at least two times per year;
- Adds requirement of emergency drill declaration to renew sedation permit and maintenance of drill documentation;
- Clarifies random audits for each requirement; and
- Moves site visit requirements to new section WAC 246-817-775.

The cost to obtain the pediatric endorsement is provided in WAC 246-817-765 analysis. There is no additional cost to clarification of the rule requirements. The commission does anticipate potential additional cost for a dentist to obtain on-site inspections, conduct emergency drills, and to maintain site visit and drill documentation. The commission anticipates that average staff participating in on-site inspections and drills include one dentist, and two dental assistants. Salaries based on the Bureau of Labor Statistics are:

- Dentist - \$79 hourly wage²⁷.
- Dental Assistant - \$19 hourly wage²⁸.

²⁷ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

²⁸ Dental Assistants: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

The commission anticipates that the average on-site inspection takes four hours. Nationally certified oral and maxillofacial surgeons

are currently required to have an on-site inspection every five years to maintain their professional certification by the American Association of Oral and Maxillofacial Surgeons²⁹. The commission anticipates no additional increased cost for certified oral and maxillofacial surgeons as under current rule they already comply with the proposed rule. Other dentists providing anesthesia may conduct peer on-site inspections at no cost or choose to obtain on-site inspection through the authorized organizations at a cost of \$0 - \$500³⁰. In addition to on-site inspection costs it is anticipated that potential staff time for on-site inspections for one dentist and two dental assistants. On-site inspections are required once every five years, annual recurring costs for inspection and staff time range from \$93.60 to \$193.60.

²⁹ AAOMS.

³⁰ HOME|WSSOMS.

A standard emergency drill may take up to 15 minutes per drill. The proposed rule now requires 24 drills annually. At 15 minutes per drill, total of six hours of dental staff time could be expected annually. Staff time is for one dentist and two dental assistants. The anticipated costs to comply with proposed rule is \$702 annually.

The commission anticipates an additional cost to document and maintain on-site and emergency drill information. The commission estimates two hours per year for an office administrator to document and maintain information. Salaries based on the Bureau of Labor Statistics for Office Administrator is \$48³¹ hourly wage. The anticipated costs to comply with the proposed rule is \$96 annually.

³¹ Administrative Services and Facilities Managers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

New WAC 246-817-775 On-site inspections: The proposed new section consolidates self and on-site inspections into one section with the following:

- Adds annual self-inspections of emergency preparedness for all dentists;
- Defines annual self-inspection for moderate sedation with parenteral agents and general anesthesia permits annually;
- Defines new on-site inspection requirement every five years for general anesthesia and moderate sedation with parenteral agent permit holders;
 - Provides on-site inspection requirement every five years by organization or self-arranged using approved form;
 - Provides standards for those self-arranged inspections using approved form;
 - Provides list of approved organizations; and
 - Provides delayed implementation of on-site inspections; and
- Includes requirement to maintain on-site inspection documentation for five years.

The commission anticipates additional costs for dentists to self-assess their office for emergency preparedness. The commission anticipates that an annual assessment will take 30 to 60 minutes annually and cost range is \$29.50 to \$79 for a dentist³². The commission does not anticipate any additional costs for a dentist who holds a moderate sedation with parenteral agents or general anesthesia permit, as it is assumed that they also hold a dentist license and must complete the annual self-assessment under proposed rule. The commission does not anticipate any additional cost to use the commission approved form.

³² Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov).

Onsite inspection costs are provided in WAC 246-817-774 analysis.

WAC 246-817-776 Discharge criteria: The existing rule requires licensed dentist follow specific discharge criteria after administering sedation. The proposed rule amendment adds two exceptions when taking vital signs is not required. There is no cost to comply with this rule amendment.

WAC 246-817-780 Mandatory reporting: The existing rule requires a licensed dentist without a general anesthesia permit to establish a contract outlining responsibilities of other providers administering anesthesia in a dental office. The proposed rule amendments update the section title from nondental to nondentist and creates specific requirements and responsibilities for written contract requirements that includes:

- Facility, equipment, monitoring, and training requirements;
- Anesthesia provider responsibilities;
- Delineation of responsibilities;
- Whom non-dentist anesthesia provider includes;
- Criteria of anesthesia provider; and
- Responsibilities of licensed dentist.

The commission does not anticipate any new costs to comply with the proposed rule amendments. A written contract is a current requirement under rule. The proposed rule amendments create and clarify specific written contract content requirements.

WAC 246-817-780 Mandatory reporting: The existing rule identifies mandatory reporting requirements for licensed dental providers. The proposed rule amendment adds hospital discharge records if available to be submitted.

The commission anticipates a negligible cost for a dentist to comply with this proposed rule amendment. The commission anticipates that for a dentist to request and obtain hospital records prior to submitting a report to the commission takes an average of five minutes and for this reason the commission anticipates the cost to comply with the proposed rule to be negligible.

WAC 246-817-790 Application of chapter 18.130 RCW: The existing rule applies chapter 18.130 RCW for sedation permits. The proposed rule amendment adds issuance and renewal of the proposed pediatric endorsement to authority under chapter 18.130 RCW.

The commission anticipated there is no additional cost for a dentist to comply with this proposed rule amendment because chapter 18.130 RCW applies to all credentialed health care practitioners.

Summary: The commission anticipated the probable cost estimate for a dentist to comply with the proposed rule changes in WAC 246-817-701 through 246-817-790 is between \$0 to \$9,277 one-time costs and \$0 to \$1,408.60 annually.

WAC Section	Initial one-time costs (Range)	Recurrent annual costs* (Range)
246-817-701	\$0	\$40
246-817-722	\$1,200 - \$1,900	\$0
246-817-724	\$372 - \$2,047	\$259
246-817-745	\$69	\$0
246-817-760	\$1,257	(\$59) net savings
246-817-765	\$500 - \$2,505	\$0
246-817-770	\$127	\$98
246-817-772	\$1,372	\$0

WAC Section	Initial one-time costs (Range)	Recurrent annual costs* (Range)
246-817-774	\$0	\$93.60 - \$991.60
246-817-775	\$0	\$29.50 - \$79
Probable Costs	\$0 - \$9,277	\$0 - \$1,408.60

Analysis of whether the proposed rule may impose more-than minor-costs on businesses in the industry: The commission has determined that \$0 to \$9,277 one-time costs and \$0 to \$1,408.60 annual costs for the proposed rules will exceed minor economic impact of \$3,415 for dentist offices. Costs associated with sedating patients and responding to emergencies range significantly because not all sedation cases or emergencies are the same. Specific levels of education depend on level of sedation being performed; variety of monitoring and emergency equipment and drugs are necessary to ensure the dentist is prepared for any emergency.

Rule making supports the overarching goal of chapter 18.32 RCW by assuring dentists, anesthesia providers, and patients that dentists are adequately trained, complying with nationally accepted standards of practice, and prepared to respond to emergencies during administration of anesthetics, confirming that the public policy goals of the dental commission are achieved.

Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: The proposed rule may have a disproportionate impact on small businesses versus large businesses. Whether a licensed dentist is practicing in an independent practice setting or is part of a larger group or clinic, the administration of anesthetic agent requirements applies to wherever anesthetic agents for dentistry are administered in the state of Washington.

Licensed dentists work in many settings: Independent practice, partnerships, group practices, community clinics, general dental clinics, and universities. There are approximately 7,200 licensed dentists as of April 2022. We are unable to determine how many licensed dentists work in each of the different practice settings. Dentists in independent practice or partnerships will incur all the costs to comply with the proposed rules. Dentists that are part of larger group practices will be able to share in the costs to comply with the proposed rules. Dentists that work for community clinics, general dental clinics, or universities will most likely incur minimal, if any, costs to comply with the proposed rules. As business models differ so does the expectation of who will cover the costs to comply with the proposed rules. Ultimately, the licensed dentist needs to ensure all requirements have been met where anesthetic agents for dentistry is administered in the state of Washington.

If the proposed rule has a disproportionate impact on small businesses, the steps taken to reduce the costs of the rule on small businesses. If the costs can not be reduced provide a clear explanation of why: Although the proposed rule may have disproportionate impact on small businesses versus large businesses, the commission determined to delay implementation of pediatric endorsement, CE changes, and on-site inspections in proposed rules WAC 246-817-765, 246-817-773, and 246-817-775 to help reduce the first-year cost impact of the proposed rules.

Description of how small businesses were involved in the development of the proposed rule: The commission worked closely with interes-

ted parties and other constituents to minimize the burden of this proposed rule. The commission held open public meetings from December 2017 through February 2022 allowing interested parties, including the Washington State Dental Association, Washington State Society of Oral and Maxillofacial Surgeons, and Washington State Society of Mobile Dental Anesthesia, provided suggested rule changes and comments. During open public rules meetings, alternative versions of the rules were discussed. After careful consideration, some of the suggested changes were accepted while others were rejected. Mutual interests were identified and considered through deliberations.

The commission's public participation process encouraged interested individuals to:

- Identify burdensome areas of the existing rule and proposed rule;
- Propose initial or draft rule changes; and
- Refine those changes.

The proposed rule amendments went through several stages of edits, review, and discussion and then further refinement before arriving at the final proposal. The results of this process are proposed changes that will provide increased rule clarity, guidance and will ultimately be less burdensome than the original rule. The commission filed an initial proposed rule on November 10, 2022. The commission withdrew the original CR-102 on December 21, 2022, because of comments received from interested parties. This second proposal includes changes that are responsive to input from interested parties to decrease burdensome areas of the rule such as decreasing the interval for reporting CE for minimal sedation and minimal sedation with nitrous oxide, granting dentists discretion when using EKG monitoring on children, and other helpful changes.

The estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The commission does not anticipate any jobs created or lost because of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 711, email Dental@doh.wa.gov.

March 10, 2023

David L. Carsten, DDS, Chair
Dental Quality Assurance Commission

OTS-3080.6

AMENDATORY SECTION (Amending WSR 10-23-001, filed 11/3/10, effective 12/4/10)

WAC 246-817-701 Administration of anesthetic agents for dental procedures. The purpose of WAC 246-817-701 through 246-817-790 is to govern the administration of anesthetic, sedation, and general anesthesia by dentists licensed in the state of Washington in settings other than hospitals as defined in WAC 246-320-010 and ambulatory surgical facilities as defined in WAC 246-310-010, pursuant to the DQAC authority in RCW 18.32.640.

(1) The DQAC has determined that sedation and anesthesia permitting should be based on the ~~((u))~~ level ~~((u))~~ of ~~((anesthesia))~~ sedation or anesthesia because ~~((anesthesia/sedation))~~ sedation or anesthesia is a continuum, and the route of administration and drug combinations are both capable of producing a deeper level of ~~((sedation/anesthesia))~~ sedation or anesthesia than is initially intended. Practitioners intending to produce a given level of sedation should be able to rescue patients who enter a state deeper than initially intended.

(2) All anesthesia providers must provide ~~((twenty-four))~~ 24 hour, on-call availability following an anesthesia procedure ~~((, excluding those procedures using only local anesthetic))~~.

(a) A licensed dentist that only administers local anesthesia shall provide timely telephonic or electronic communication with the patient or their representative by the provider or a designated provider.

(b) In the event a licensed dentist will be unavailable for timely assistance, the licensed dentist shall have a prearranged agreement with another provider that is available to provide timely care to a patient.

(3) The dental assistant and expanded function dental auxiliary may not administer any general or local anesthetic, including intravenous sedation.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 10-23-001, § 246-817-701, filed 11/3/10, effective 12/4/10; WSR 09-04-042, § 246-817-701, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-701, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-710 Definitions. The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise.

(1) "Advanced cardiac life support" or "ACLS" means a set of clinical interventions for the urgent treatment of cardiac arrest, stroke, and other life-threatening medical emergencies, as well as the knowledge and skills to deploy those interventions.

(2) "American Society of Anesthesiologists patient classification I" means a normal healthy patient.

(3) "American Society of Anesthesiologists patient classification II" means a patient with mild systemic disease.

(4) "American Society of Anesthesiologists patient classification III" means a patient with severe systemic disease.

(5) "American Society of Anesthesiologists patient classification IV" means a patient with severe systemic disease that is a constant threat to life.

(6) "Analgesia" ~~((is))~~ means the diminution of pain in the conscious patient.

~~((2))~~ (7) "Anesthesia" ~~((is))~~ means the loss of feeling or sensation, especially loss of sensation of pain.

~~((3))~~ (8) "Anesthesia monitor" means a credentialed health care provider specifically trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency inci-

dents that may occur as a result of the sedation or secondary to an unexpected medical complication.

~~((4))~~ (9) "Anesthesia provider" means a dentist, physician anesthesiologist, dental hygienist, or certified registered nurse anesthetist (CRNA) licensed ~~((and))~~, authorized, competent, and qualified to ~~((practice))~~ perform anesthesia within the state of Washington.

~~((5))~~ (10) "Automated external defibrillator" or "AED" means a portable electronic device that automatically diagnoses the life-threatening cardiac arrhythmias of ventricular fibrillation and pulseless ventricular tachycardia, and is able to treat through defibrillation.

(11) "Basic life support" or "BLS" means a type of care health care providers and public safety professionals provide to anyone who is experiencing cardiac arrest, respiratory distress, or an obstructed airway.

(12) "Carbon dioxide" or "CO₂" means a gas consisting of one part carbon and two parts oxygen.

(13) "Close supervision" means that a supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervising dentist is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. ~~((The term))~~ Close supervision does not require a supervising dentist to be physically present in the operator.

~~((6))~~ (14) "Commission on Dental Accreditation" or "CODA" means a national organization that develops and implements accreditation standards that promote and monitor the continuous quality and improvement of dental education programs.

(15) "Deep ~~((sedation/analgesia" is))~~ sedation" means a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~((7))~~ (16) "Dental anesthesia assistant" means a health care provider certified under chapter 18.350 RCW and specifically trained to perform the functions authorized in RCW 18.350.040 under supervision of an oral and maxillofacial surgeon or dental anesthesiologist.

~~((8))~~ "Direct visual supervision" means supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight.

~~((9))~~ (17) "Enteral" means any technique of administration in which an agent is absorbed through the gastrointestinal tract.

(18) "General anesthesia" ~~((is))~~ means a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof may be impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~((10))~~ "Local anesthesia" is the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

~~((11))~~ (19) "Minimal sedation" ~~((is a drug induced state during which patients))~~ means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

~~((12))~~ (20) "Moderate sedation" ~~((is))~~ means a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Moderate sedation can include both ~~((moderate sedation/analgesia (conscious sedation) and moderate sedation with))~~ enteral and parenteral ((agent)) routes of administration.

~~((13))~~ (21) "Nothing by mouth" or "NPO" means the time before an examination or procedure during which a patient cannot eat or drink.

(22) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract ~~((i.e.))~~ including, but not limited to, intramuscular, intravenous, intranasal, submuscular, subcutaneous, and intraosseous((+)).

(23) "Pediatric" means a child 12 years of age or younger.

(24) "Pediatric advanced life support" or "PALS" means a type of care that focuses on providing advanced airway and life support skills in immediate emergency care to children.

[Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-710, filed 7/23/13, effective 8/23/13. Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-710, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-710, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-720 Basic life support requirements. (1) Dental staff providing direct patient care in an in-office or out-patient setting must hold a current and valid health care provider ~~((basic life support (-)))~~ BLS ~~((+))~~ certification. Initial and renewal certification must include both didactic and hands-on components.

(2) Health care provider BLS certification must be obtained from an individual, organization, or training center who holds a current and valid BLS instructor certification and teaches the current International Liaison Committee on Resuscitation or ILCOR standard including, but not limited to, American Heart Association or American Red Cross.

(3) Health care provider BLS instruction must include online or in-person didactic instruction with a written assessment, in-person skills assessment on high quality chest compressions, rescue breathing using the bag valve mask, correct use of AED or defibrillator for

adults, children, and infants, feedback to students, and a valid health care provider BLS certification card upon completion.

(4) Dental staff providing direct patient care include: Licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants.

(5) Newly hired office staff providing direct patient care are required to obtain the required certification within ~~((forty-five))~~ 45 days from the date hired.

[Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-720, filed 7/23/13, effective 8/23/13. Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-720, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-720, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 10-23-001, filed 11/3/10, effective 12/4/10)

WAC 246-817-722 Defibrillator. ~~((1) Every dental office in the state of Washington that administers minimal, moderate, or deep sedation, or general anesthesia, as defined in WAC 246-817-710, must have an automated external defibrillator (AED) or defibrillator.~~

~~(2))~~ When anesthetic agents of any kind are administered, the dentist and staff must have access to ((the)) an AED or defibrillator ((in an emergency, and it)). The AED or defibrillator must be available and in reach within ((sixty)) 60 seconds.

~~((3) A dental office may share a single AED or defibrillator with adjacent businesses if it meets the requirements in this section.))~~

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 10-23-001, § 246-817-722, filed 11/3/10, effective 12/4/10; WSR 09-04-042, § 246-817-722, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-724 Recordkeeping, equipment, and emergency medications or drugs ~~((required in all sites where anesthetic agents of any kind are administered)).~~ When anesthetic agents of any kind are administered, the dentist must comply with the requirements in this section.

(1) ~~((Dental records must contain an appropriate medical history and patient evaluation. Any adverse reactions, and))~~ The anesthesia provider or anesthesia monitor shall record the patient's condition. The record must include documentation of all medications ((and)) administered with dosages ((, must be recorded)), regular and consistent time intervals, and route of administration. The provider administering the sedation may determine time intervals.

(2) ~~((When sedation of any level is to be administered, excluding minimal sedation by inhalation, pre-sedation))~~ All patients receiving

any anesthetic agent including local anesthesia or minimal sedation with nitrous oxide, vital((s)) signs including, but not limited to, blood pressure and heart rate must be ((obtained and)) recorded, unless the cooperation of the patient or circumstances of the case will not allow it. If ((pre-sedation)) pretreatment vitals cannot be obtained, the reason((+s)) or reasons why must be recorded. Obtaining vital signs on ASA 1 age 13 and under will be at the dentist's discretion.

(3) ~~((Office facilities and))~~ The following equipment must be available and include:

(a) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(b) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen enriched ventilation to the patient;

(c) Blood pressure cuff ((+))or sphygmomanometer((+)) of appropriate size;

(d) Stethoscope or equivalent monitoring device.

(4) The following emergency drugs must be available and maintained:

(a) Bronchodilator including, but not limited to, albuterol;

(b) Sugar ((+)) or glucose((+));

(c) Aspirin;

(d) Antihistaminic including, but not limited to, diphenhydramine;

(e) Coronary artery vasodilator including, but not limited to, nitroglycerin;

(f) Anti-anaphylactic agent including, but not limited to, epinephrine.

(5) A licensed dentist shall develop and maintain written emergency protocols and ensure:

(a) All staff are trained in the protocols wherever anesthetic agents of any kind are administered.

(b) The emergency preparedness written protocols include training requirements and procedures specific to the licensed dentist's equipment and drugs for responding to emergency situations involving sedation or anesthesia, including information specific to respiratory emergencies.

(c) The protocols are reviewed annually, updated as necessary, and the review is documented.

(d) The protocols include basic life support protocols, advanced cardiac life support protocols, or pediatric advanced life support protocols based on the level of anesthetics being administered.

(6) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-724, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-724, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-730 Local anesthesia. Local anesthesia ~~((shall))~~ must only be administered ~~((only))~~ by a ~~((person))~~ provider qualified under this chapter and dental hygienists as provided in chapter 18.29 RCW.

(1) ~~((All offices must))~~ "Local anesthesia" means the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

(2) A licensed dentist administering local anesthetic agents shall comply with ((the)) recordkeeping, equipment, and emergency medication requirements ((listed)) in WAC 246-817-724.

~~((2))~~ (3) A permit of authorization is not required.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-730, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-730, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-740 (("))Minimal sedation ((by inhalation" ~~((to include, but not limited to,))~~ with nitrous oxide(())). (1) ~~((Training requirements:))~~ To administer ((inhalation)) minimal sedation with nitrous oxide, a licensed dentist ((must have completed a course containing)) shall successfully complete a minimum of ((fourteen)) 14 hours of ((either predoctoral dental school or postgraduate instruction in inhalation minimal sedation)) education and training in one of the following:

(a) Minimal sedation with nitrous oxide; or

(b) Moderate sedation with nitrous oxide; or

(c) Advanced education program accredited by the CODA that meets comprehensive and appropriate training necessary to administer and manage minimal sedation with nitrous oxide; or

(d) Education and training must be consistent with ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, adopted by ADA House of Delegates October 2016 or prior adopted version in effect at the time training was completed.

(2) ~~((Procedures for administration: Inhalation))~~ A licensed dentist shall ensure:

(a) Delegation of administration for minimal sedation ((must be administered)) with nitrous oxide is under the close supervision of ((a person)) an anesthesia provider qualified under this chapter ((and dental hygienists as provided in chapter 18.29 RCW:

~~((a) When administering inhalation minimal sedation,))~~ .

(b) A second individual ((must be on)) is in the office ((premises)) and able to immediately respond to any request from the ((person administering the inhalation minimal sedation,

~~((b))~~ licensed dentist or anesthesia provider.

(c) The patient must be continuously observed while ((inhalation)) minimal sedation with nitrous oxide is administered.

(3) A licensed dentist shall comply with recordkeeping, equipment, and emergency medication~~((s: All offices in which inhalation~~

minimal sedation is administered must comply with the recordkeeping and equipment standards listed) requirements in WAC 246-817-724.

(4) Dental records must contain documentation in the chart of ((either)) nitrous oxide, and oxygen ((or any other inhalation sedation agent)) administered or dispensed.

(a) In the case of nitrous oxide sedation only ("~~N₂O~~ used" is required), the record must include the maximum nitrous oxide concentration used and the times started and stopped or total time of administration.

(b) Other inhalation agents require a dose record noting the time each concentration or agent was ((used)) administered or dispensed.

(5) ((Continuing education:)) A licensed dentist who administers ((inhalation)) minimal sedation ((to patients must participate in)) with nitrous oxide shall complete seven hours of continuing education ((or equivalent)) every five years as required in WAC 246-817-773.

((a) The education must include instruction in one or more of the following areas:

- (i) ~~Sedation;~~
- (ii) ~~Physiology;~~
- (iii) ~~Pharmacology;~~
- (iv) ~~Inhalation analgesia;~~
- (v) ~~Patient evaluation;~~
- (vi) ~~Patient monitoring; and~~
- (vii) ~~Medical emergencies.~~

(b) In addition to education requirements in (a) of this subsection, the dentist must obtain health care provider basic life support (BLS), or advanced cardiac life support (ACLS) certification. Hourly credits earned from certification in BLS or ACLS courses may not be used to meet the education requirements in (a) of this subsection. However, the hourly credits earned in BLS or ACLS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.)

(6) A licensed dentist who administers minimal sedation with nitrous oxide must hold a current and valid BLS certification.

(7) A permit of authorization is not required.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-740, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-740, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-740, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-745 ((=))Minimal sedation.((=)) (1) ((Training requirements: To administer "minimal sedation," including:

(a) A single oral agent, a dentist must have completed a course containing a minimum of fourteen hours of a predoctoral dental school, postgraduate instruction, or continuing education (as defined in WAC 246-817-440) in the use of oral agents;

(b) Any oral agent in combination with a different agent or multiple agents other than nitrous oxide or injectable agents, a dentist must have completed a course containing) To administer minimal seda-

tion which is limited to a single dose of a single oral agent with or without nitrous oxide, a licensed dentist shall successfully complete a minimum of ~~((twenty-one))~~ 16 hours of ~~((either predoctoral dental school or postgraduate instruction.~~

~~(2) Procedures for administration:~~

~~(a)) education and training in one of the following:~~

~~(a) Minimal sedation; or~~

~~(b) Moderate sedation; or~~

~~(c) Advanced education program accredited by the CODA that meets comprehensive and appropriate training necessary to administer and manage minimal sedation; or~~

~~(d) Education and training must be consistent with ADA *Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students*, adopted by ADA House of Delegates October 2016 or prior adopted version in effect at the time training was completed.~~

~~(2) A licensed dentist shall:~~

~~(a) Evaluate patient considered for minimal sedation prior to the administration of any sedative procedure.~~

~~(i) Review of the patient's current medical history and medication use is required for healthy or medically stable individuals with American Society of Anesthesiologists patient classification of I or II.~~

~~(ii) Consultation with the patient's primary care physician or consulting medical specialist is required for patients with significant medical considerations whom have American Society of Anesthesiologists patient classification III or IV. If the licensed dentist is unsuccessful in contacting or consulting with the patient's physician or physicians, the licensed dentist shall document the attempt or document the patient has no physician to contact.~~

~~(b) Administer oral sedative agents ~~((can be administered))~~ in the treatment setting or ~~((prescribed))~~ prescribe for patient dosage prior to the appointment~~((+))~~. Single oral agents must be in a dose that is not to exceed the manufacturer's maximum recommended for home use.~~

~~((b)) (c) Ensure a second individual ~~((must be on))~~ is in the office ~~((premises))~~ and able to immediately respond to any request from the ~~((person))~~ anesthesia provider administering ~~((the drug+))~~ minimal sedation.~~

~~((e)) (d) Ensure the patient ~~((must be))~~ is continuously observed while in the office under the influence of ~~((the drug+))~~ minimal sedation.~~

~~((d)) (e) Comply with the recordkeeping, equipment, and emergency medication requirements in WAC 246-817-724.~~

~~(f) Ensure any adverse reactions ~~((must be))~~ are documented in the ~~((records+))~~ patient record.~~

~~((e)) (g) If a patient unintentionally enters into a moderate level of sedation, ensure the patient ~~((must be))~~ is returned to a level of minimal sedation as quickly as possible. While returning the patient to the minimal sedation level, periodic monitoring of pulse, respiration, and blood pressure must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.~~

~~(3) ~~((Dental records must contain documentation))~~ A licensed dentist shall document in the ~~((chart of))~~ patient record all agents administered, time administered, and dosage for minimal sedation.~~

~~((a) In the case of nitrous oxide sedation only "N₂O used" is required.~~

~~(b) Other inhalation agents require a dose record noting the time each concentration and agent was used.)~~

(4) ~~((Continuing education:))~~ A licensed dentist who administers minimal sedation ~~((to patients must participate in))~~ shall complete seven hours of continuing education ((or equivalent)) every five years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

- ~~(i) Sedation;~~
- ~~(ii) Physiology;~~
- ~~(iii) Pharmacology;~~
- ~~(iv) Nitrous oxide analgesia;~~
- ~~(v) Patient evaluation;~~
- ~~(vi) Patient monitoring; and~~
- ~~(vii) Medical emergencies.~~

~~(b) In addition to education requirements in (a) of this subsection, the dentist must obtain health care provider basic life support (BLS) or advanced cardiac life support (ACLS) certification. Hourly credits earned from certification in BLS or ACLS courses may not be used to meet the education requirements in (a) of this subsection. However, the hourly credit hours earned in BLS or ACLS certification may be used to meet the renewal requirements of WAC 246-817-440 to renew the dentist license.)~~

(5) A licensed dentist who administers minimal sedation must hold a current and valid BLS certification.

(6) A permit of authorization is not required.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-745, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-745, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-755 Moderate sedation with enteral agents. (1)

~~((Training requirements: To administer moderate sedation the dentist must have completed a course containing))~~ A licensed dentist is required to hold a permit of authorization to administer moderate sedation with enteral agents.

(2) To obtain a moderate sedation with enteral agents permit, a licensed dentist shall:

(a) Comply with the permitting and renewal requirements in WAC 246-817-774; and

(b) Successfully complete:

(i) A minimum of 16 hours of education and training in minimal sedation as required in WAC 246-817-745(1); and

(ii) A minimum of ((seven)) 21 hours of ((a predoctoral dental school, postgraduate instruction, or continuing education (as defined in WAC 246-817-440))) education and training in moderate sedation ((in addition to twenty-one hours for minimal sedation)).

~~((2) Procedures for administration:~~

~~(a))~~ (iii) Moderate sedation education and training must:

(A) Meet ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, adopted by ADA House of Delegates October 2016 or prior adopted version in effect at the time training was completed; and

(B) Include medical emergency management, not limited to airway management, conducted in-person with hands-on skills.

(3) A licensed dentist shall:

(a) Ensure the patient is evaluated for moderate sedation with enteral agents prior to the administration of any sedative.

(i) Review at an appropriate time the patient's medical history and medication use and NPO or nothing by mouth status.

(ii) Consult with the patient's primary care physician or consulting medical specialist for a patient with significant medical considerations whom have American Society of Anesthesiologists patient classification of III or IV. If the anesthesia provider is unsuccessful in contacting or consulting with the patient's physician or physicians, document the attempt or document the patient has no physician to contact.

(iii) Patients body mass index must be assessed as part of a pre-procedural workup.

(b) Administer oral sedative agents ((can be administered)) in the treatment setting or ((prescribed)) prescribe for patient dosage prior to the appointment.

((b)) (c) Ensure a second individual ((must be on)) is in the office ((premises)) who can immediately respond to any request from the ((person administering the drug)) anesthesia provider.

((e)) (d) Ensure the patient ((must be)) is continuously observed while in the office ((under the influence of the drug)).

((d)) (e) Record any adverse reactions ((must be documented)) in the patient record(s).

((e) If a patient unintentionally enters a deeper level of sedation,) (f) Ensure the patient ((must be)) is returned to a level of moderate sedation as quickly as possible, if a patient unintentionally enters a deeper level of sedation. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, and blood pressure and pulse oximetry must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

((f) Patients) (g) Ensure a patient receiving ((these forms of)) moderate sedation ((must be)) with enteral agents is accompanied by a responsible adult upon departure from the treatment facility.

((3)) (4) A licensed dentist shall comply with the recordkeeping, equipment, and emergency ((medications: All offices must comply with the requirements listed in WAC 246-817-724.)) medication requirements in WAC 246-817-724.

(a) When a sedative drug is used that has a reversal agent, the reversal agent must be in the office emergency kit and the equipment to administer the reversal agent must be stored with the delivery device.

(b) Pulse oximetry equipment or equivalent respiratory monitoring equipment must be available in the office.

((4) Continuing education:) (5) A licensed dentist who ((administers)) holds a valid moderate sedation ((to patients must participate in)) with enteral agents permit shall complete seven hours of

continuing education (~~(or equivalent)~~) every ~~((five))~~ three years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

- ~~(i) Sedation;~~
- ~~(ii) Physiology;~~
- ~~(iii) Pharmacology;~~
- ~~(iv) Nitrous oxide analgesia;~~
- ~~(v) Patient evaluation;~~
- ~~(vi) Patient monitoring; and~~
- ~~(vii) Medical emergencies.~~

~~(b) In addition to education requirements in (a) of this subsection, the dentist must obtain health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) certification to renew the moderate sedation permit. Hourly credits earned from certification in BLS, ACLS, or PALS courses may not be used to meet the education requirements in (a) of this subsection. However, the hourly credits earned in BLS, ACLS, or PALS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.~~

~~(5) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.)~~ (6) A licensed dentist who holds a valid moderate sedation with enteral agents permit must hold a current and valid BLS certification.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-755, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-755, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 17-07-037, filed 3/8/17, effective 4/8/17)

WAC 246-817-760 Moderate sedation with parenteral agents. (1)

~~((Training requirements: To administer moderate sedation with parenteral agents, the dentist must have successfully completed))~~ A licensed dentist is required to hold a permit of authorization to administer moderate sedation with parenteral agents. A moderate sedation with parenteral agents permit allows the holder to deliver moderate sedation with enteral agents without obtaining a separate permit.

(2) To obtain a moderate sedation with parenteral agents permit, a licensed dentist shall:

(a) Comply with the permitting and renewal requirements in WAC 246-817-774;

(b) Successfully complete a postdoctoral course ~~((+s))~~ or courses of ~~((sixty))~~ 60 clock hours or more which includes ~~((training in))~~:

(i) Basic moderate sedation ~~((τ))~~;

(ii) Physical evaluation ~~((τ))~~;

(iii) Venipuncture ~~((τ))~~ and intravenous drug administration, training is a hands-on skill and must be completed in-person;

(iv) Technical administration ~~((τ))~~;

(v) Recognition and management of complications and emergencies, training is a hands-on skill and must be completed in-person;

(vi) Monitoring ~~((τ))~~; and

(vii) Supervised experience in providing moderate sedation with parenteral agents to ~~((fifteen))~~ 20 or more patients. ~~((If treating an adult, the dentist must have))~~

(c) Training in adult sedation ~~((. If treating a minor, the dentist must have))~~, if treating an adult; and

(d) Training in pediatric sedation, if treating a pediatric patient.

~~((2))~~ (3) In addition to meeting the criteria in subsection ~~((1))~~ (2) of this section, the licensed dentist ~~((must also have))~~ shall hold and maintain a current certification in ~~((advanced cardiac life support ~~(-))~~ ACLS ~~((+))~~ or ~~((pediatric advanced life support ~~(-))~~ PALS ~~((+))~~).~~~~

(a) If treating an adult, the dentist must have ACLS certification.

(b) If treating a ~~((minor))~~ pediatric patient, the dentist must have PALS certification.

~~((3))~~ (4) The use of any drugs classified under the Food and Drug Administration as general anesthetic agents including, but not limited to, Propofol, Ketamine, Sevoflurane, Halothane, and Isoflurane are considered outside the scope of a moderate sedation with parenteral agents permit.

(5) The drugs, drug amounts, and techniques used must carry a margin of safety wide enough to render unintended loss of consciousness highly unlikely.

~~((4) Procedures for administration of moderate sedation with parenteral agents by a dentist and an individual trained in monitoring sedated patients:))~~ (6) A licensed dentist shall:

(a) ~~((In the treatment setting,))~~ Ensure a patient receiving moderate sedation with parenteral agents ~~((must have that))~~ receives the sedation ~~((administered by a person))~~ from an anesthesia provider qualified under this chapter.

(b) Ensure the patient is evaluated for moderate sedation with parenteral agents prior to the administration of any sedative.

(i) Review, at an appropriate time, the patient's medical history and medication use and NPO or nothing by mouth status.

(ii) Consult with the patient's primary care physician or consulting medical specialist for a patient with significant medical considerations whom have American Society of Anesthesiologists patient classification of III or IV.

(iii) Patient's body mass index must be assessed as part of a preprocedural workup.

(iv) A focused physical examination to include vital signs, evaluation of the airway, and auscultation of the heart and lungs is required before administration of any sedative or anesthesia agent.

(c) Ensure a patient ~~((may not be))~~ is not left alone in a room and ~~((must be))~~ is continually monitored by a ~~((dentist with a valid moderate sedation with parenteral agent permit))~~ anesthesia provider or trained anesthesia monitor as defined in WAC 246-817-772.

~~((e))~~ (d) Ensure an intravenous infusion ~~((must be))~~ is maintained during the administration of a parenteral agent. Two exceptions for intravenous infusion may occur, but reasons why intravenous infusion was not used must be documented for:

(i) Pediatric sedation cases using agents for brief procedures; and

(ii) When the pediatric patient is uncooperative or the emotional condition is such that intravenous access is not possible.

~~((d))~~ (e) Ensure when the operative dentist is also the (per-
~~son)) provider administering the moderate sedation with parenteral~~
~~agents, the operative dentist ((must be)) is continuously assisted by~~
~~((at least one individual experienced in monitoring sedated patients))~~
a trained anesthesia monitor as defined in WAC 246-817-772. The
trained anesthesia monitor may function as the dental or surgical as-
stant.

(i) If treating an adult, the additional individual must have ex-
perience or training in adult sedation.

(ii) If treating a ((minor)) pediatric patient, the additional
individual must have experience or training in pediatric sedation.

~~((e) In the treatment setting,)~~ (f) Ensure a patient ((experi-
~~encing moderate sedation with parenteral agents must be)) is visually~~
~~and tactilely monitored ((by the dentist)) either by themselves or an~~
~~individual trained in monitoring sedated patients. Patient monitoring~~
~~must include:~~

(i) Heart rate;

(ii) Blood pressure;

(iii) ((Respiration,)) Respiratory rate;

(iv) ((Pulse oximetry; and)) Oxygen saturation;

(v) ((Expired carbon dioxide (CO₂)). Two exceptions for expired
~~CO₂ monitoring may occur, but reasons why expired CO₂ monitoring was~~
~~not used must be documented for)) Continuous electrocardiographic mon-~~
~~itoring when the patient has clinically significant cardiovascular~~
~~disease.~~

(A) Clinically significant cardiovascular disease can be classi-
fied, but not limited to, coronary artery disease, arrhythmias, con-
genital heart defects, heart valve disease, disease of the heart mus-
cle, and heart infection.

(B) Electrocardiographic monitoring of a pediatric patient is not
required when the pediatric patient is uncooperative, the emotional
condition is such that monitoring is not possible, or who does not
tolerate the monitor pads or wiring. Reasons why electrocardiographic
monitoring was not used must be documented.

(vi) End-tidal CO₂. Monitoring is not required when:

(A) A pediatric sedation ((eases using)) case uses agents for a
brief ((procedures; and)) procedure; or

(B) ((When the)) A pediatric patient is uncooperative or the emo-
tional condition is such that end-tidal CO₂ monitoring is not possi-
ble.

~~((f))~~ (C) Reasons why end-tidal CO₂ monitoring was not per-
formed must be documented.

(g) Comply with requirements of immobilization devices for pedia-
trian patients((+)).

(i) Immobilization devices, such as, papoose boards, must be ap-
plied in such a way as to avoid airway obstruction or chest restric-
tion.

(ii) The pediatric patient head position and respiratory excur-
sions must be checked frequently to ensure airway patency.

(iii) If an immobilization device is used, a hand or foot must be
kept exposed.

~~((g))~~ (h) Ensure the patient's blood pressure ((and)), heart
~~rate ((must be)), pulse oximetry, and respiration rate is recorded ev-~~
~~ery five minutes((, pulse oximetry recorded every five minutes, and~~
~~respiration rate must be recorded at least every fifteen minutes)).~~

~~((h))~~ (i) Ensure the patient's level of consciousness ((must be)) is recorded prior to the dismissal of the patient.

~~((i) Patients receiving moderate sedation with parenteral agents must be))~~ (j) Ensure patient is accompanied by a responsible adult upon departure from the treatment facility.

~~((j) If a patient unintentionally enters a deeper level of sedation,))~~ (k) Ensure the patient ((must be)) is returned to a level of moderate sedation as quickly as possible, if the patient unintentionally enters a deeper level of sedation. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, blood pressure and continuous monitoring of oxygen saturation must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

~~((5) Dental records must contain))~~ (7) A licensed dentist shall document in the patient record appropriate medical history and patient evaluation. Sedation records must be recorded during the procedure in a timely manner and must include:

(a) Blood pressure;

(b) Heart rate;

(c) Respiration;

(d) Pulse oximetry;

(e) End-tidal CO₂. ~~((Two exceptions for end-tidal CO₂ monitoring may occur, but reasons why end-tidal CO₂ monitoring was not used must be documented for:))~~ Monitoring is not required when:

(i) Pediatric sedation ~~((eases using))~~ case uses agents for brief procedure ~~((s; and))~~; or

(ii) ~~((When the))~~ A pediatric patient is uncooperative or the emotional condition is such that end-tidal CO₂ monitoring is not possible.

(iii) Reasons why end-tidal CO₂ monitoring was not performed must be documented.

(f) Drugs administered including amounts and time administered;

(g) Length of procedure; and

(h) Any complications of sedation.

~~((6))~~ (8) A licensed dentist shall comply with the following recordkeeping, equipment, and emergency ~~((medications: All offices in which moderate sedation with parenteral agents is administered or prescribed must comply with the following equipment standards:~~

~~Office facilities and equipment shall include:~~

~~(a))~~ medication requirements:

(a) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions.

(b) An operating theater must be large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least two individuals to freely move about the patient;

(c) An operating table or chair must permit the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

(d) A lighting system must be adequate to permit evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit conclusion of any procedure underway at the time of general power failure;

(e) Suction equipment capable of aspirating gastric contents from the mouth and ~~((pharynx))~~ pharyngeal cavities. A backup suction device must be available;

~~((b) Portable)~~ (f) An oxygen delivery system ~~((including))~~ with adequate full face masks and ~~((a bag valve mask combination with))~~ appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, ~~((oxygen-enriched patient ventilation and oral and nasal pharyngeal airways.))~~ together with an adequate portable backup system;

(i) If treating an adult, the equipment must be appropriate for adult sedation~~((-))~~;

(ii) If treating a ~~((minor))~~ pediatric patient, the equipment must be appropriate for pediatric sedation;

~~((e))~~ (iii) Appropriate sized laryngeal mask airway must be ready for emergency use;

(g) A blood pressure cuff ~~((+))~~ or sphygmomanometer ~~((+))~~ of appropriate size and stethoscope; or equivalent monitoring devices;

~~((d))~~ (h) End-tidal CO₂ monitor;

~~((e))~~ (i) Pulse oximetry; and

~~((f))~~ (j) An emergency drug kit with minimum contents of:

(i) Sterile needles, syringes, and tourniquet;

(ii) Narcotic antagonist;

(iii) Alpha and beta adrenergic stimulant;

(iv) Vasopressor;

(v) Coronary vasodilator including, but not limited to, nitroglycerin;

(vi) Antihistamine including, but not limited to, diphenhydramine;

(vii) Parasympatholytic;

(viii) Intravenous fluids, tubing, and infusion set; ~~((and))~~

(ix) Sedative antagonists for drugs used, if available;

(x) Bronchodilator agent including, but not limited to, albuterol;

(xi) ACLS or PALS emergency drugs; and

(xii) Anti-hypoglycemic agent.

~~((7) Continuing education: A dentist who administers moderate sedation with parenteral agents must participate in eighteen))~~ (9) A licensed dentist who holds a valid moderate sedation with parenteral agents permit and administers moderate sedation with parenteral agents in another licensed dentist office, must have a contract in place that contains the provisions described in WAC 246-817-778 (1)(a) through (c).

(10) A licensed dentist who holds a valid moderate sedation with parental agents permit shall complete 14 hours of continuing education ~~((or equivalent))~~ every three years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

~~(i) Venipuncture;~~

~~(ii) Intravenous sedation;~~

~~(iii) Physiology;~~

~~(iv) Pharmacology;~~

~~(v) Nitrous oxide analgesia;~~

~~(vi) Patient evaluation;~~

~~(vii) Patient monitoring; and~~

~~(viii) Medical emergencies.~~

~~(b) In addition to the education requirements in (a) of this subsection, the dentist must have a current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) to renew the moderate sedation with parenteral agents permit. Hourly credits earned from certification in BLS, ACLS, or PALS courses may not be used to meet the education requirements in (a) of this subsection to renew a moderate sedation with parenteral agents permit. However, the hourly credits earned in ACLS or PALS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.~~

~~(8) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.) (11) A licensed dentist who holds a valid moderate sedation with parenteral agents permit must hold a current and valid ACLS certification.~~

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 17-07-037, § 246-817-760, filed 3/8/17, effective 4/8/17; WSR 16-06-106, § 246-817-760, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-760, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-760, filed 10/10/95, effective 11/10/95.]

NEW SECTION

WAC 246-817-765 Pediatric sedation endorsement. A pediatric patient is physiologically and anatomically unlike an adult, and different sedation drugs and practices may be used for this population, it is necessary to ensure that adequately trained and skilled individuals are treating pediatric patients.

(1) Effective January 1, 2024, a pediatric sedation endorsement is required to administer moderate sedation with enteral agents or moderate sedation with parenteral agents, to pediatric patients.

(2) A licensed dentist who holds a valid moderate sedation with enteral agents permit and a pediatric sedation endorsement may administer intranasal midazolam to a pediatric patient. This modality may be administered without a moderate sedation with parenteral agents permit. Administration of intranasal drugs on patients over the age of 12 requires the licensed dentist to hold a moderate sedation with parenteral agents or general anesthesia permit.

(3) To obtain a pediatric sedation endorsement a licensed dentist shall:

(a) Hold a valid moderate sedation with enteral agents or moderate sedation with parenteral agents permit;

(b) Comply with the permitting and renewal requirements in WAC 246-817-774;

(c) Provide evidence of education and training in:

(i) A CODA postgraduate instruction in pediatric dentistry, oral and maxillofacial surgery, or dental anesthesiology; or

(ii) Predoctoral dental school, postgraduate instruction, or continuing education of at least 37 hours in minimal and moderate sedation and an additional 14 hours in pediatric sedation.

(A) The 14 hours in pediatric sedation must include:

(I) Pediatric specific anatomical and physiological considerations;

- (II) Pediatric behavioral management during administration of sedating medication and intraoperatively;
 - (III) Pediatric drugs, dosages, and routes of administration;
 - (IV) Appropriate use of immobilization devices;
 - (V) Recordkeeping;
 - (VI) Nitrous oxide in combination with other sedating medications;
 - (VII) Prevention, recognition and management of complications;
- and
- (VIII) Four or more hours must include hands-on instruction, simulations, live supervised pediatric sedation case management, or a combination of those modalities. Observation alone is not acceptable.
- (B) The 37 hours in minimal and moderate sedation must include:
- (I) Physical evaluation;
 - (II) Technical administration;
 - (III) Drugs and routes of administration;
 - (IV) Recognition and management of complications and emergencies;
- and
- (V) Monitoring and monitoring equipment including training in expired CO₂.
- (d) Provide current health care provider BLS and PALS certifications.
- (4) A licensed dentist who holds a valid pediatric sedation endorsement shall complete 14 hours of continuing education every three years as required in WAC 246-817-773.
- (5) A licensed dentist who holds a valid pediatric endorsement must maintain a current and valid BLS and PALS certification.

[]

AMENDATORY SECTION (Amending WSR 14-21-068, filed 10/10/14, effective 11/10/14)

WAC 246-817-770 General anesthesia and deep sedation. (~~Deep sedation and general anesthesia must be administered by an individual qualified to do so under this chapter.~~

~~(1) Training requirements: To administer deep sedation or general anesthesia, the dentist must meet one or more of the following criteria:~~

~~(a) Any provider currently permitted as of the effective date of this revision to provide deep sedation or general anesthesia by the state of Washington will be grandfathered regarding formal training requirements, provided they meet current continuing education and other ongoing applicable requirements.~~

~~(b) New applicants with anesthesia residency training will be required to have had two years of continuous full-time anesthesia training meeting the following requirements based on when they began their anesthesia training:~~

~~(i) For dentists who began their anesthesia training prior to 2008, training must include two full years of continuous full-time training in anesthesiology beyond the undergraduate dental school level, in a training program as outlined in part 2 of "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry,"~~

published by the American Dental Association, Council on Dental Education (last revised October 2005).

~~(ii) For dentists who begin their anesthesia training in January 2008 or after, must have either received a certificate of completion.~~

~~(A) From))~~ (1) A licensed dentist is required to hold a permit of authorization to administer deep sedation or general anesthesia. A general anesthesia permit allows the holder to deliver moderate sedation with enteral or moderate sedation with parenteral agents without obtaining a separate permit.

(2) To obtain a general anesthesia permit, a licensed dentist shall:

(a) Comply with permitting and renewal requirements in WAC 246-817-774;

(b) Successfully complete two years of continuous full-time anesthesia training in at least one of the following:

(i) A dental anesthesiology program accredited by CODA ((ADA Commission on Dental Accreditation, "Accreditation Standards for Advanced General Dentistry Education Programs in Dental Anesthesiology," January 2007)) at the time the training was completed; or

~~((B) From))~~ (ii) A dental anesthesiology program approved by the ((Dental Quality Assurance Commission)) DQAC; or

~~((C) With a minimum of two years of full-time))~~ (iii) An anesthesia residency training, with a minimum of two years full-time, at a medical program accredited by the Accreditation Council for Graduate Medical Education ((ACGME)).

~~(c) New applicants who completed residency training in); or~~

(iv) An oral and maxillofacial surgery ((must meet)) residency and obtain at least one of the following ((requirements)):

~~((i) Be a))~~ (A) Diplomate status of the American Board of Oral and Maxillofacial Surgery;

~~((ii) Be a))~~ (B) Fellow status of the American Association of Oral and Maxillofacial Surgeons; or

~~((iii) Be a graduate of))~~ (C) Diploma in an Oral and Maxillofacial Residency Program accredited by CODA at the time the training was completed.

~~((2))~~ (3) In addition to meeting one or more of the ((above criteria)) requirements in subsection (1) of this section, the licensed dentist ((must also)) shall have a current ((and documented proficiency in advanced cardiac life support ((ACLS)) certification.

~~((3) Procedures for administration:))~~ (4) A licensed dentist shall:

(a) Ensure a patient is evaluated for general anesthesia prior to the administration of any sedative.

(i) Review the patient's medical history, medication use, and NPO or nothing by mouth status.

(ii) Consult with the patient's primary care physician or consulting medical specialist for significant medical considerations whom have American Society of Anesthesiologists patient classification of III or IV.

(iii) A patient's body mass index must be assessed as part of a preprocedural workup.

(iv) A focused physical examination to include vital signs, evaluation of the airway, and auscultation of the heart and lungs is required before administration of any sedative or anesthesia agent.

(b) Ensure a patient((s)) receiving deep sedation or general anesthesia ((must have)) has continual monitoring of their heart rate,

blood pressure, respiration, and expired ~~((carbon dioxide-))~~ CO₂ ~~((+))~~.
~~((In so doing, the licensee must))~~

(i) The licensed dentist shall utilize electrocardiographic monitoring, pulse oximetry, and end-tidal CO₂ monitoring~~((+))~~.
~~((b))~~.

(ii) Electrocardiograph monitoring must be continuously displayed from the beginning of general anesthesia and until the patient reaches the level of stage 1 anesthesia after treatment is completed.

(c) The patient's blood pressure ~~((and))~~, heart rate, and respiration rate shall be recorded every five minutes ~~((and respiration rate shall be recorded at least every fifteen minutes;))~~.

~~((e))~~ (d) To complete dental procedures under general anesthesia, the anesthesia permit holder, the anesthesia monitor, and the dental assistant shall all be present in the operating or treatment room. During deep sedation or general anesthesia, the ~~((person administering the))~~ anesthesia provider and the ~~((person))~~ provider monitoring the patient may not leave the immediate area~~((+))~~.

~~((d))~~ (e) During the recovery phase, the patient must be continually observed by the anesthesia provider or credentialed personnel~~((+))~~

~~((e))~~ acting within their scope of practice and trained in recovery phase of anesthesia.

(f) A discharge entry ~~((shall))~~ must be made in the patient's record indicating the patient's condition upon discharge and the responsible party to whom the patient was discharged.

~~((4) Dental records must contain))~~ (5) A licensed dentist who holds a valid general anesthesia permit shall document in the patient record appropriate medical history and patient evaluation. Anesthesia records ~~((shall))~~ must be recorded during the procedure in a timely manner and must include:

- (a) Blood pressure;
- (b) Heart rate;
- (c) Respiration;
- (d) Pulse oximetry;
- (e) End-tidal CO₂;
- (f) Drugs administered including amounts and time administered;
- (g) Length of procedure; and
- (h) Any complications of anesthesia.

~~((5))~~ (6) A licensed dentist shall comply with the following recordkeeping, equipment, and emergency ~~((medications: All offices in which general anesthesia (including deep sedation) is administered must comply with the following equipment standards))~~ medication requirements:

(a) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions;

(b) An operating theater must be large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least three individuals to freely move about the patient;

~~((b))~~ (c) An operating table or chair ~~((which))~~ must permit ~~((s))~~ the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

~~((e))~~ (d) A lighting system ~~((which is))~~ must be adequate to permit evaluation of the patient's skin and mucosal color and a backup

lighting system of sufficient intensity to permit conclusion of any ~~((operation))~~ procedure underway at the time of general power failure;

~~((d))~~ (e) Suction equipment capable of aspirating gastric contents from the mouth and pharyngeal cavities. A backup suction device must be available;

~~((e))~~ (f) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate portable backup system;

~~((f))~~ (g) A recovery area that has available oxygen, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theater;

~~((g))~~ (h) Ancillary equipment ~~((which))~~ must include the following:

(i) Laryngoscope complete with adequate selection of blades, spare batteries, and bulb;

(ii) Endotracheal tubes and appropriate connectors, and laryngeal mask airway ~~((LMA))~~ and other appropriate equipment necessary to do an intubation;

(iii) Oral airways;

(iv) Tonsillar or pharyngeal suction tip adaptable to all office outlets;

(v) Endotracheal tube forceps;

(vi) Sphygmomanometer and stethoscope;

(vii) Adequate equipment to establish an intravenous infusion;

(viii) Pulse oximeter or equivalent;

(ix) Electrocardiographic monitor;

(x) End-tidal CO₂ monitor; and

~~((xi) AED or defibrillator ((or automatic external defibrillator (AED) available and in reach within sixty seconds from any area where general or deep anesthesia care is being delivered. Multiple AEDs or defibrillators may be necessary in large facilities. The AED or defibrillator must be on the same floor. (In dental office settings where sedation or general anesthesia are not administered, AEDs or defibrillators are required)) as defined in WAC 246-817-722.))~~

~~((h))~~ (i) Emergency drugs of the following types ~~((shall))~~ must be maintained:

(i) Vasopressor or equivalent;

(ii) Corticosteroid or equivalent;

(iii) Bronchodilator including, but not limited to, albuterol;

(iv) Muscle relaxant;

(v) Intravenous medications for treatment of cardiac arrest;

(vi) Narcotic antagonist;

(vii) Benzodiazepine antagonist;

(viii) Antihistaminic including, but not limited to, diphenhydramine;

(ix) Anticholinergic;

(x) Antiarrhythmic;

(xi) Coronary artery vasodilator including, but not limited to, nitroglycerin;

(xii) Antihypertensive;

(xiii) Anticonvulsant; and

(xiv) ACLS or PALS emergency drugs.

~~((6) Continuing education:~~

~~((a) A dentist granted a permit to administer))~~ (7) A licensed dentist who holds a valid general anesthesia permit and administers

general anesthesia in another licensed dentist office, must have a contract in place that contains the provisions required in WAC 246-817-778 (1) (a) through (c).

~~(8) A licensed dentist who holds a valid general anesthesia ((including deep sedation) under this chapter, must)) permit shall complete ((eighteen)) 18 hours of continuing education every three years as required in WAC 246-817-773.~~

~~(9) A licensed dentist who holds a valid general anesthesia permit must hold a current and valid ACLS certification.~~

~~((A dentist granted a permit must maintain records that can be audited and must submit course titles, instructors, dates attended, sponsors, and number of hours for each course every three years.~~

~~(b) The education must be provided by organizations approved by the DQAC and must be in one or more of the following areas: General anesthesia; conscious sedation; physical evaluation; medical emergencies; pediatric advanced life support (PALS); monitoring and use of monitoring equipment; pharmacology of drugs; and agents used in sedation and anesthesia.~~

~~(c) Hourly credits earned from certification in health care provider basic life support (BLS) and advanced cardiac life support (ACLS) courses may not be used to meet the continuing education hourly requirements for obtaining or renewing a general anesthesia and deep sedation permit, however these continuing education hours may be used to meet the renewal requirement for the dental license.~~

~~(7) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.))~~

[Statutory Authority: RCW 18.32.0365, 18.32.640 and 18.32.002. WSR 14-21-068, § 246-817-770, filed 10/10/14, effective 11/10/14. Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-770, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-770, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-771 Dental anesthesia assistant. (1) A dental anesthesia assistant (~~must~~) shall be certified under chapter 18.350 RCW and WAC 246-817-205.

(2) A dental anesthesia assistant may only accept delegation from an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(3) Under close supervision, the dental anesthesia assistant may:

(a) Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia; and

(b) Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

(4) Under direct visual supervision, the dental anesthesia assistant may:

(a) Draw up and prepare medications;

(b) Follow instructions to deliver medications into an intravenous line upon verbal command;

- (c) Adjust the rate of intravenous fluids infusion beyond a keep open rate;
- (d) Adjust an electronic device to provide medications, such as an infusion pump;
- (e) Administer emergency medications to a patient in order to assist the oral and maxillofacial surgeon or dental anesthesiologist in an emergency.
- (5) The responsibility for monitoring a patient and determining the selection of the drug, dosage, and timing of all anesthetic medications rests solely with the supervising oral and maxillofacial surgeon or dental anesthesiologist.
- (6) A certified dental anesthesia assistant shall notify the ~~((commission))~~ DQAC in writing, on a form provided by the department, of any changes in his or her supervisor.
- (a) The ~~((commission))~~ DQAC must be notified of the change prior to the certified dental anesthesia assistant accepting delegation from another supervisor. The certified dental anesthesia assistant may not practice under the authority of this chapter unless he or she has on file with the ~~((commission))~~ DQAC such form listing the current supervisor.
- (b) A supervisor must be an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.
- (c) For the purposes of this subsection:
- (i) "Any change" means the addition, substitution, or deletion of supervisor from whom the certified dental anesthesia assistant is authorized to accept delegation.
- (ii) "Direct visual supervision" means supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight.

[Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-771, filed 7/23/13, effective 8/23/13.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-772 (~~((Requirements for))~~ Anesthesia monitor requirements. (1) When ~~((the))~~ a licensed dentist is also administering ~~((the))~~ moderate sedation with parenteral agents, deep sedation or general anesthesia, one additional appropriately trained team member must be designated for patient monitoring. The team member designated for patient monitoring when general anesthesia is being administered may not also perform dental assistant tasks.

(2) When moderate sedation with parenteral agents, deep sedation or general anesthesia is administered by a dedicated anesthesia provider who is not the operative dentist, the anesthesia provider may serve as the monitoring personnel.

(3) ~~((The))~~ A licensed dentist cannot employ an individual to monitor patients receiving moderate sedation with parenteral agents, deep sedation or general anesthesia unless that individual has received a minimum of ~~((fourteen))~~ 14 hours of documented training, ~~((+))~~ such as national certification American Association of Oral and Maxillofacial Surgeons (~~((AAOMS))~~ in a course), on-site or in-office

training by a licensed dentist with a moderate sedation with parenteral agents or general anesthesia permit, or other education course specifically designed to include instruction and practical experience in use of equipment to include, but not be limited to, the following equipment:

- (a) Sphygmomanometer((+)) or a device able to measure blood pressure;
 - (b) Pulse oximeter((+)) or other respiratory monitoring equipment;
 - (c) Electrocardiogram;
 - (d) Bag-valve-mask resuscitation equipment;
 - (e) Oral and nasopharyngeal airways;
 - (f) Defibrillator((+)) or automatic external defibrillator.
- (4) The ((course)) training referred to in subsection (3) of this section must also include instruction in:
- (a) Basic sciences;
 - (b) Evaluation and preparation of patients with systemic diseases;
 - (c) Anesthetic drugs and techniques;
 - (d) Anesthesia equipment and monitoring; and
 - (e) Office anesthesia emergencies.
- (5) A licensed dentist shall maintain training or certification documentation of the anesthesia monitor.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-772, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-772, filed 1/30/09, effective 3/2/09.]

NEW SECTION

WAC 246-817-773 Continuing education for dentists administering sedation. Continuing education must contribute to the professional knowledge and development of the licensed dentist to enhance sedation services provided to patients.

(1) The continuing education reporting period for a licensed dentist that administers sedation in Washington before December 31, 2023, begins January 1, 2024.

(2) The five-year continuing education reporting period for a licensed dentist that administers minimal sedation with nitrous oxide or minimal sedation in Washington on January 1, 2024, or later begins the date of first administration of sedation.

(3) The three-year continuing education reporting period for a licensed dentist initially issued a moderate sedation with enteral agents, moderate sedation with parenteral agents, pediatric sedation endorsement, or general anesthesia permit in Washington on January 1, 2024, or later begins the date of permit issuance.

(4) A licensed dentist who holds a valid permit or endorsement shall complete required hours of continuing education in one or more of the subject categories as required in below table.

	WAC 246-817-740 Minimal sedation with nitrous oxide – 7 hours	WAC 246-817-745 Minimal sedation – 7 hours	WAC 246-817-755 Moderate sedation with enteral agents – 7 hours	WAC 246-817-760 Moderate sedation with parenteral agents – 14 hours	WAC 246-817-765 Pediatric sedation endorsement – 14 hours	WAC 246-817-770 General anesthesia and deep sedation – 18 hours
Appropriate use of immobilization devices					X	

	WAC 246-817-740 Minimal sedation with nitrous oxide – 7 hours	WAC 246-817-745 Minimal sedation – 7 hours	WAC 246-817-755 Moderate sedation with enteral agents – 7 hours	WAC 246-817-760 Moderate sedation with parenteral agents – 14 hours	WAC 246-817-765 Pediatric sedation endorsement – 14 hours	WAC 246-817-770 General anesthesia and deep sedation – 18 hours
ACLS	X	X	X			
Behavioral management						X
General anesthesia						X
Inhalation analgesia						X
Medical emergencies	X	X	X	X	X	X
Nitrous oxide analgesia	X	X	X	X	X	
Oral or intravenous sedation				X		
Oral sedation	X	X	X			
PALS	X	X	X	X		X
Patient evaluation	X	X	X	X	X	X
Patient monitoring	X	X	X	X	X	X
Pediatric behavioral management					X	
Pediatric pharmacology					X	
Pediatric physiological					X	
Pediatric sedation					X	
Pharmacology				X		X
Physiology	X	X	X	X		X

(5) Verification of completion of continuing education hours will be due on the dentist's sedation permit renewal date beginning in 2027.

(6) Continuing education in subject categories identified in subsection (4) of this section may be completed using any of the activities or methods authorized in WAC 246-817-440(4).

(7) Proof of continuing education requirements are listed in WAC 246-817-440(5).

[]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-774 Permitting(~~/~~) and renewal requirements. (1) To administer moderate sedation (~~((oral and/or parenteral))~~) with enteral agents, moderate sedation with parenteral agents, or general anesthesia, (~~((+))~~) including deep sedation(~~(, dentist must first)~~), a licensed dentist shall:

(a) Meet the requirements of this chapter(~~(,)~~);

(b) Possess and maintain a (~~(current dental))~~) valid dentist license pursuant to chapter 18.32 RCW; and

(c) Obtain a permit of authorization from the DQAC (~~(through the department of health)~~). (~~(Application forms for permits may be obtained online or from the department and must be fully completed and include the current))~~)

(2) A pediatric sedation endorsement is required to administer moderate sedation with enteral agents or moderate sedation with parenteral agents to pediatric patients. A moderate sedation with enteral agents or moderate sedation with parenteral agents permit is required

to obtain the pediatric sedation endorsement as described in WAC 246-817-765.

~~(3)~~ An applicant for a permit or an endorsement as identified in this section shall complete and submit to the department an application as provided by the department and the applicable application fee.

~~((2))~~ (4) A permit of authorization is valid for three years from the date of issuance ~~((and must be renewed prior to the expiration date))~~.

~~((3) In addition to the renewal application form, the permit holder must))~~ (5) The permit holder shall renew the permit prior to the expiration date by providing to the department:

(a) ~~((Demonstrate))~~ Written declaration of continuing compliance with this chapter.

(b) ~~((Submit satisfactory evidence))~~ For a licensed dentist with a moderate sedation with parenteral agents or general anesthesia permit a written declaration of an acceptable on-site inspection by a DQAC approved organization, as described in WAC 246-817-775, within the previous five years.

(i) The permit holder shall maintain on-site inspection documentation for five years.

(ii) The DQAC may randomly audit up to 25 percent of permit holders after the permit is renewed.

(c) Written declaration of continuing education hours as required ((by this chapter)) in WAC 246-817-773.

~~((The dentist must maintain records that can be audited and must submit course titles, instructors, dates of attendance, sponsors and number of hours for each course every three years as required by this chapter.~~

~~(e) Pay))~~ (i) The permit holder shall maintain continuing education documentation for four years in compliance with WAC 246-12-170 through 246-12-240.

(ii) The DQAC may randomly audit up to 25 percent of permit holders as required in WAC 246-12-190.

(d) Written declaration that a minimum of 12 emergency drill scenarios were performed at least two times per year.

(i) The permit holder shall maintain emergency drill documentation for three years.

(ii) The DQAC may randomly audit up to 25 percent of permit holders after the permit is renewed.

(e) The applicable renewal fee.

~~((4) Site visits may be conducted at the DQAC discretion. Site visits will be conducted by an anesthesia provider permitted at the same level, in conjunction with a department of health investigator. Site visits may include the evaluation of equipment, medications, patient records, documentation of training of personnel, and other items as determined necessary.))~~

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-774, filed 1/30/09, effective 3/2/09.]

NEW SECTION

WAC 246-817-775 On-site inspections. (1) A licensed dentist shall conduct a self-assessment of their office preparedness for emer-

gencies, proper emergency equipment, and emergency drugs annually. The annual self-assessment attestation must be maintained for five years.

(2) A licensed dentist who holds a valid moderate sedation with parenteral agents or general anesthesia permit shall conduct a self-inspection using the appropriate DQAC's on-site inspection form annually. The annual self-inspection form shall be maintained for five years.

(3) A licensed dentist who holds a moderate sedation with parenteral agents or general anesthesia permit must:

(a) Obtain an on-site inspection every five years at the location where moderate sedation with parenteral agents or general anesthesia is provided by an approved organization or by a self-arranged inspection using the DQAC approved on-site inspection form.

(i) The self-arranged on-site inspection must be completed by at least two providers with the same or higher level permit as the licensed dentist being evaluated.

(ii) Volunteer evaluators may be a certified registered nurse anesthetist, licensed physician anesthesiologist, or a licensed dentist who holds an appropriate moderate sedation with parenteral agents or general anesthesia permit for at least five years.

(b) Choose one office to have inspected, if the permit holder provides sedation or anesthesia in more than one office. The permit holder must provide an attestation that all the same standards from the inspection are met in all offices where sedation or anesthesia is provided.

(4) On-site inspections by approved organizations include:

(a) The Washington state society of oral and maxillofacial surgeons;

(b) Accreditation Association for Ambulatory Health Care;

(c) Department of health ambulatory surgical facility license survey as required in chapter 246-330 WAC;

(d) Joint commission;

(e) American Association for Accreditation of Ambulatory Surgery Facilities;

(f) The Centers for Medicare and Medicaid Services; or

(g) Substantially equivalent organizations approved by the DQAC.

(5) On-site inspections for general anesthesia permit holders must begin by the end of the first full permit renewal period after June 30, 2023, or five years after initial permit issuance, whichever is later.

(6) On-site inspection for moderate sedation with parenteral agents permit holders must begin by the end of the first full permit renewal period after June 30, 2024, or five years after initial permit issuance, whichever is later.

(7) A licensed dentist who holds a moderate sedation with parenteral agents or general anesthesia permit shall maintain completed and signed on-site inspection forms for at least five years.

[]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-776 Discharge criteria for all levels of sedation (/) or general anesthesia. The licensed dentist shall ensure an

anesthesia provider (~~(must assess)~~) assesses patient responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met, except when their prior baseline is below the noted criteria:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable(~~(+)~~). Vital signs are not required when:

(a) A pediatric ASA I or ASA II patient is undergoing a routine dental procedure using either local anesthetic, nitrous oxide, or both with no other sedating medications; or

(b) A pediatric patient is uncooperative or the emotional condition is such that obtaining vital signs is not possible.

(c) Reasons why vital signs were not obtained must be documented.

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(3) The patient can talk and respond coherently to verbal questioning as appropriate to age and preoperative psychological status;

(4) The patient can sit up unassisted;

(5) The patient can walk with minimal assistance;

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness;

(7) The anesthesia provider has made a discharge entry (~~(must be made)~~) in the patient's record (~~(by the anesthesia provider indicating)~~). Discharge entries must include:

(a) The patient's condition upon discharge(~~(+)~~); and

(b) The name of the responsible party to whom the patient is released, (~~(+)~~) if a patient is required to be released to a responsible party(~~(+)~~);

(8) If the patient does not meet established discharge criteria, the anesthesia provider must evaluate the patient and determine if the patient has safely recovered to be discharged. The evaluation determining that the patient can be safely discharged must be noted in the patient's record.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-776, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-778 ((Nondental)) Nondentist anesthesia providers.

(1) A licensed dentist(~~(, certified registered nurse anesthetist (CRNA) or physician anesthesiologist~~) may provide anesthesia services in dental offices where dentists do not have an anesthesia permit when the anesthesia provider ensures that all equipment, facility, monitoring and assistant training requirements as established within this chapter related to anesthesia have been met. The anesthesia provider is exclusively responsible for the pre, intra, and post operative anesthetic management of the patient.

(2) The dentist without a general anesthesia permit must establish a written contract with the anesthesia provider to guarantee that when anesthesia is provided, all facility, equipment, monitoring and training requirements, for all personnel, as established by DQAC related to anesthesia, have been met.

(a) The dentist and the anesthesia provider may agree upon and arrange for the provision of items such as facility, equipment, moni-

toring and training requirements to be met by either party, provided the delineation of such responsibilities is written into the contract.

~~(b) Any contract under this section must state that the anesthesia provider must ensure anesthesia related requirements as set forth in this chapter have been met.)~~ shall have a contract in place when working with a nondentist anesthesia provider. The contract must include:

(a) That all facility, equipment, monitoring, and training requirements, for all personnel required in WAC 246-817-701 through 246-817-790 have been met.

(b) That the anesthesia provider is responsible for the pre, intra, postoperative, and discharge anesthetic management of the patient.

(c) Delineation of responsibilities. The dentist and the anesthesia provider shall agree upon and arrange for the provision of items such as facility, equipment, monitoring, and training requirements to be met by either party. The dentist and the anesthesia provider shall establish written emergency protocols, as required in WAC 246-817-724, and all clinical staff must be trained.

(2) A nondentist anesthesia provider may be a certified registered nurse anesthetist or licensed physician anesthesiologist.

(3) Sedation or general anesthesia must be provided by a competent and qualified certified registered nurse anesthetist, licensed physician anesthesiologist, or a licensed dentist with an appropriate sedation or general anesthesia permit.

(4) A licensed dentist must ensure compliance with WAC 246-817-701 through 246-817-790 whenever sedation or general anesthesia is administered in their dental facility.

(5) A licensed dentist with a moderate sedation, moderate sedation with parenteral agents, or general anesthesia permit must ensure compliance with WAC 246-817-701 through 246-817-790 everywhere they administer sedation or general anesthesia.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-778, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-780 Mandatory reporting (~~of death or significant complication as a result of any dental procedure~~). ~~((All licensees engaged in the practice of dentistry must))~~ A licensed dentist shall submit a report of any patient death or other life-threatening incident or complication, permanent injury or admission to a hospital that results in a stay at the hospital for more than (~~twenty-four~~) 24 hours, which is or may be a result of a dental procedure caused by a dentist or dental treatment.

(1) (~~The dentist involved must~~) A licensed dentist shall notify the (~~department of health/DQAC~~) DQAC, by telephone, email, or (~~fax~~) facsimile within (~~seventy-two~~) 72 hours of discovery and must submit a complete written report to the DQAC within (~~thirty~~) 30 days of the incident.

(2) When a patient comes into an office with an existing condition, and hospital admission is the result of that condition and not the dental procedure, it is not reportable.

- (3) The written report must include the following:
- (a) Name, age, and address of the patient.
 - (b) Name of the dentist and other personnel present during the incident.
 - (c) Address of the facility or office where the incident took place.
 - (d) Description of the type of sedation or anesthetic being utilized at the time of the incident.
 - (e) Dosages, if any, of drugs administered to the patient.
 - (f) A narrative description of the incident including approximate times and evolution of symptoms.
 - (g) Hospital discharge records if available.
 - (h) Additional information which the DQAC may require or request.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-780, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-780, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-790 Application of chapter 18.130 RCW. The provisions of the Uniform Disciplinary Act, chapter 18.130 RCW, apply to the permits and endorsements of authorization that may be issued and renewed under this chapter.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-790, filed 10/10/95, effective 11/10/95.]

WSR 23-16-109

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed July 31, 2023, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-102.

Title of Rule and Other Identifying Information: The board of optometry (board) is proposing several rule changes regarding the variety of course types and adjusting hourly limits for continuing education (CE) for licensed optometrists in WAC 246-851-090, 246-851-125, 246-851-140, 246-851-150, 246-851-155, 246-851-170, and 246-851-230.

Hearing Location(s): On September 8, 2023, at 9:00 a.m., at Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501; or virtual meeting via Microsoft Teams. Join on your computer, mobile app, or room device [https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLThiODctMmVhMDU3ZmE2OTkx%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLThiODctMmVhMDU3ZmE2OTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d)

[context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLThiODctMmVhMDU3ZmE2OTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d), Meeting ID 286 469 743 295, Passcode BLEXQT; or call in (audio only) +1 564-999-2000,,893212425# United States, Olympia, 833-322-1218,,893212425# United States (toll-free), Phone Conference ID 893 212 425#.

Date of Intended Adoption: September 8, 2023.

Submit Written Comments to: Kristina Bell, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by August 28, 2023.

Assistance for Persons with Disabilities: Contact Kristina Bell, Program Manager, phone 360-236-4841, fax 360-236-2901, TTY 711, email Kristina.bell@doh.wa.gov, by August 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would clarify and expand access to CE courses required for an optometrist's licensure renewal. This includes new definitions, adjusting limits on types and categories allowable for CE, references to other required trainings, and certain allowances during a declared state of emergency.

Reasons Supporting Proposal: The board's intent is to keep a robust standard while increasing access and flexibility for the CE rules. During the declared emergency for the coronavirus disease 2019 (COVID-19) pandemic, the board adopted and implemented a policy statement allowing licensed optometrists to accrue unlimited online (virtual) CE to satisfy their license renewal requirements (WSR 23-06-036). The board rescinded the policy in May 2023 after the public emergency declaration ended (WSR 23-13-041). The proposed rule would implement changes based on experience gained from the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 18.54.070.

Statute Being Implemented: Chapter 18.53 RCW.

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

Name of Proponent: Board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Bell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4841.

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 Kristina Bell, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 711, email Kristina.bell@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 10, 2023

William Prothero, Optometrist, Chair
Board of Optometry

OTS-4445.5

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-090 Continuing education requirement. (1) The definitions in this subsection apply throughout this section:

(a) "Asynchronous" means the course instructor and learner are not together at the same time, have no real-time communications, and the content is learner-paced.

(b) "Synchronous in-person" means the instructor is in the same room and face-to-face with the learner, even if other formats are used as audiovisual aids for teaching the course.

(c) "Synchronous virtual" means the course instructor is not physically present but is meeting with learners in real time and can provide immediate feedback.

(2) A licensed optometrist must complete and document ((fifty)) 50 total hours of continuing education every two years ((and comply with chapter 246-12 WAC, Part 7)) in compliance with WAC 246-12-170 through 246-12-235. Of the 50 total credit hours:

(a) A minimum of 10 credit hours must be completed through synchronous in-person learning;

(b) A maximum of 25 credit hours may be completed through asynchronous learning;

(c) The remaining credit hours may be completed through any combination of synchronous virtual learning and asynchronous learning; and

(d) In the event of a declaration of emergency for the state of Washington or federal declaration of emergency affecting the state of Washington, all credit hours may be completed through synchronous virtual or asynchronous learning for the duration of the declared emergency.

(3) Documentation of continuing education credit hours is a certificate of completion, letter, or other document which must:

(a) Verify or confirm attendance or completion of continuing education hours, with the exception of hours earned under WAC 246-851-170 category 5;

(b) Be provided by the organization providing the education activity; and

(c) Contain at least the following information:

(i) Date of attendance or completion;

(ii) Hours earned; and

(iii) Course title or subject.

~~((2))~~ (4) A licensed optometrist ((must)) may alternatively meet the continuing education requirements ((by:

~~(a) Completing fifty hours of education that complies with WAC 246-851-125 through 246-851-230; or~~

~~(b) Alternatively meeting the requirements of this subsection) of this section by providing proof that ((he or she:~~

~~(i) Holds a current Optometric Recognition Award from the American Optometric Association;~~

~~(ii)) the licensee:~~

~~(a) Holds a current certification by the American Board of Optometry or other certification program deemed substantially equivalent to American Board of Medical Specialties' programs; or~~

~~((iii)) (b) Is practicing solely outside of Washington state and meets the continuing education requirements of the state or territory in which ((he or she)) the licensee practices.~~

(5) Nothing in this section exempts a licensed optometrist from the education and training requirements for:

(a) Suicide prevention in WAC 246-851-245; or

(b) Health equity in WAC 246-851-225.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-090, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-851-090, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.54.070(2). WSR 97-12-088, § 246-851-090, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.54.070. WSR 92-06-030 (Order 248B), § 246-851-090, filed 2/26/92, effective 3/28/92; WSR 91-06-025 (Order 119B), recodified as § 246-851-090, filed 2/26/91, effective 3/29/91; WSR 88-07-047 (Order PM 710), § 308-53-100, filed 3/11/88. Statutory Authority: RCW 18.54.070(5). WSR 80-01-088 (Order PL 326), § 308-53-100, filed 12/28/79; Order PL 239, § 308-53-100, filed 3/3/76.]

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-125 Category 1—Credit for education from optometry-specific organizations. (1) A minimum of ~~((twenty-five))~~ 25 credit hours in category 1 ~~((credit hours))~~ must be earned in any two-year reporting period.

(2) ~~((Up to ten category 1 credit hours may be earned for live courses attended remotely, provided that attendees have the documented opportunity to question the instructor and hear the questions of other attendees in real time.~~

~~(3))~~ Credits may be obtained for ~~((in-person live-attended))~~ education offered by the following optometry-specific course and program sources:

- (a) The American Optometric Association (AOA) and its state affiliates;
- (b) Educational institutions accredited by the Association of Schools and Colleges of Optometry (ASCO);
- (c) The Association of Regulatory Boards of ~~((Optometry))~~ Optometry's (ARBO) ~~((and its state agency members))~~ Council on Optometric Practitioner Education (COPE)—Accredited education;
- (d) ARBO member boards;
- (e) Nationally recognized academic and scholarly optometric organizations including, but not limited to, the American Academy of Optometry, the Optometric Extension Program, and the College of Optometrists in Vision Development; and
- ~~((e))~~ (f) Ophthalmic referral centers, secondary and tertiary ophthalmic specialty providers.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-125, filed 12/1/15, effective 1/1/16.]

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-140 Category 2—Credit for education from nonoptometric organizations. (1) A maximum ~~((of twenty))~~ 20 credit hours in category 2 ~~((credit hours))~~ may be earned in any two-year reporting period.

(2) Credits may be obtained for ~~((in-person live-attended))~~ education offered by the following nonoptometry-specific course and program sources:

- (a) ~~((Category 1 and category 2))~~ Continuing medical education courses in category 1 and category 2 as approved by the ~~((medical quality assurance commission))~~ American Medical Association or their affiliates;
- (b) First aid, ~~((CPR))~~ cardiopulmonary resuscitation, and other emergency-related courses; and
- (c) Industry-sponsored scientific courses that enhance the knowledge of ocular conditions and diseases, and their treatments.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-140, filed 12/1/15, effective 1/1/16; WSR 97-12-088, § 246-851-140, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.54.070. WSR 91-06-025 (Order 119B), recodified as § 246-851-140, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.54.070(2). WSR 89-10-030 (Order PM 839), § 308-53-135, filed 4/27/89. Statutory Authority: RCW 18.54.070(5). WSR 80-01-088 (Order PL 326), § 308-53-135, filed 12/28/79.]

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-150 Category 3—Credit for teaching. (1) A maximum of ~~((ten))~~ 10 credit hours in category 3 ~~((credit hours))~~ may be earned in any two-year reporting period.

(2) Credits may be obtained for formal and informal optometric instruction.

(a) Three credit hours will be granted for each course hour taught.

(b) Credit will be granted for only the first time a course is taught.

(c) Qualifying courses must be presented to ~~((optometrists))~~ practitioners or allied health professionals.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-150, filed 12/1/15, effective 1/1/16; WSR 02-10-065, § 246-851-150, filed 4/26/02, effective 5/27/02; WSR 97-12-088, § 246-851-150, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.54.070. WSR 91-06-025 (Order 119B), recodified as § 246-851-150, filed 2/26/91, effective 3/29/91; Order PL 239, § 308-53-140, filed 3/3/76.]

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-155 Category 4—Credit for publishing and exhibiting. (1) A maximum of ~~((ten))~~ 10 credit hours in category 4 ~~((credit hours))~~ may be earned in any two-year reporting period.

(2) Five credits may be obtained for each paper, exhibit, publication, or for each chapter of a book that is authored and published.

(a) A paper must be published in a recognized optometric, scientific, or medical journal.

(b) A qualifying paper or exhibit must be presented to ~~((optometrists))~~ practitioners or allied health professionals.

(c) Credit may be claimed only once for the scientific materials published or exhibited.

(d) Credit will be assigned as of the date materials were presented or published.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-155, filed 12/1/15, effective 1/1/16.]

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-170 Category 5—Credit for ~~((self-directed study))~~ self-study. ~~((1))~~ A maximum of ~~twenty-five~~ category 5 credit hours may be earned in any two-year reporting period.

~~(2) Credits may be obtained for nonsupervised individual continuing educational activities.~~

~~(a) Subject matter must be from professional optometric or medical literature or multimedia material;~~

~~(b) Course material may be presented in any form of printed or electronic media;~~

~~(c) Courses must be approved by a category 1 organization listed in WAC 246-851-125; and~~

~~(d) Successful completion of an examination or other assessment tool is required for qualifying credit. Up to ten category 5 credit hours may be earned by submitting in lieu of an assessment tool a non-handwritten report which includes a copy of the article, publication source and date, and at least ten descriptive statements from the article.)~~ (1) A maximum of 10 credit hours may be earned through self-study without an instructor physically present.

(2) A licensed optometrist shall receive two credit hours for each self-study completed. Each self-study must include:

(a) A copy of the article, and its publication source and date;
and

(b) A two-page typewritten and dated synopsis of what has been learned by the licensed optometrist.

(3) Self-study material must be from professional optometrist or medical literature, and includes reading a book, study clubs, research materials or other publications that contribute to the professional knowledge and development of the licensed optometrist, or enhance services provided to patients.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-170, filed 12/1/15, effective 1/1/16; WSR 04-21-077, § 246-851-170, filed 10/20/04, effective 11/20/04; WSR 97-12-088, § 246-851-170, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.54.070. WSR 91-22-061 (Order 210B), § 246-851-170, filed 11/1/91, effective 12/2/91; WSR 91-06-025 (Order 119B), recodified as § 246-851-170, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.54.070(2). WSR 89-10-030 (Order PM 839), § 308-53-146, filed 4/27/89. Statutory Authority: RCW 18.54.070(5). WSR 80-04-054 (Order PL 331), § 308-53-146, filed 3/21/80.]

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

WAC 246-851-230 Credits for practice management courses. A maximum of (~~ten~~) 10 credit hours may be granted in any two-year reporting period for practice management courses or programs.

[Statutory Authority: RCW 18.54.070(2). WSR 15-24-119, § 246-851-230, filed 12/1/15, effective 1/1/16; WSR 97-12-088, § 246-851-230, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.54.070. WSR 91-22-061 (Order 210B), § 246-851-230, filed 11/1/91, effective 12/2/91; WSR 91-06-025 (Order 119B), recodified as § 246-851-230, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.54.070(2). WSR 89-10-030 (Order PM 839), § 308-53-175, filed 4/27/89.]

WSR 23-16-117
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 1, 2023, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-080.

Title of Rule and Other Identifying Information: Factory assembled structures (FAS) rules: WAC 296-150C-3000 Commercial coach fees, 296-150F-3000 Factory-built housing and commercial structure fees, 296-150I-3000 Penalties, fees, and refunds, 296-150M-3000 Manufactured/mobile home fees, 296-150P-3000 Recreational park trailer fees, 296-150R-3000 Recreational vehicle fees, 296-150T-3000 Factory-built temporary worker housing fees, and 296-150V-3000 Conversion vendor units and medical units—Fees.

Hearing Location(s): On September 7, 2023, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically <https://lni-wa.gov.zoom.us/j/87349573625?pwd=VVVOOE9uWEJtWThsNFR4b28zRUx3Zz09>, Passcode %3Dcg=Y1; or join by phone (audio only) 253-215-8782, Meeting ID 873 4957 3625, Passcode 57087786. The in-person and virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 17, 2023.

Submit Written Comments to: Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Meagan.Edwards@lni.wa.gov, fax 360-902-6134, by 5 p.m. on September 7, 2023.

Assistance for Persons with Disabilities: Contact Meagan Edwards, phone 360-522-0125, fax 360-902-6134, email Meagan.Edwards@lni.wa.gov, by August 23, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose amendments to the FAS rules to increase fees by the fiscal growth factor rate of 6.22 percent. The fee increase is the maximum allowed by the state office of financial management for fiscal year 2024.

Reasons Supporting Proposal: A fee increase is needed to cover increased operating costs and new technology improvements for the FAS program. The current fee levels are insufficient to cover current program expenses. The increase will ensure that revenues match expenditures, otherwise service levels may need to be reduced.

Statutory Authority for Adoption: Chapter 43.22 RCW, L&I; and chapter 43.22A RCW, Mobile and manufactured home installation.

Statute Being Implemented: Chapter 43.22 RCW, L&I, and chapter 43.22A RCW, Mobile and manufactured home installation.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Rarig, Acting Program Manager, Tumwater, Washington, 425-577-8064; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023
Joel Sacks
Director

OTS-4683.1

AMENDATORY SECTION (Amending WSR 23-09-024, filed 4/11/23, effective 4/11/23)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction: VB	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.428)) 0.454...	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.614)) 0.649.....	\$
* Minimum plan review fee is 2 1/2 hours x ((\$93.00)) \$98.70 per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by ((0.183)) 0.194.....	\$
b. Master plan design—Multiply the total on line 7 by ((0.305)) 0.323.....	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing ((\$21.90 + \$7.10)) \$23.20 + \$7.50 per fixture	\$
12. Medical gas ((\$21.90 + \$7.10)) \$23.20 + \$7.50 per gas outlet.....	\$
DESIGN RENEWAL OR ADDENDUM	

13.	((12.23%)) 12.99% of building permit + ((\$93.00)) \$98.70	\$
RESUBMITTAL			
14.	((12.23%)) 12.99% of building permit + ((\$93.00)) \$98.70	\$
ELECTRICAL PLAN-REVIEW FEE			
15.	See WAC 296-46B-906(9) for electrical review fees		
INSIGNIA FEES			
16.	FIRST SECTION	\$	((27.80)) 29.50
17.	EACH ADDITIONAL SECTION	\$	((17.10)) 18.10
TOTAL FEES			
18.	Total plan review fees:	Add lines 8 or 9 and 10 through 15	\$
19.	Total fees due:	Includes plan fees and insignia fees	\$
20.	Total amount paid		\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((\$45.90) \$48.70)
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1.223)) 1.299*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1.223)) 1.299*	
RENEWAL FEE - 10% of permit fee × ((1.223)) 1.299 +	((\$93.00) \$98.70)
RESUBMIT FEE - 10% of permit fee × ((1.223)) 1.299 +	((\$93.00) \$98.70)
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1.223)) 1.299 +	((\$93.00) \$98.70)
PLUMBING PLAN FEE, ((\$21.90)) \$23.20 + PER FIXTURE FEE of	((\$7.10) \$7.50)
MEDICAL GAS PLAN FEE, ((\$21.90)) \$23.20 + PER OUTLET FEE of	((\$7.10) \$7.50)
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1.223)) 1.299	
One year design 15% of the permit fee × ((1.223)) 1.299	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	((\$93.00) \$98.70 per hour)

INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	((\$93.00) \$98.70 per hour)
RENEWAL FEE (minimum 1 hour)	((\$93.00) \$98.70 per hour)
ADDENDUM (minimum 1 hour)	((\$93.00) \$98.70 per hour)
PLANS APPROVED BY LICENSED PROFESSIONALS - 10% of permit fee × ((1,223) 1,299 +	((\$93.00) \$98.70)
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$93.00) \$98.70 per hour)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee × ((1,223) 1,299 +	((\$93.00) \$98.70)
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	((\$93.00) \$98.70)
TRAVEL (Per hour)	((\$93.00) \$98.70)
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((\$93.00) \$98.70)
TRAVEL (Per hour**)	((\$93.00) \$98.70)
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	((\$120.80) \$128.30)
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	((\$27.80) \$29.50)
EACH ADDITIONAL SECTION (NEW or ALTERATION)	((\$17.10) \$18.10)
REISSUED-LOST/DAMAGED	((\$17.10) \$18.10)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((\$93.00) \$98.70)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$17.10) \$18.10)
REFUND FEE	((\$30.50) \$32.30)

*Minimum plan review fee is 2 1/2 hours at the field technical service rate
 **Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments
 ***Per state guidelines
 ****Actual charges incurred

[Statutory Authority: Chapter 43.22 RCW. WSR 23-09-024, § 296-150C-3000, filed 4/11/23, effective 4/11/23. Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150C-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150C-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150C-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87,

43.22, and 43.22A RCW. WSR 18-24-102, § 296-150C-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150C-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150C-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapter 43.22 RCW. WSR 07-19-086, § 296-150C-3000, filed 9/18/07, effective 10/19/07. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150C-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150C-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150C-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150C-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150C-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150C-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150C-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150C-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150C-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150C-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150C-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150C-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-3000, filed 10/23/96, effective 11/25/96.]

OTS-4684.1

AMENDATORY SECTION (Amending WSR 23-09-024, filed 4/11/23, effective 4/11/23)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:

3. Type of construction:	4. Square footage of building:	
5. Valuation of the building shall be based on the following:		
• Square footage of the building multiplied by the amount in the BVD valuation table		\$
6. Total valuation:		\$
PERMIT FEE		
7. Calculate from building permit fee table using the total valuation		\$
STRUCTURAL PLAN REVIEW FEE*		
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.428) <u>0.454</u>		\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.611) <u>0.649</u>		\$
* Minimum plan review fee is 2 1/2 hours x ((\$104.60) <u>\$111.10</u> per hour		
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10. Fire and life-safety plan review:		
a. One year design—Multiply the total on line 7 by ((0.183) <u>0.194</u>		\$
b. Master plan design—Multiply the total on line 7 by ((0.305) <u>0.323</u>		\$
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE		
11. Plumbing ((\$21.90 + \$7.10) <u>\$23.20 + \$7.50</u> per fixture		\$
12. Medical gas ((\$21.90 + \$7.10) <u>\$23.20 + \$7.50</u> per gas outlet		\$
DESIGN RENEWAL OR ADDENDUM		
13. ((12.23%) <u>12.99%</u> of building permit + ((\$104.60) <u>\$111.10</u>		\$
RESUBMITTAL		
14. ((12.23%) <u>12.99%</u> of building permit + ((\$104.60) <u>\$111.10</u>		\$
ELECTRICAL PLAN-REVIEW FEE		
15. See WAC 296-46B-906(9) for electrical review fees		
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16. Notification to local enforcement agency fee:		\$ ((45.00) <u>47.70</u>)
INSIGNIA FEES		
17. FIRST SECTION		\$ ((334.80) <u>355.60</u>)
18. EACH ADDITIONAL SECTION		\$ ((29.80) <u>31.60</u>)
TOTAL FEES		
19. Total plan review fees: Add lines 8 or 9 and 10 through 15		\$
20. Total fees due: Includes plan fees, insignia fees, and NLEA fees		\$
21. Total amount paid		\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00

Total Valuation	Fee
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((\$81.70) \$86.70)
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1.223) 1.299)*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1.223) 1.299)*	
RENEWAL FEE - 10% of permit fee × ((1.223) 1.299) +	((\$104.60) \$111.10)
RESUBMIT FEE - 10% of permit fee × ((1.223) 1.299) +	((\$104.60) \$111.10)
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1.223) 1.299) +	((\$104.60) \$111.10)
PLUMBING PLAN FEE, ((\$21.90) \$23.20) + PER FIXTURE FEE of	((\$7.10) \$7.50)
MEDICAL GAS PLAN FEE, ((\$21.90) \$23.20) + PER OUTLET FEE of	((\$7.10) \$7.50)
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1.223) 1.299)	
One year design - 15% of the permit fee × ((1.223) 1.299)	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	((\$104.60) \$111.10 per hour)
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	((\$104.60) \$111.10 per hour)
RENEWAL FEE (minimum 1 hour)	((\$104.60) \$111.10)
ADDENDUM (minimum 1 hour)	((\$104.60) \$111.10 per hour)
PLANS APPROVED BY LICENSED PROFESSIONALS - 10% of permit fee × ((1.223) 1.299) +	((\$104.60) \$111.10)
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$104.60) \$111.10 per hour)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee × ((1.223) 1.299) +	((\$104.60) \$111.10)
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	((\$104.60) \$111.10)
TRAVEL (Per hour**)	((\$104.60) \$111.10)
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	((\$104.60) \$111.10)

TRAVEL (Per hour**)	((\$104.60) \$111.10)
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	((\$334.80) \$355.60)
EACH ADDITIONAL SECTION	((\$29.80) \$31.60)
REISSUED-LOST/DAMAGED	((\$81.70) \$86.70)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((\$104.60) \$111.10)
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	((\$45.00) \$47.70)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$16.60) \$17.60)
REFUND FEE	((\$30.50) \$32.30)

*Minimum plan review fee is 2 1/2 hours at the field technical service rate.

**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

***Per state guidelines.

****Actual charges incurred.

[Statutory Authority: Chapter 43.22 RCW. WSR 23-09-024, § 296-150F-3000, filed 4/11/23, effective 4/11/23. Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150F-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150F-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150F-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150F-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150F-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150F-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150F-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapter 43.22 RCW. WSR 07-05-063, § 296-150F-3000, filed 2/20/07, effective 4/1/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150F-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150F-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150F-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150F-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150F-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150F-3000, filed 5/30/03, effective 5/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150F-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150F-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW.

WSR 98-12-041, § 296-150F-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150F-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-3000, filed 10/23/96, effective 11/25/96.]

OTS-4685.1

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 may be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation	\$250.00
Each Additional Final Violation	\$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00

(c) Failure by a certified installer to affix a certification tag to an installed manufactured or mobile home:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:

First Final Violation	Warning
Each Additional Final Violation	\$250.00

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:

First Final Violation to Each Contractor in Violation	\$250.00
Each Additional Final Violation to Each Contractor in Violation	\$1,000.00

Fees and Refunds

The following fees are payable to the department in advance:

Installer test and certification	(\$303.00)	
	<u>\$321.80</u>	
Homeowner test and approval	(\$151.40)	
	<u>\$160.80</u>	
Manufactured home installation inspector test and certificate	(\$151.40)	
	<u>\$160.80</u>	
Refund	(\$30.10)	
	<u>\$31.90</u>	
Certification renewal	(\$151.40)	
	<u>\$160.80</u>	
Continuing education class	(\$60.40)	
	<u>\$64.10</u>	
Retake failed examination and training at scheduled class	(\$45.30)	
	<u>\$48.10</u>	
Manufactured home installer training manual (on thumb drive)	(\$15.00)	
	<u>\$15.90</u>	
Installer certification tag	(\$10.40)	
	<u>\$11.00</u>	
L&I manufactured home installation inspection permit*	See WAC 296-150M-3000	for fee

* Only available when L&I has an interagency agreement with the local enforcement agency in accordance with WAC 296-150I-0370.

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
- (b) Request a refund.

(4) An applicant who fails the examination shall not be entitled to a refund.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150I-3000, filed 9/20/22, effective 11/1/22; WSR 22-01-193, § 296-150I-3000, filed 12/21/21, effective 1/31/22; WSR 21-07-126, § 296-150I-3000, filed 3/23/21, effective 4/23/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150I-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22A RCW. WSR 17-23-173, § 296-150I-3000, filed 11/21/17, effective 1/1/18. Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-3000, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-3000, filed 5/30/08, effective 6/30/08.]

OTS-4686.1

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	((\$203.40) <u>\$216.00</u>)
RESUBMITTAL FEE	((\$89.80) <u>\$95.30</u>)
ADDENDUM (Approval expires on the same date as original plan.)	((\$89.80) <u>\$95.30</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$6.20) <u>\$6.50</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.)	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	((\$222.30) <u>\$236.10</u>)
Heat pump	((\$222.30) <u>\$236.10</u>)
Air conditioning	((\$222.30) <u>\$236.10</u>)
Air conditioning with replacement furnace	((\$222.30) <u>\$236.10</u>)
Gas furnace installation includes gas piping	((\$222.30) <u>\$236.10</u>)
Fire safety inspection	((\$222.30) <u>\$236.10</u>)
MECHANICAL	
Gas*** piping	((\$98.70) <u>\$104.80</u>)
Wood stove	((\$98.70) <u>\$104.80</u>)
Pellet stove	((\$98.70) <u>\$104.80</u>)
Gas*** Room heater	((\$98.70) <u>\$104.80</u>)
Gas*** Decorative appliance	((\$98.70) <u>\$104.80</u>)
Range: Changing from electric to gas***	((\$98.70) <u>\$104.80</u>)
Gas*** Water heater replacement	((\$73.90) <u>\$78.40</u>)
ELECTRICAL	
Electric water heater replacement	((\$123.60) <u>\$131.20</u>)
Electric water heater replacing gas*** water heater	((\$123.60) <u>\$131.20</u>)
Each added or modified 120 volt circuit (maximum charge is two circuits)	((\$123.60) <u>\$131.20</u>)
Each added 240 volt circuit (for other than heat pumps, air conditioners, furnaces, water heaters, ranges, hot tubs or spas)	((\$123.60) <u>\$131.20</u>)
Hot tub or spa (power from home electrical panel)	((\$123.60) <u>\$131.20</u>)
Replace main electrical panel/permanently installed transfer equipment	((\$123.60) <u>\$131.20</u>)
Low voltage fire/intrusion alarm	((\$123.60) <u>\$131.20</u>)
Any combination of furnace, range and water heater changing from electric to gas***	((\$123.60) <u>\$131.20</u>)
PLUMBING	
Fire sprinkler system	((\$277.70) <u>\$294.90</u>)
Each added fixture	((\$73.90) <u>\$78.40</u>)
Replacement of water piping system (this includes two inspections)	((\$247.90) <u>\$263.30</u>)
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	((\$110.80) <u>\$117.60</u>)
Reroofs (may require a plan review)	((\$198.00) <u>\$210.30</u>)
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	((\$198.00) <u>\$210.30</u>)
Other structural changes (may require a plan review)	((\$198.00) <u>\$210.30</u>)
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (per hour*)	((\$81.00) <u>\$86.00</u>)
ALL REINSPECTIONS (per hour*)	((\$81.00) <u>\$86.00</u>)
Manufactured home installation inspection permit (only available in cities and counties with L&I inspection contract)	((\$567.60) <u>\$602.90</u>)
Refund	((\$24.40) <u>\$25.90</u>)
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	((\$24.40) <u>\$25.90</u>)
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	((\$40.60) <u>\$43.10</u>)

Second and succeeding inspections of unlabeled sections (per hour*)	(((\$89.80)) \$95.30
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (per hour* separate from other fees)	(((\$89.80)) \$95.30
Red tag removal at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Increased frequency surveillance (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Attendance at manufacturers training classes (per hour* only)	(((\$89.80)) \$95.30
Subpart "I" investigations (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Alterations to a labeled unit (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
IPIA Issues/Responses (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Monthly surveillance during a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Monthly surveillance at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Plant certifications, recertifications and addenda updates (per hour* plus travel time* and mileage** per each inspector)	(((\$89.80)) \$95.30
Response to HBT audit during a regularly scheduled IPIA audit (per hour*)	(((\$89.80)) \$95.30
Response to HBT audit at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Alternative construction (AC) letter inspections at placement site (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
Replacement of HUD labels (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
State administrative agency (SAA) inspection fee (per hour* plus travel time* and mileage**)	(((\$89.80)) \$95.30
State administrative agency (SAA) dispute resolution filing fee	(((\$89.80)) \$95.30
State administrative agency (SAA) dispute resolution (per hour*)	(((\$89.80)) \$95.30
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour plus travel time* and mileage**)	(((\$83.50)) \$88.60
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (one free copy per year upon request)	(((\$16.30)) \$17.30
VARIANCE INSPECTION FEE	(((\$198.00)) \$210.30
HOMEOWNER REQUESTED INSPECTION	(((\$198.00)) \$210.30
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	(((\$198.00)) \$210.30
DEMOLITION OF A MOBILE/MANUFACTURED HOME	(((\$198.00)) \$210.30
ENERGY CONSERVATION PERMIT	(((\$33.60)) \$35.60

NOTE: Local jurisdictions may have other fees that apply.

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Gas means all gases; natural, propane, etc.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150M-3000, filed 9/20/22, effective 11/1/22; WSR 22-01-193, § 296-150M-3000, filed 12/21/21, effective 1/31/22; WSR 21-07-126, § 296-150M-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150M-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150M-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150M-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150M-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150M-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapter 43.22 RCW. WSR 07-05-063, § 296-150M-3000, filed 2/20/07, effective 4/1/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150M-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW and 2005 c 399. WSR 05-24-020, § 296-150M-3000, filed 11/29/05, effective 1/1/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150M-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150M-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.340,

43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150M-3000, filed 5/30/03, effective 5/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150M-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150M-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150M-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150M-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150M-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150M-3000, filed 10/23/96, effective 11/25/96.]

OTS-4687.1

AMENDATORY SECTION (Amending WSR 23-09-024, filed 4/11/23, effective 4/11/23)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	(\$42.30) <u>\$44.90</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	(\$120.10) <u>\$127.50</u>
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	(\$158.80) <u>\$168.60</u>
RESUBMITTAL FEE	(\$85.90) <u>\$91.20</u>
ADDENDUM (Approval expires on same date as original plan.)	(\$85.90) <u>\$91.20</u>
PLANS APPROVED BY LICENSED PROFESSIONALS	(\$30.00) <u>\$31.80</u>
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	(\$85.90) <u>\$91.20 per hour</u>
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	(\$85.90) <u>\$91.20</u>
TRAVEL (per hour)*	(\$85.90) <u>\$91.20</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	(\$85.90) <u>\$91.20</u>
TRAVEL (per hour)*	(\$85.90) <u>\$91.20</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	

PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	(((\$128.30)) \$136.20
INSIGNIA FEES:	
STATE CERTIFIED	(((\$30.50)) \$32.30
ALTERATION	(((\$42.30)) \$44.90
REISSUED-LOST/DAMAGED	(((\$15.60)) \$16.50
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	(((\$85.90)) \$91.20
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	(((\$15.80)) \$16.70
REFUND FEE	(((\$30.50)) \$32.30

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapter 43.22 RCW. WSR 23-09-024, § 296-150P-3000, filed 4/11/23, effective 4/11/23. Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150P-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150P-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150P-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150P-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150P-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150P-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150P-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150P-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150P-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150P-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150P-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150P-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150P-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150P-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150P-3000, filed 7/31/97, effective 12/1/97.]

OTS-4688.1

AMENDATORY SECTION (Amending WSR 23-09-024, filed 4/11/23, effective 4/11/23)

WAC 296-150R-3000 Recreational vehicle fees.

STATE PLAN	
INITIAL FILING FEE	((\$36.70)) <u>\$38.90</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE	((\$102.50)) <u>\$108.80</u>
RESUBMITTAL FEE	((\$74.00)) <u>\$78.60</u>
ADDENDUM (Approval expires on same date as original plan.)	((\$74.00)) <u>\$78.60</u>
PLANS APPROVED BY LICENSED PROFESSIONALS	((\$15.00)) <u>\$15.90</u>
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$74.10)) <u>\$78.70</u> per hour
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$74.10)) <u>\$78.70</u>
TRAVEL (per hour)*	((\$74.10)) <u>\$78.70</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((\$74.10)) <u>\$78.70</u>
TRAVEL (per hour)*	((\$74.10)) <u>\$78.70</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$110.90)) <u>\$117.70</u>
INSIGNIA FEES:	
STATE CERTIFIED	((\$27.30)) <u>\$28.90</u>
ALTERATION	((\$36.70)) <u>\$38.90</u>
REISSUED-LOST/DAMAGED	((\$13.10)) <u>\$13.90</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$74.10)) <u>\$78.70</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	((\$13.80)) <u>\$14.60</u>

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

SELF CERTIFICATION	
INITIAL FILING FEE	((\$36.70)) <u>\$38.90</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE (one time fee)	((\$103.90)) <u>\$110.30</u>
RESUBMITTAL FEE	((\$74.10)) <u>\$78.70</u>
ADDENDUM (Approval expires on same date as original plan.)	((\$74.10)) <u>\$78.70</u>
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.50)) <u>\$5.80</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$74.10)) <u>\$78.70</u>

TRAVEL (per hour)*	((\$74.10) <u>\$78.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((\$74.10) <u>\$78.70</u>)
TRAVEL (per hour)*	((\$74.10) <u>\$78.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
SELF CERTIFIED	((\$27.30) <u>\$28.90</u>)
ALTERATION	((\$36.70) <u>\$38.90</u>)
REISSUED-LOST/DAMAGED	((\$13.10) <u>\$13.90</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$74.10) <u>\$78.70</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	((\$13.80) <u>\$14.60</u>)
REFUND FEE	((\$27.30) <u>\$28.90</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapter 43.22 RCW. WSR 23-09-024, § 296-150R-3000, filed 4/11/23, effective 4/11/23. Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 20-04-081, § 296-150R-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150R-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150R-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150R-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150R-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150R-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150R-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150R-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150R-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR

99-12-080, § 296-150R-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150R-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150R-3000, filed 7/31/97, effective 12/1/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150R-3000, filed 10/23/96, effective 11/25/96.]

OTS-4689.2

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	((\$64.30) <u>\$68.20</u>)
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	((\$186.90) <u>\$198.50</u>)
RENEWAL FEE	((\$64.30) <u>\$68.20</u>)
RESUBMIT FEE	((\$93.00) <u>\$98.70</u>)
ADDENDUM (Approval expires on same date as original plan)	((\$93.00) <u>\$98.70</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$6.30) <u>\$6.60</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	((\$110.30) <u>\$117.10</u>)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((\$17.40) <u>\$18.10</u>)
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((\$93.00) <u>\$98.70</u>)
TRAVEL (Per hour)*	((\$93.00) <u>\$98.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((\$93.00) <u>\$98.70</u>)
TRAVEL (Per hour*)	((\$93.00) <u>\$98.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	((\$262.30) <u>\$278.60</u>)
EACH ADDITIONAL SECTION	((\$25.10) <u>\$26.60</u>)
REISSUED-LOST/DAMAGED	((\$64.30) <u>\$68.20</u>)
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	((\$271.70) <u>\$288.50</u>)
Additional Feeder	((\$51.40) <u>\$54.50</u>)

ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	((\$143.90) <u>\$152.80</u>)
Additional Feeder	((\$36.40) <u>\$38.60</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	((\$93.00) <u>\$98.70</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free per year)	((\$17.10) <u>\$18.10</u>)
REFUND FEE	((\$30.50) <u>\$32.30</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150T-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150T-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150T-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150T-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150T-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150T-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150T-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150T-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150T-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150T-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150T-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150T-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150T-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150T-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.480. WSR 99-12-079, § 296-150T-3000, filed 5/28/99, effective 6/28/99.]

OTS-4690.1

AMENDATORY SECTION (Amending WSR 23-09-024, filed 4/11/23, effective 4/11/23)

**WAC 296-150V-3000 Conversion vendor units and medical units—
Fees.**

INITIAL FILING FEE	((\$45.90) <u>\$48.70</u>)
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	((\$319.00) <u>\$338.80</u>)
INITIAL FEE - ONE YEAR DESIGN	((\$130.30) <u>\$138.40</u>)
RENEWAL FEE	((\$55.20) <u>\$58.60</u>)
RESUBMIT FEE	((\$93.00) <u>\$98.70</u>)
ADDENDUM (Approval expires on same date as original plan)	((\$93.00) <u>\$98.70</u>)
PLANS APPROVED BY LICENSED PROFESSIONALS	((\$81.10) <u>\$86.10</u>)
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$85.80) <u>\$91.10</u> per hour)
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	((\$142.00) <u>\$150.80</u>)
INITIAL FEE - ONE YEAR DESIGN	((\$85.80) <u>\$91.10</u>)
RENEWAL FEE	((\$85.80) <u>\$91.10</u>)
ADDENDUM	((\$85.80) <u>\$91.10</u>)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((\$17.10) <u>\$18.10</u>)
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((\$93.00) <u>\$98.70</u>)
TRAVEL (Per hour)*	((\$93.00) <u>\$98.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$139.30) <u>\$147.90</u>)
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	((\$26.60) <u>\$28.20</u>)
REISSUED-LOST/DAMAGED	((\$17.10) <u>\$18.10</u>)
EXEMPT	((\$45.90) <u>\$48.70</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	((\$93.00) <u>\$98.70</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$17.10) <u>\$18.10</u>)
REFUND FEE	((\$30.50) <u>\$32.30</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapter 43.22 RCW. WSR 23-09-024, § 296-150V-3000, filed 4/11/23, effective 4/11/23. Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150V-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150V-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150V-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150V-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150V-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150V-3000, filed 5/30/08, effective

6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150V-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150V-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150V-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150V-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150V-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150V-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150V-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150V-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150V-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-3000, filed 8/31/99, effective 10/1/99.]

WSR 23-16-120

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed August 1, 2023, 11:24 a.m.]

Continuance of WSR 23-15-107.

Preproposal statement of inquiry was filed as WSR 23-01-076.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for optometrists. The board of optometry (board) is proposing new WAC 246-851-225 to establish health equity CE to implement ESSB 5229 (chapter 276, Laws 2021).

Hearing Location(s): On September 8, 2023, at 9:00 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501; or link to virtual meeting via Microsoft Teams. Join on your computer, mobile app, or room device, [https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLTThiODctMmVkJDU3ZmE2OTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d, Meeting ID 286 469 743 295, Passcode BLEXQT; or call in \(audio only\) +1 564-999-2000,,893212425# United States, Olympia 833-322-1218,,893212425# United States \(toll-free\), Phone Conference ID 893 212 425#](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLTThiODctMmVkJDU3ZmE2OTkx%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7d, Meeting ID 286 469 743 295, Passcode BLEXQT; or call in (audio only) +1 564-999-2000,,893212425# United States, Olympia 833-322-1218,,893212425# United States (toll-free), Phone Conference ID 893 212 425#).

Date of Intended Adoption: September 8, 2023.

Submit Written Comments to: Kristina Bell, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by August 30, 2023.

Assistance for Persons with Disabilities: Contact Kristina Bell, program manager, phone 360-236-4841, fax 360-236-2901, TTY 711, email Kristina.bell@doh.wa.gov, by September 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to correct the physical location of the public hearing and correct the time of day.

July 31, 2023
William Prothero, OD, Chair
Board of Optometry

WSR 23-16-121

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 1, 2023, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-056 [23-13-036].

Title of Rule and Other Identifying Information: WAC 4-30-056
Form of organization and name.

Hearing Location(s): On October 20, 2023, at 9:00 a.m., at Capital Event Center, 6005 Tyee Drive S.W., Tumwater, WA 98512; or Microsoft Teams meeting. The link to join the meeting will be available on the board of accountancy's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: October 20, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by October 18, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by October 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending the rule to establish licensee name use parameters.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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 board 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023
Michael J. Paquette, CPA
Executive Director

OTS-4802.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-056 Form of organization and name. (1) A licensee may practice public accounting only in a form of organization permitted by law or regulation.

(2) A firm name that does not consist of the name(s) of one or more present or former owners must be approved in advance by the board as not being deceptive or misleading.

(3) Misleading or deceptive firm names are prohibited. The following are examples of misleading firm names. The board does not intend this listing to be all inclusive. The firm name:

(a) Implies it is a legal entity when it is not such an entity (as by the use of the designations "P.C.," "P.S.," "Inc. P.S.," or "L.L.C.");

(b) Implies the existence of a partnership when one does not exist;

(c) Includes the name of a person who is neither a present nor a past owner of the firm;

(d) Implies educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or

(e) Includes the terms "& Company", "& Associate", or "Group," but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff employee.

(4) Licensed firms and unlicensed firms.

(a) No licensed firm may operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board.

(b) A firm not required to be licensed may not operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the secretary of state and/or the department of revenue.

(5) A licensee may not operate under an alias or title that differs from the name that is registered with the board.

(6) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055. WSR 23-04-088, § 4-30-056, filed 1/31/23, effective 3/3/23. WSR 10-24-009, recodified as § 4-30-056, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055 (4), (8) and 18.04.345(5). WSR 05-01-137, § 4-25-661, filed 12/16/04, effective 1/31/05. Statutory Authority: RCW 18.04.055(8). WSR 01-22-036, § 4-25-661, filed 10/30/01, effective 12/1/01; WSR 00-11-073, § 4-25-661, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-661, filed 10/28/93, effective 11/28/93.]

WSR 23-16-122
PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 1, 2023, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-065.

Title of Rule and Other Identifying Information: WAC 4-30-062 Applying to take the CPA examination.

Hearing Location(s): On October 20, 2023, at 9:00 a.m., at Capital Event Center, 6005 Tyee Drive S.W., Tumwater, WA 98512; or Microsoft Teams meeting. The link to join the meeting will be available on the board of accountancy's (board) website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: October 20, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by October 18, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by October 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board proposes amending the rule to: (1) Extend the time period (testing window) in which all sections of the CPA examination must be passed; and (2) eliminate outdated subsections which no longer apply after the implementation of continuous testing.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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 board 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023
Michael J. Paquette, CPA
Executive Director

OTS-4803.1

AMENDATORY SECTION (Amending WSR 21-23-003, filed 11/3/21, effective 12/4/21)

WAC 4-30-062 Applying to take the CPA examination. (1) **Application process and due dates:** Your application to take the CPA examination must be submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within 60 days of the date their application is submitted to the board's examination administrator. Your application is not considered complete until all of the following are provided:

- Complete application information and requested documents;
- Fee(s).

(2) **Fee refund and forfeiture:** Upon submission of your application to the examination administrator, no portion of the board's administrative fee is refundable. Upon the examination administrator's authorization to test, no portion of the total exam fee (both administrative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all of the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** You must contact the approved test provider to schedule the time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS), the NTS will be valid for one taking of the examination within the six months following the date of the NTS.

Notice of a denial of your application, or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content and grading:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The board may accept the advisory grading services of the American Institute of Certified Public Accountants.

(5) **Examination process:**

(a) **Conditions for examinations held prior to January 1, 2004:**

Contact a customer service representative at customerservice@acb.wa.gov or by phone at 360-753-2586.

(b) **For examinations taken after December 31, 2003:** The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

(i) To satisfy the examination requirement for a license you must have achieved a score of 75 on all sections of the examination within a rolling ((18)) 36-month period.

(ii) You may take the required sections individually and in any order. Credit for any section(s) taken and passed after December 31, 2003, will be valid for ((18)) 36 months from the actual date you successfully passed any particular section of the examination.

(iii) You must pass all sections of the examination within a rolling ((18)) 36-month period, which begins on the date that the first section(s) is passed. A section is considered passed on the date that your grade is released.

(iv) You ~~((may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (com-~~

~~prised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the examination is refreshed).~~

~~(v) If the board determines that the examination system changes necessary to eliminate the test window limitations have been implemented, (iv) of this subsection will no longer be effective, and a candidate) can retake a test section once ((their)) the grade for any previous attempt of that same section has been released.~~

~~((vi)) (v) In the event you do not pass all sections of the examination within the rolling ((18)) 36-month period, credit for any section(s) passed prior to the ((18)) 36-month period will expire and you must retake any expired section.~~

[Statutory Authority: RCW 18.04.055. WSR 21-23-003, § 4-30-062, filed 11/3/21, effective 12/4/21; WSR 19-10-080, § 4-30-062, filed 5/1/19, effective 6/1/19; WSR 18-21-034, § 4-30-062, filed 10/8/18, effective 11/8/18. Statutory Authority: RCW 18.04.055, 18.04.105. WSR 16-10-019, § 4-30-062, filed 4/22/16, effective 5/23/16. Statutory Authority: RCW 18.04.105(2). WSR 10-24-009, amended and recodified as § 4-30-062, filed 11/18/10, effective 12/19/10; WSR 05-01-137, § 4-25-720, filed 12/16/04, effective 1/31/05; WSR 03-17-041, § 4-25-720, filed 8/15/03, effective 9/30/03. Statutory Authority: RCW 18.04.055(5) and 18.04.105(2). WSR 02-04-064, § 4-25-720, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055. WSR 93-12-070, § 4-25-720, filed 5/27/93, effective 7/1/93.]

WSR 23-16-123

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 1, 2023, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-046.

Title of Rule and Other Identifying Information: WAC 4-30-010 Definitions, 4-30-020 What are the authority for and the purpose of the Board's rules?, 4-30-028 Rules governing the formal adjudicative proceedings and the brief adjudicative proceedings before the board, 4-30-030 What are the requirements for communicating with the board and staff?, 4-30-032 Do I need to notify the board if I change my address?, 4-30-034 Must I respond to inquiries from the board?, 4-30-036 What enforcement actions must be reported to the board?, 4-30-038 Fees, 4-30-082 How does a CPA-Inactive certificate holder apply for licensure?, 4-30-084 Converting from certificate to license, 4-30-088 What is the effect on a Washington individual licensee or CPA-inactive certificate holder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?, 4-30-094 How do I renew my individual license, CPA-inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-104 How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?, 4-30-120 I am a CPA-Inactive certificate holder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee?, 4-30-122 If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or CPA-Inactive certificate out of retirement?, 4-30-124 How do I reinstate a lapsed license, CPA-inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-126 How do I reinstate a revoked or suspended license, CPA-inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-134 Continuing professional education (CPE) requirements, 4-30-136 Reporting continuing professional education (CPE) to the board, and 4-30-142 What are the bases for the board to impose discipline?

Hearing Location(s): On October 20, 2023, at 9:00 a.m., at Capital Event Center, 6005 Tyee Drive S.W., Tumwater, WA 98512; or Microsoft Teams meeting. The link to join the meeting will be available on the board of accountancy's (board) website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: October 20, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by October 18, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by October 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board proposes amending the rules due to legislative changes. On March 17, 2022, Governor Inslee signed into law SB 5519. SB 5519 amends existing laws to remove outdated references to certificate holders. The board has not issued such certificates since the early 2000s. SB 5519 allows for the remaining population of certificate holders to transition to a licensed but inactive status while affording such certificate holders the opportunity to be-

come fully licensed. SB 5519 also creates this new inactive status which did not previously exist. This new licensed status provides an intermediate step bridging the gap between the licensee statuses of CPA and retired CPA. Because SB 5519 removes the certificate holder status and creates an inactive licensee status, board laws now align with other CPA jurisdictions. As a result, many board rules must be amended because "CPA-Inactive certificate holder" and "certificate" references are woven throughout the entirety of chapter 4-30 WAC (board rules). The proposed board rules also further refine the new licensed but inactive status and the processes associated with the new status. The proposed rule changes will ensure consistency with the law as enacted by SB 5519 and consistency with other CPA jurisdictions. The proposed changes will rename some of the rules.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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 board 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023

Michael J. Paquette, CPA
Executive Director

OTS-4805.1

AMENDATORY SECTION (Amending WSR 23-04-085, filed 1/31/23, effective 3/3/23)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

"Act" means the Public Accountancy Act codified as chapter 18.04 RCW.

"Active individual participant" means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

"Applicant" means an individual who has applied:

(a) To take the national uniform CPA examination;

(b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;

(c) To renew an individual license, (~~(a CPA Inactive certificate,~~) a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate an individual license (~~(, a CPA Inactive certificate,~~) or registration as a resident nonlicensee firm owner (~~(, or practice privileges)~~);

(e) To convert an inactive license to an active license.

"Attest" means providing the following services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any engagement to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

"Audit," "review," and **"compilation"** are terms reserved for use by licensees, as defined in this section.

"Board" means the board of accountancy created by RCW 18.04.035.

"Breach of fiduciary responsibilities/duties" means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

"Certificate" (~~(means a certificate as a CPA Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule)~~) issued under this act means an alternative license type previously issued by the board indicating that the certificate holder had passed the CPA examination, but had no verified experience, and was not fully licensed to practice public accounting. Certificates remained valid until June 30, 2024, at which time they convert to a CPA license in an inactive status. This definition does not include certificates issued by other jurisdictions which may be substantially equivalent to a Washington CPA license.

(~~("Certificate holder" means the holder of a valid CPA Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.)~~)

"Client" means the person or entity that retains a licensee, as defined in this section, (~~(a CPA Inactive certificate holder,~~) a nonlicensee firm owner of a licensed firm(~~(,)~~) or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

"Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

"CPA" or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

~~(("CPA-Inactive" means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.))~~

"CPE" means continuing professional education.

"Fiduciary responsibility/duty" means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

"Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

"Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195

(1)(a)(iii)(A) through (D) exercising practice privileges in this state.

"Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

"Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

"Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

~~"Inactive" means ((the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public))~~ a status of a license which prohibits a licensee from practicing public accounting. A person holding an inactive license may apply to the board to convert the license to an active status through an approval process established by the board.

"Individual" means a living, human being.

"Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

"Interactive self-study program" means a CPE program that provides feedback throughout the course.

"IRS" means Internal Revenue Service.

"License" means a license to practice public accounting issued to an individual or a firm under the act, or ~~((the act of))~~ a license or certificate to practice public accounting in another state or jurisdiction.

"Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, ~~((including out-of-state))~~ and individuals ((exercising)) holding licenses or certificates to practice public accounting granted by out-of-state jurisdiction who are allowed to exercise practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

"Manager" means a manager of a limited liability company licensed as a firm under the act.

"Nano learning" is a stand-alone continuing professional education (CPE) course that is a minimum of 10 minutes (0.2 CPE credit hours) consisting of electronic self-study with a stated learning objective and a minimum of two final assessment questions.

"NASBA" means the National Association of State Boards of Accountancy.

"Nonlicensee firm owner" means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

"PCAOB" means Public Company Accounting Oversight Board.

"Peer review" means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under this section.

"Person" means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

"Practice privileges" are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or pro-

ceeding by this state's board against the certificate holder or licensee.

"Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

"Professional services" include all services requiring accountancy or related skills that are performed for a client, an employer, or on a volunteer basis. These services include, but are not limited to, accounting, audit and other attest services, tax, bookkeeping, management consulting, financial management, corporate governance, personal financial planning, business valuation, litigation support, educational, and those services for which standards are promulgated by the appropriate body for each services undertaken.

"Public practice" or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(10) by persons or firms not required to be licensed under the act.

"Quality assurance review or QAR" is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

"Reciprocity" means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

"Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

"Representing oneself" means having a license, practice privilege, (~~certificate~~) or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

"Rules of professional conduct" means rules adopted by the board to govern the conduct of licensees, as defined in this section, while representing themselves to others as licensees. These rules also govern the conduct of (~~CPA-Inactive certificate holders~~) licensees with an inactive status, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

"SEC" means the Securities and Exchange Commission.

"Sole proprietorship" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

"State" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2)(a).

"Statements on auditing standards (SAS)" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

"Statements on standards for accounting and review services (SSARS)" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

"Statements on standards for attestation engagements (SSAE)" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

"Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed those listed in this chapter.

[Statutory Authority: RCW 18.04.055. WSR 23-04-085, § 4-30-010, filed 1/31/23, effective 3/3/23; WSR 19-16-074, § 4-30-010, filed 7/31/19, effective 1/1/20. Statutory Authority: RCW 18.04.055 and 2017 c 304. WSR 18-04-071, § 4-30-010, filed 2/2/18, effective 3/5/18. Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-010, filed 8/9/16, effective 9/9/16. Statutory Authority: 18.04.055, 18.04.025, 18.04.350. WSR 10-24-009, amended and recodified as § 4-30-010, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055, 18.04.025. WSR 08-18-016, § 4-25-410, filed 8/25/08, effective 9/25/08. Statutory Authority: RCW 18.04.055. WSR 05-01-137, § 4-25-410, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-410, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(16). WSR 02-04-064, § 4-25-410, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(11). WSR 01-11-124, § 4-25-410, filed 5/22/01, effective 6/30/01; WSR 98-12-020, § 4-25-410, filed 5/27/98, effective 6/27/98; WSR 94-23-071, § 4-25-410, filed 11/15/94, effective 12/16/94.]

OTS-4806.1

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-020 (~~(What are the authority for and the)~~) **Authority and purpose of the board's rules** ((?)). The Public Accountancy Act (act), chapter 18.04 RCW, establishes the board as the licensing and disciplinary agency for certified public accountants (CPA), (~~(CPA-In-active certificate holders,)~~) CPA firms, and owners of CPA firms. The act authorizes the board to promulgate rules to carry out the purpose of the act, which include:

- Protecting the public interest;
- Enhancing the reliability of information used for guidance in financial transactions or for accounting for or assessing financial status or performance;
- Establishing one set of qualifications to be a licensee of this state;
- Assuring that CPAs practicing in Washington have substantially equivalent qualifications to those practicing in other states;
- Regulating ownership of CPA firms;
- Publishing consumer alerts and public protection information regarding persons and firms who violate the act or board rules; and
- Providing general consumer protection information to the public.

The board's rules, contained in Title 4 WAC, encompass these subjects:

- Definitions;
- Administration of the board;
- Ethics and prohibited practices;
- Entry and renewal requirements;
- Continuing competency; and
- Regulation and enforcement.

[Statutory Authority: RCW 18.04.055. WSR 11-07-070, § 4-30-020, filed 3/22/11, effective 4/22/11; WSR 10-24-009, recodified as § 4-30-020, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-400, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-400, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-400, filed 10/30/01, effective 12/1/01; WSR 00-11-067, § 4-25-400, filed 5/15/00, effective 6/30/00; WSR 93-12-063, § 4-25-400, filed 5/27/93, effective 7/1/93.]

OTS-4807.1

AMENDATORY SECTION (Amending WSR 22-04-074, filed 1/31/22, effective 3/3/22)

WAC 4-30-028 (~~(Rules governing the)~~) **Formal adjudicative proceedings and ((the)) brief adjudicative proceedings before the board.** Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, adjudicative proceedings in and before the board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

(1) Denials of initial individual license (~~(applications)~~), renewal(~~s~~), conversion, or (~~(applications for)~~) reinstatement applications;

(2) (~~(Denials of CPA Inactive certificate renewals or applications for reinstatement;~~

~~(3))~~) Denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;

(~~(4))~~) (3) Denials of initial firm license applications, renewals, and amendments;

(~~(5))~~) (4) Denials of exam applications;

(~~(6))~~) (5) A proposed suspension as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship; and

(~~(7))~~) (6) Lifts of stays of suspension from a board order.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within 30 days** after the decision by board staff is posted in the U.S. mail. The board chair or the board vice chair, if the board chair is unavailable, will appoint one member of the board as the presiding officer for brief adjudicative proceedings. The presiding officer renders a decision either upholding or overturning the denial. This decision, called an order, will be provided to you at the last address you furnished to the board.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing, within 21 days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice chair's, or designee's, decision, also called an order, will be provided to you at the last address you furnished to the board.

[Statutory Authority: RCW 18.04.055. WSR 22-04-074, § 4-30-028, filed 1/31/22, effective 3/3/22. Statutory Authority: RCW 18.04.055(1), 34.05.220, and 34.05.482. WSR 10-24-009, amended and recodified as § 4-30-028, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-540, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-540, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-540, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(1) and 34.05.482. WSR 00-11-070, § 4-25-540, filed 5/15/00, effective 6/30/00; WSR 98-12-022, § 4-25-540, filed 5/27/98, effective 6/27/98. Statutory Authority: RCW 18.04.055. WSR 93-12-074, § 4-25-540, filed 5/27/93, effective 7/1/93.]

OTS-4808.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-030 ((What are the requirements for)) Communicating with the board and staff(?). Individuals and firms must communicate with the board as follows:

- Note: (1) Failure to timely inform the board ((of matters required by WAC 4-30-032, 4-30-036, 4-30-100, and 4-30-110)) can result in late fees and/or board discipline.
 (2) Failure to timely respond to board requests for information may result in board discipline.

Condition	Time Period	Preferred Form of Contact	WAC
Complete and/or submitted applications, including requested information, documents, and fees.	Prior to holding out as a credentialed person.	Online system, board form, letter, or email with required information.	Various
Request for brief adjudicative proceeding (BAP).	Within 30 days after the staff decision is posted in U.S. mail.	Email or written correspondence.	4-30-028
Request for appeal of brief adjudicative proceeding (BAP).	Within 21 days after the BAP decision is posted in U.S. mail.	Oral, email or written correspondence.	4-30-028
1. Change of individual physical address; or	Within 30 days of any change of address.	Online system, board form, letter, or email with required information.	((4-30-32 [4-30-032])) <u>4-30-032</u>
2. Change in the physical address of a firm's main office or branch office(s).			
Board requests for information or documents from licensees, ((certificate holders;)) nonlicensee firm owners, or applicants.	Within 20 days after the date of the request.	Email or written correspondence with requested information.	((4-30-34 [4-30-034])) <u>4-30-034</u>
1. Notification of orders or sanctions imposed by the SEC, PCAOB, IRS, or another state board of accountancy for reasons other than payment of a license fee or failure to meet the CPE requirements of another state board of accountancy.	Within 30 days of receipt of an initial notice.	Board form, letter, PDF, or email with required information.	4-30-036
2. Charges filed by the SEC, IRS, PCAOB, another state board of accountancy or a federal or state taxing, insurance or securities regulatory body.			
Licensees ((or certificate holders)) granted issued through foreign reciprocity.	Within 30 days of receiving notice that an investigation has begun or a sanction was imposed.	Board form, letter, PDF, or email with required information.	4-30-036
Any investigations undertaken or sanctions imposed by a foreign credentialing body against a foreign credential.			
Reporting firm changes:	Within 90 days after the condition occurs.	Board form, letter, PDF, or email with required information.	4-30-110
<ul style="list-style-type: none"> • Change in legal form; • Dissolution of a firm; • Change in resident manager(s) or owner(s); • Change in branch or main office location(s); 			

Condition	Time Period	Preferred Form of Contact	WAC
<ul style="list-style-type: none"> Change in firm name; Noncompliance with firm ownership requirements. A foreign license, permit, or certificate has lapsed or otherwise becomes invalid.	Within 30 days after the credential issued by the other jurisdiction has lapsed or otherwise becomes invalid.	Board form, letter, PDF, or email with required information.	((4-30-100)) <u>4-30-102</u>

[Statutory Authority: RCW 18.04.055 (1), (8), (16), 18.04.183, 18.04.195 (13)(b), 18.04.205, 18.04.215 (9)(b), 34.05.220, and 34.05.482. WSR 10-24-009, § 4-30-030, filed 11/18/10, effective 12/19/10.]

OTS-4809.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-032 ~~((Do I need to notify the board if I change my address?))~~ **Change of address.** ~~((Yes.))~~ All individuals licensed in this state, ~~((CPA Inactive certificate holders,))~~ CPA firms licensed in this state, individuals registered with the board as resident nonlicensee firm owners, and applicants must notify the board **in writing** within ~~((thirty))~~ 30 days of any change of address. Firms licensed in this state must notify the board of any opening, closing, or relocation of the main office or a branch office in this state.

[Statutory Authority: RCW 18.04.055(16). WSR 10-24-009, recodified as § 4-30-032, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-550, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-550, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-550, filed 10/30/01, effective 12/1/01. Statutory Authority: RCW 18.04.055. WSR 98-12-023, § 4-25-550, filed 5/27/98, effective 6/27/98; WSR 93-12-073, § 4-25-550, filed 5/27/93, effective 7/1/93.]

OTS-4810.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-034 ~~((Must I respond to inquiries from the board?))~~ **Responding to board inquiries.** ~~((Yes.))~~ All licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b), ~~((CPA Inactive certificate~~

holders,)) nonlicensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within **((twenty)) 20 days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

[Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-034, filed 8/9/16, effective 9/9/16. Statutory Authority: RCW 18.04.055(16). WSR 10-24-009, amended and recodified as § 4-30-034, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-551, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-551, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-551, filed 10/30/01, effective 12/1/01. Statutory Authority: RCW 18.04.055. WSR 98-12-047, § 4-25-551, filed 5/29/98, effective 6/29/98; WSR 93-12-072, § 4-25-551, filed 5/27/93, effective 7/1/93.]

OTS-4811.1

AMENDATORY SECTION (Amending WSR 11-06-062, filed 3/2/11, effective 4/2/11)

WAC 4-30-036 ((What)) Enforcement actions ((must be reported)) reportable to the board((?)). (1) A licensee(~~(, CPA Inactive certificate holder,))~~) or nonlicensee firm owner must notify the board, of the following matters, in the manner prescribed by the board, within **((thirty)) 30 days** of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, ~~((CPA Inactive certificate holder,))~~) or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards.

(2) Licensed CPA firms with more than one licensed owner are not required to report on action taken against owners, principals, partners, or employees.

(3) If you hold a license ~~((or CPA Inactive certificate))~~) issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within **((thirty)) 30 days** of receiving notice that an investigation has begun or a sanction was imposed.

[Statutory Authority: RCW 18.04.195 (13)(b) and 18.04.215 (9)(b). WSR 11-06-062, amended and recodified as § 4-30-036, filed 3/2/11, effective 4/2/11; WSR 08-18-016, § 4-25-670, filed 8/25/08, effective 9/25/08. Statutory Authority: RCW 18.04.195 (10)(b) and 18.04.215 (9)(b). WSR 05-01-137, § 4-25-670, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-670, filed 11/25/03, effective 12/31/03.]

OTS-4812.1

AMENDATORY SECTION (Amending WSR 18-04-071, filed 2/2/18, effective 3/5/18)

WAC 4-30-038 Fees. RCW 18.04.065 provides that the board shall set fees related to licensure at a level adequate to pay the costs of administering chapter 18.04 RCW. The board has established the following fee schedule:

- (1) Initial application for individual license, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner \$330
- (2) Renewal of individual license, (~~CPA-Inactive certificate,~~) CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner \$230
- (3) Application for (~~CPA-Inactive certificate holder~~) a licensee to convert (~~(to a license) from an inactive to an active status~~) \$0
- (4) Application for reinstatement of license(~~;~~ ~~CPA-Inactive certificate,~~) or registration as a resident nonlicensee owner \$480
- (5) Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years)
 - Firm submits reports for review \$400
 - Firm submits a peer review report for review \$60
 - Firm is exempted from the QAR program because the firm did not issue attest reports \$0
- (6) Late fee * \$100
- (7) Amendment to firm license except for a change of firm address (there is no fee for filing a change of address) \$35
- (8) Replacement CPA wall document \$50
- (9) Dishonored check fee (including, but not limited to, insufficient funds or closed accounts) \$35
- (10) CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.
 - (a) Section fees: Section fees for the computerized uniform CPA examination are set by third-party providers for the development and delivery of the exam. These fees are collected and retained by the third-party provider.

- (b) Administrative fees: Administrative fees for the qualification and application processes are set by a third-party provider. These fees are collected and retained by the third-party provider.

* The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

[Statutory Authority: RCW 18.04.055 and 2017 c 304. WSR 18-04-071, § 4-30-038, filed 2/2/18, effective 3/5/18. Statutory Authority: RCW 18.04.065 and 18.04.215(5). WSR 14-04-086, § 4-30-038, filed 2/3/14, effective 3/6/14. Statutory Authority: RCW 18.04.055, 18.04.065, 18.04.105 (1)(e), (3), and (4)(e), 18.04.195(10), 18.04.205(4), 18.04.215 (3), (4), and (8), 42.56.120. WSR 10-24-009, recodified as § 4-30-038, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.065, 18.04.105 (2) and (3). WSR 09-24-055, § 4-25-530, filed 11/24/09, effective 12/25/09. Statutory Authority: RCW 18.04.065, 18.04.105(3). WSR 09-10-019, § 4-25-530, filed 4/27/09, effective 8/1/09; WSR 08-14-152 and 08-15-018, § 4-25-530, filed 7/1/08 and 7/8/08, effective 8/1/08 and 8/8/08; WSR 07-14-035, § 4-25-530, filed 6/26/07, effective 8/1/07; WSR 06-14-030, § 4-25-530, filed 6/27/06, effective 8/1/06; WSR 05-10-046, § 4-25-530, filed 4/29/05, effective 6/2/05. Statutory Authority: RCW 18.04.065, 18.04.105(3), 18.04.205. WSR 05-01-136, § 4-25-530, filed 12/16/04, effective 1/31/05. Statutory Authority: RCW 18.04.065, [18.04.]105(3), [18.04.]195(7), [18.04.]205(4), [18.04.]215(8), [18.04.]350 (2)(a), and 42.17.260(8). WSR 04-01-076, § 4-25-530, filed 12/15/03, effective 1/15/04. Statutory Authority: RCW 18.04.055, [18.04].065, [18.04].105 (1)(e) and (3). WSR 02-22-083, § 4-25-530, filed 11/5/02, effective 12/31/02. Statutory Authority: RCW 18.04.055, 18.04.065, 18.04.105(3), 18.04.195(7), 18.04.205(4), 18.04.215(8), and 18.04.350(2). WSR 01-22-036, § 4-25-530, filed 10/30/01, effective 12/1/01. Statutory Authority: RCW 18.04.055, 18.04.065, 18.04.105(7), 18.04.195(6) and 18.04.205(4). WSR 99-18-112, § 4-25-530, filed 9/1/99, effective 1/1/00. Statutory Authority: RCW 18.04.055, 18.04.065 and 18.04.195(b). WSR 99-02-009, § 4-25-530, filed 12/24/98, effective 5/7/99. Statutory Authority: RCW 18.04.055, 18.04.065 and 18.04.195(6). WSR 96-12-060, § 4-25-530, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 18.04.055. WSR 93-12-075, § 4-25-530, filed 5/27/93, effective 7/1/93.]

OTS-4813.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-082 ((How does a CPA-Inactive certificate holder apply for licensure?)) Certificate holder applying for initial licensure.
 ((CPA-Inactive)) Certificate holders ((are individuals who held a valid certificate on June 30, 2001, but did not hold a valid Washington state license to practice public accounting on that date. Individuals who did not hold a valid certificate on June 30, 2001 and current licenses are not eligible for CPA-Inactive certificate holder status))

who did not hold a valid certificate on the conversion date of June 30, 2024, must apply for a license and meet the requirements for initial licensure.

- (1) To qualify for licensure (~~((a CPA Inactive certificate holder))~~) you must meet the following criteria and requirements:
- (a) Good character requirements of RCW 18.04.105 (1)(a);
 - (b) Experience requirements of WAC 4-30-070 within the eight-year period immediately preceding your application; and
 - (c) CPE requirements of WAC 4-30-134(5).
- (2) ~~((To apply for a license, you must also submit to the board a certification that you meet the requirements of subsection (1) of this section and:~~
- ~~(a) Have not held out in public practice during the time in which you were a CPA Inactive certificate holder; and~~
 - ~~(b) Other required documentation or information deemed necessary by the board.~~
- ~~(3))~~ You must ~~((provide))~~ submit the required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.
- ~~((4) You must submit all requested information, documents, and fees (if applicable) to the board before the application will be evaluated.~~
- ~~(5))~~ (3) Upon assessment of your qualifications and approval of your application, your license status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your ~~((credential))~~ license can be provided upon request.
- ~~((6) Your CPE reporting period and your renewal cycle will remain the same.~~
- ~~(7))~~ (4) Your license will expire on June 30th of the third calendar year following initial licensure.
- (5) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

[Statutory Authority: RCW 18.04.055(12), 18.04.105(4). WSR 10-24-009, amended and recodified as § 4-30-082, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-735, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-735, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-735, filed 1/31/02, effective 3/15/02.]

OTS-4814.1

NEW SECTION

WAC 4-30-084 Converting from certificate to license. Previous certificate holders were automatically converted on July 1, 2024, to a license in an inactive status. In order to practice public accounting, you must convert your license to an active status.

- (1) To qualify to apply for an active license you must:

- (a) Meet the experience requirements of WAC 4-30-070, without regard to the eight-year limitation; and
- (b) Meet the CPE requirements of WAC 4-30-134(5); and
- (c) Submit the required information, documents, and fees (if applicable) to the board either by submitting an application through the board's online application system or on a form provided upon request.
- (2) Upon assessment of your qualifications and approval of your application, your license status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.
- (3) Your CPE reporting period and your renewal cycle will remain the same.
- (4) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

[]

OTS-4815.1

AMENDATORY SECTION (Amending WSR 14-22-033, filed 10/28/14, effective 11/28/14)

~~WAC 4-30-088 ((What is the effect on a Washington individual licensee or CPA inactive certificateholder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?))~~ Military service. (1) **Definitions.** For purposes of this rule:

- (a) "Active military duty" means:
- (i) Deployed upon order of the President of the United States, the U.S. Secretary of Defense or Homeland Security in the case of a member of the armed forces or armed force reserves; or
- (ii) Deployed upon order of the governor of this state in the case of the National Guard.
- (b) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard and reserves of each branch of the armed forces.
- (c) "Active duty" means full-time employment in the armed forces of the United States. Such term does not include National Guard duty.
- (d) "Military individual" means a living human being serving full time in the United States armed forces.
- (e) "Military spouse" means the husband, wife, or registered domestic partner of a military individual.

(2) **Active military duty.**

(a) An individual fully employed on active duty in the armed forces of the United States applying for an initial license in this state shall receive priority processing of the application for initial licensing.

(b) A military applicant who obtains an initial license or a military individual holding a current license issued by this board, will be classified as "military" if the services provided to the armed forces include services within the definition of the practice of public accounting.

(c) An individual in the armed forces, reserves or National Guard and called to "active military duty" while holding an active or inactive license (~~(or CPA inactive certificate)~~) issued by this board may apply for a waiver of renewal fees and continuing professional education (CPE):

(i) The request for waiver of renewal fees and continuing professional education may be made through the board's online application and payment system or on a form provided by the board upon request;

(ii) The request for waiver must be supported by submitting documentation to substantiate the military individual's "active military duty" status;

(iii) Upon approval the waiver will serve to classify the individual as "military inactive";

(iv) The CPE reporting period and renewal year will not be affected by this reclassification of status;

(v) The waiver will continue to maintain an individual's military inactive status without fee or CPE until the individual is released from active military duty or discharged from the armed forces, reserves, or National Guard;

(vi) The board must be notified within six months after the date of release from active military duty or discharge from the armed forces. The board must be notified within six months of the date of release from a treatment facility if the individual is or has been in a treatment facility and a discharge was the result of injury or other reasons.

(3) Return to previously held status after release from "active military duty" or discharge from the armed forces.

(a) If a military individual desires to return to a previously held status after release from active military duty or discharge from the armed forces, all required information, documents, and fees must be submitted to the board before the application will be evaluated. An application for return to previously held status may be made through the board's online application and payment system or on a form provided by the board upon request and must include the following:

(i) Documentation to substantiate:

- Release from "active military duty"; or
- Type of discharge from the armed forces.

(ii) Documentation to substantiate completion of the following qualified CPE:

- If the application is submitted in the last year of the previous CPE reporting period the individual must have completed four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of (~~(ninety)~~) 90 percent on the board prepared examination available on the board's website. The renewal fee is waived in this circumstance;

- If the application is submitted in the second year of the previous CPE reporting period the individual must have completed (~~(forty)~~) 40 CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of (~~(ninety)~~) 90 percent on the board prepared examination available on the board's website;

- If the application is submitted in the first year of the previous CPE reporting period the individual must have completed (~~(eighty)~~) 80 CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of (~~(ninety)~~) 90 percent on the board prepared examination available on the board's website.

(iii) A military individual may receive an expedited license while completing any specific requirements that are not related to CPE or other board rules.

(b) The previously held status will not become effective until the status has been posted to the board's database and, therefore, made available to the general public.

(4) Military spouses.

(a) A military spouse or state registered domestic partner of an individual in the military may receive an expedited license while completing any specific additional requirements that are not related to training or practice standards for the profession, provided the military spouse or state registered domestic partner:

(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington; and

(ii) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of another state or jurisdiction of the United States.

(b) To receive expedited license treatment, the military spouse or state registered domestic partner of an individual in the military must provide all required information, documents, and fees to the board either by making application through the board's online application and payment system or on a form provided by the board upon request before the application will be evaluated.

(c) The application for expedited licensing will not be processed until the applicant submits copies to the board of the military individual's orders and official documents to establish the applicant's relationship to the military individual, such as one or more following documents:

(i) The military issued identification card showing the individual's military information and the applicant's relationship to that individual;

(ii) A marriage license; or

(iii) Documentation verifying a state registered domestic partnership.

(d) A military spouse or state registered domestic partner may only use a restricted title and practice public accounting under another state's license without an expedited license issued by this board for ~~((ninety))~~ 90 days from the date the spouse entered this state for temporary residency during the military individual's transfer to this state.

[Statutory Authority: RCW 18.04.055, 14.04.105(1) [18.04.105(1)], and 18.04.215(1). WSR 14-22-033, § 4-30-088, filed 10/28/14, effective 11/28/14.]

OTS-4816.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

~~**WAC 4-30-094 ((How do I renew my individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm own-**~~

er?) Renewals. (~~(A licensee may not renew as a CPA Inactive certificate holder.)~~)

To renew your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner, you must by April 30th of the year of expiration make application through the board's online application system or on a form provided by the board upon request and provide the board with:

(1) Complete renewal information including:

(a) Your certification that you have complied with the CPE requirements of WAC 4-30-134(~~(+1)~~) and the supporting documentation requirements of WAC 4-30-138; and

(b) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or permit to practice;

(2) All required documentation, required information, and other documentation deemed necessary by the board; and

(3) All applicable fees.

A renewal application is not complete and cannot be processed until all required information, documents, and all applicable fees are submitted to the board.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

An individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner renewal expires on June 30 of the third calendar year following the calendar year of renewal.

Late renewal application: Failure to file a complete application for renewal of an individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner by April 30th of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

Failure to file a renewal application: If you fail to file a complete application for renewal of an individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner by June 30th of the year of renewal, your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner will lapse.

Failure to complete CPE: If you did not complete the credit hours of continuing professional education (CPE) required to renew (~~your credential~~), or did not submit (~~a timely~~) an extension request, and/or (~~was~~) were not granted an extension of time (~~for reasonable cause within which~~) to complete the deficiency, your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner will lapse on June 30th of the year of renewal.

Lapsed credentials: A lapsed credential is subject to reinstatement.

If your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) or exercise other privileges that are dependent upon the renewal (~~of your credential~~).

[Statutory Authority: RCW 18.04.215 (2) and (4). WSR 10-24-009, amended and recodified as § 4-30-094, filed 11/18/10, effective 12/19/10; WSR 05-01-137, § 4-25-790, filed 12/16/04, effective 1/31/05; WSR

02-04-064, § 4-25-790, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.105 and 18.04.215. WSR 99-18-120, § 4-25-790, filed 9/1/99, effective 1/1/00.]

OTS-4817.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 4-30-104 How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?

OTS-4818.2

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-120 ~~((I am a CPA-Inactive certificate holder Prior to July 1, 2001, I held a license How do I apply to return to my previous status as a licensee?))~~ **Converting license status from inactive to active.** ~~((CPA-Inactive certificate holders who held a license at any time prior to July 1, 2001, may apply to return to their previous status as a licensee. If you are a CPA-Inactive certificate holder, you may not use the title "CPA" or "Certified Public Accountant" until you return to your previous status as a licensee.~~

~~If you hold a valid CPA-Inactive certificate, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, required documentation, fees, and other documentation deemed necessary by the board are submitted to the board.~~

~~To apply to return to your previous))~~ To convert to an active status as a licensee you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not held out ((in)) or practiced public ((practice)) accounting during the time in which you were ((a CPA-Inactive certificate holder)) inactive; and

(b) Met the CPE requirements of WAC 4-30-134(5) ((?)).

(2) ((All other required information, documents, and all fees.)) The required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

Upon assessment of your continued qualifications and approval of your application, your active status will be posted in the board's li-

censee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

~~((You may not use the title CPA until your status as a licensee is posted in the board's licensee database.))~~

[Statutory Authority: RCW 18.04.215 (2) and (4). WSR 10-24-009, amended and recodified as § 4-30-120, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.215(2). WSR 09-01-166, § 4-25-791, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 18.04.215 (2), (4). WSR 05-01-137, § 4-25-791, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-791, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(11) and 18.04.215 (2), (4). WSR 99-18-121, § 4-25-791, filed 9/1/99, effective 1/1/00.]

OTS-4819.2

AMENDATORY SECTION (Amending WSR 20-02-059, filed 12/24/19, effective 1/24/20)

WAC 4-30-122 ~~((If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or a CPA-Inactive certificate out of retirement?))~~ **Renewal out of retirement.** If you notify the board that you wish to retire your license (~~(or CPA-Inactive certificate)~~) prior to the end of your renewal cycle, pursuant to RCW 18.04.215, you may renew your license (~~(or CPA-Inactive certificate)~~) out of retirement at a later date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you renew out of retirement.

~~((If you previously held a license and requested that the license be retired, you are not eligible to apply for CPA-Inactive certificate holder status.))~~

To apply to renew a license (~~(or a CPA-Inactive certificate)~~) out of retirement, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To apply to renew out of retirement, you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license (~~(or CPA-Inactive certificate)~~) was retired; and
(b) Met the CPE requirements to renew out of retirement in WAC 4-30-134(5) (~~(; and)~~).

(2) ~~((All applicable fees.))~~ The required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee

database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license (~~((or CPA-Inactive certificate))~~) will expire on June 30th of the third calendar year following the calendar year of the renewal out of retirement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the renewal of your retired license (~~((or CPA-Inactive certificate))~~) was approved by the board and ends on December 31st of the second calendar year following approval of the renewal out of retirement. CPE credit hours utilized to qualify for renewal of a retired license (~~((or CPA-Inactive certificate))~~) cannot be utilized for subsequent renewal (~~((of your credential renewed out of retirement))~~).

You may not use the title CPA (~~((or CPA-Inactive))~~) until your renewal out of retirement application has been approved.

[Statutory Authority: RCW 18.04.055. WSR 20-02-059, § 4-30-122, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 18.04.215(7). WSR 10-24-009, amended and recodified as § 4-30-122, filed 11/18/10, effective 12/19/10; WSR 09-01-166, § 4-25-793, filed 12/23/08, effective 1/23/09; WSR 05-01-137, § 4-25-793, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-793, filed 1/31/02, effective 3/15/02.]

OTS-4820.1

AMENDATORY SECTION (Amending WSR 20-02-059, filed 12/24/19, effective 1/24/20)

WAC 4-30-124 ((How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?)) Reinstatements. If your individual license(~~((, CPA-Inactive certificate,))~~) or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) until your individual credential has been reinstated by the board.

~~((Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificate holders.))~~

To reinstate a lapsed individual license(~~((, CPA-Inactive certificate,))~~) or registration as a nonlicensee firm owner you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information and documents, and fees have been submitted to the board.

To reinstate, you must submit to the board:

(1) Complete reinstatement information including your certification that you have:

(a) *For those who wish to reinstate a license ((or CPA-Inactive certificate))*: Not used the title CPA or CPA-Inactive during the time in which your individual license (~~((or CPA-Inactive certificate))~~) was lapsed; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner*: Not participated as an owner in a CPA firm

during the time in which your registration as a resident nonlicensee firm owner was (~~suspended or revoked~~) lapsed; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(5); and

(d) Met the CPE supporting documentation requirements in WAC 4-30-138;

(2) (~~Source~~) Provide documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-30-138;

(3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;

(4) Other required documents; and

(5) All applicable fees.

Upon approval of your reinstatement application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license(~~, CPA-Inactive certificate,~~) or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license(~~, CPA-Inactive certificate,~~) or registration as a nonlicensee firm owner was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for subsequent renewal (~~of your reinstated credential~~).

You may not use the (~~restricted title(s)~~) title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident licensee firm owner until your reinstatement application has been approved (~~and posted to the board's database~~).

[Statutory Authority: RCW 18.04.055. WSR 20-02-059, § 4-30-124, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 18.04.215 (2) and (4). WSR 10-24-009, amended and recodified as § 4-30-124, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.215(2). WSR 09-01-166, § 4-25-792, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 18.04.215 (2), (4). WSR 05-01-137, § 4-25-792, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-792, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(11) and 18.04.215 (2), (4). WSR 99-18-122, § 4-25-792, filed 9/1/99, effective 1/1/00.]

OTS-4821.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-126 ((How do I reinstate)) Reinstatement of a revoked or suspended license(~~, CPA-Inactive certificate,~~) or registration as a resident nonlicensee firm owner(?). If your license (~~or CPA-Inactive certificate~~) was revoked or suspended by the board pursuant to

the act, you may not use the title CPA or CPA-Inactive until your license (~~(or CPA-Inactive certificate)~~) is reinstated by the board.

If your registration as a resident nonlicensee firm owner was revoked or suspended by the board pursuant to the act, you may not be a firm owner until your registration is reinstated by the board.

You may request that the board modify the suspension or revocation after three years have elapsed from the effective date of the board's order revoking or suspending your license (~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner unless the board sets some other period by order. However, if you made a previous request with respect to the same order, no additional request will be considered before the lapse of an additional three years following the board's decision on the last such previous application for reinstatement.

To request reinstatement of a revoked or suspended license (~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner you must provide the board with certain information either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To request reinstatement, you must submit to the board:

(1) Complete information including your certification that you have:

(a) *For those who wish to reinstate a license (~~(or CPA-Inactive certificate)~~)*: Not used the title CPA or CPA-Inactive during the time in which your license (~~(or CPA-Inactive certificate)~~) was suspended or revoked; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner*: Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(~~(+6))~~) (5), by submitting the documentation to support the CPE claimed;

(2) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, (~~(CPA-Inactive)~~) certificate, permit, or practice privilege under substantial equivalence;

(3) All applicable fees;

(4) Written substantiation of the reasons constituting good cause for the reinstatement; and

(5) Two supporting recommendations from licensees who have personal knowledge of your activities since the suspension or revocation was imposed.

In considering the reinstatement application, the board may consider all relevant factors, including but not limited to:

(a) The offense for which you were disciplined;

(b) Your activities since the disciplinary penalty was imposed;

(c) Your activities during the time the license (~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner was in good standing;

(d) Your rehabilitative efforts;

(e) Restitution to damaged parties in the matter for which the penalty was imposed; and

(f) Your general reputation for integrity, objectivity, and ethical commitment.

If the board decides to consider the merits of your application for reinstatement, in the board's discretion, a hearing may be held following such procedures as the board deems suitable for the particular case. If the board decides that it will not consider the merits of your application for reinstatement, then this constitutes final agency action and there is no further administrative review available to you. As a condition of reinstatement, the board may impose such terms and conditions as it deems suitable.

The board will not consider a request for reinstatement while you are under sentence for any criminal offense, including any period during which you are on court-imposed probation or parole.

If the board approves your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your reinstated credential can be provided upon request.

Your reinstated license(~~(, CPA-Inactive certificate,)~~) or registration will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license(~~(, CPA-Inactive certificate,)~~) or registration was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement of a license(~~(, CPA-Inactive certificate,)~~) or registration cannot be utilized for subsequent renewal (~~(of your credential)~~).

You may not use the title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident nonlicensee firm owner until your reinstatement application has been approved.

[Statutory Authority: RCW 18.04.215(2), 18.04.335, 34.05.220. WSR 10-24-009, amended and recodified as § 4-30-126, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.215(2), 18.04.335. WSR 09-01-166, § 4-25-795, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 18.04.215(2), 18.04.335, and 34.05.220. WSR 05-01-137, § 4-25-795, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-795, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(11), 18.04.335 and 34.05.220. WSR 99-18-123, § 4-25-795, filed 9/1/99, effective 1/1/00.]

OTS-4822.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-134 Continuing professional education (CPE) requirements. (1) Renewal.

(a) CPE requirements for renewal are pursuant to RCW 18.04.215(5).

(b) An individual seeking renewal shall assert in a manner acceptable to the board that they met all of the CPE requirements for renewal during their CPE reporting period ending December 31st of the year prior to their license expiration date.

(c) **CPA ((licensee)) license in an active status.**

(i) Completion of a minimum of (~~one hundred twenty~~) 120 CPE credit hours within the three-year CPE reporting period;

(ii) Completion of a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132;

(iii) Completion of a minimum of (~~twenty~~) 20 CPE credit hours during each calendar year included in the three-year CPE reporting period. Restrictions on the type of CPE credit hours qualifying to meet the (~~twenty~~) 20 credit hour minimum are specified in WAC 4-30-133; and

(iv) Completion of no more than (~~sixty~~) 60 CPE credit hours in nontechnical subject areas as specified in WAC 4-30-132.

Exception: If the licensee qualifies for CPE reciprocity, see the CPE requirements under the provisions of subsection (7) of this section.

(d) (~~(CPA-Inactive certificate holder)~~) **CPA license in an inactive status or nonlicensee firm owner.** Completion of a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(2) **First renewal cycle.**

(a) After license issuance:

(i) CPE credit is allowable only for those programs taken in time periods after the first CPA license is issued pursuant to the authority of the board under chapter 18.04 RCW.

(ii) Credit is not allowed for programs taken to prepare an applicant for the CPA examination or the AICPA ethics examination as a requirement for initial licensure.

(b) After conversion of a (~~(CPA-Inactive to a CPA license)~~) **license from an inactive to an active status.**

(i) If your (~~(license)~~) **active status** was issued during the **first calendar year** of your CPE reporting period, you must have completed (~~(eighty)~~) 80 CPE credit hours which is limited to (~~(forty)~~) 40 CPE credit hours in nontechnical subject areas and must include a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(ii) If your (~~(license)~~) **active status** was issued during the **second calendar year** of your CPE reporting period, you must have completed (~~(forty)~~) 40 CPE credit hours which is limited to (~~(twenty)~~) 20 CPE credit hours in nontechnical subject areas and must include a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(iii) If your (~~(license)~~) **active status** was issued during the **third calendar year** of your CPE reporting period, you must have completed a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(3) **Extension requests for renewal.**

(a) If an individual has failed to complete the required CPE as defined in WAC 4-30-134 by December 31st of the last year of their three-year CPE reporting period, the individual must notify the board prior to their expiration date to request an extension of time to complete their CPE requirement by their expiration date.

(b) Credits earned during the interim period between January 1st and June 30th of the individual's renewal year that are used to meet the prior reporting period's CPE requirement will be carried back to the CPE reporting period ended December 31st. These credits cannot be counted towards the requirement for the individual's current CPE reporting period.

(c) An individual is allowed only one CPE extension in any two consecutive CPE reporting periods (six year period).

(4) **Failure to obtain required CPE for renewal.** Under the following circumstances the board will serve notice that a license(~~(, CPA-Inactive certificate,)~~) or nonlicensee firm owner registration will lapse and the individual will have an opportunity to request a brief adjudicative proceeding:

(a) An individual who applied for renewal and failed to obtain the required CPE credit hours by December 31st of the last year of their CPE reporting period and failed to request an extension by their expiration date;

(b) An individual who applied for renewal and failed to obtain the required CPE credit hours by December 31st for the second time in any two consecutive CPE reporting periods; or

(c) An individual who applied for renewal and failed to obtain the necessary CPE credit hours by June 30th of their renewal year after submitting an extension request.

(5) **Applications other than renewal.**

(a) For the following applications, you must have completed the requirements of this section within the (~~(thirty-six)~~) 36-month period immediately preceding the date an application is submitted to the board; however, the completion of a four credit hour Washington state board approved ethics course must be within the six-month period immediately preceding the date your application and the CPE documentation are submitted to the board:

(i) You are applying to renew a license out of retirement;

(ii) You are applying to convert your inactive status to active;

(iii) You are a (~~(CPA-Inactive)~~) certificate holder applying for ((a)) an initial license; or

(~~(iii)~~) (iv) You are applying for reinstatement of a lapsed, suspended, or revoked license.

(b) For the following applications, you must have completed a four credit hour Washington state board approved ethics course within the six-month period immediately preceding the date your application and the CPE documentation are submitted to the board: (~~(i) You are applying to renew a CPA-Inactive certificate out of retirement;~~

~~(ii) You are applying to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate; or~~

~~(iii))~~ You are applying to reinstate a lapsed, suspended, or revoked registration as a resident nonlicensee firm owner.

(6) **Individuals operating under mobility.** Licensees from other substantially equivalent U.S. states or jurisdictions, eligible to exercise practice privileges under RCW 18.04.195, are exempt from the CPE requirements of this section provided that they have met the CPE requirements of the state in which they are licensed.

(7) **CPE reciprocity.**

(a) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal place of business is located.

(b) Nonresident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal place of business is located by signing a statement on the renewal application of this state.

(c) If the state of residence has no CPE requirements for renewal, the nonresident licensee must comply with all CPE requirements for this state.

[Statutory Authority: RCW 18.04.055. WSR 19-16-074, § 4-30-134, filed 7/31/19, effective 1/1/20. Statutory Authority: RCW 18.04.065 and 18.04.215(5). WSR 14-04-086, § 4-30-134, filed 2/3/14, effective 3/6/14. Statutory Authority: RCW 18.04.055 (7), (14), 18.04.215(5). WSR 13-17-094, § 4-30-134, filed 8/20/13, effective 1/1/14. Statutory Authority: RCW 18.04.055(7), 18.04.215(5). WSR 11-07-070, § 4-30-134, filed 3/22/11, effective 4/22/11; WSR 10-24-009, amended and recodified as § 4-30-134, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055(7) and 18.04.215. WSR 09-17-044, § 4-25-830, filed 8/11/09, effective 9/11/09. Statutory Authority: RCW 18.04.055(7), 18.04.215(5). WSR 08-18-016, § 4-25-830, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-830, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-830, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(7), 18.04.104(8), 18.04.215(4). WSR 00-11-077, § 4-25-830, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.04.055(7), 18.04.215(4) and 18.04.105(8). WSR 99-23-045, § 4-25-830, filed 11/15/99, effective 1/1/00.]

OTS-4823.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-136 Reporting continuing professional education (CPE) to the board. In order to apply for renewal of your license(~~(, certificate,)~~) or registration as a resident nonlicensee firm owner, you must satisfy the board's CPE and supporting documentation requirements.

The reporting of compliance with CPE requirements is concurrent with filing your renewal application. When you complete your application for renewal, you are required to certify that you complied with the board's CPE requirements as defined in WAC 4-30-134 and supporting documentation requirements as defined in WAC 4-30-138.

The board may verify through audit compliance with CPE and supporting documentation requirements as certified during the renewal application process. As part of this audit the board may require additional information to demonstrate your compliance with the board's rules.

[Statutory Authority: RCW 18.04.055. WSR 19-16-074, § 4-30-136, filed 7/31/19, effective 1/1/20. Statutory Authority: RCW 18.04.055(7), 18.04.215(5). WSR 10-24-009, amended and recodified as § 4-30-136, filed 11/18/10, effective 12/19/10; WSR 01-22-036, § 4-25-832, filed 10/30/01, effective 12/1/01. Statutory Authority: RCW 18.04.055 and 18.04.105(8). WSR 99-23-047, § 4-25-832, filed 11/15/99, effective 1/1/00.]

OTS-4824.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-142 (~~What are the bases for the board to impose discipline?~~) **Disciplinary actions.** RCW 18.04.055, 18.04.295, 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license (~~(, CPA Inactive certificate,)~~) the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed (~~(thirty thousand dollars)~~) \$30,000; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295, 18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license (~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license (~~(, certificate,)~~) or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee (~~(, CPA Inactive certificate holder,)~~) or a resident nonlicensee firm owner including, but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required per RCW 18.04.215, obtaining a firm license as required by RCW 18.04.195, or without qualifying to operate under firm mobility;

(b) Offering or rendering public accounting services in this state by an out-of-state individual not qualified for practice privileges under RCW 18.04.350(2);

(c) Offering or rendering public accounting services in this state by an out-of-state firm not qualified for practice privileges under firm mobility per RCW 18.04.195.

(d) Making misleading, deceptive, or untrue representations;

(e) Engaging in acts of fiscal dishonesty;

(f) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(g) Unlawfully selling unregistered securities;

(h) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(i) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties, acting in a manner not in compliance with chapter 11.96A RCW; or

(j) Withdrawing or liquidating, as fees earned, funds received by a licensee(~~(, CPA-Inactive certificate holder,)~~) or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, (~~(a CPA-Inactive certificate holder,)~~) or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee(~~(, certificate holder,)~~) or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee(~~(, CPA-Inactive certificate holder,)~~) or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in Title 4 WAC, by a licensee, defined

in WAC 4-30-010, (~~(CPA-Inactive certificate holder,~~) or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state that does not meet the firm mobility requirements under RCW 18.04.195 (1)(a)(iii)(A) through (D) by an out-of-state individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business has been restricted from performing those specific services;

(e) Failure of an out-of-state firm operating under firm mobility per RCW 18.04.195 (1)(a)(iii), in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a firm licensed in this state, or a firm operating under firm mobility to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in Title 4 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC 4-30-010, (~~(CPA-Inactive certificate holder,~~) or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC 4-30-010, (~~(CPA-Inactive certificate holder,~~) nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee(~~(, CPA-Inactive certificate holder,~~) or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee(~~(, CPA-Inactive certificate holder,~~) or nonlicensee firm owner.

[Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-142, filed 8/9/16, effective 9/9/16. Statutory Authority: RCW 18.04.055(16), 18.04.195 (11)(d), 18.04.295, 18.04.305, 18.04.350(2). WSR 11-07-070, § 4-30-142, filed 3/22/11, effective 4/22/11; WSR 10-24-009, amended and recodified as § 4-30-142, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-910, filed 8/25/08, effective 9/25/08. Statutory Authority: RCW 18.04.055(16), 18.04.295, and 18.04.305. WSR 05-01-137, § 4-25-910, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-910, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(11), 18.04.295, and 18.04.305. WSR 02-04-064, § 4-25-910, filed 1/31/02, effective 3/15/02; WSR 00-11-078, § 4-25-910, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.04.055 and 18.04.295. WSR 94-23-070, § 4-25-910, filed 11/15/94, effective 12/16/94.]

WSR 23-16-128

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 1, 2023, 1:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-003.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for certified counselors and certified advisers under chapter 246-810 WAC, Counselors.

The department of health (department) is proposing to amend WAC 246-810-027 and 246-810-0298 and create new WAC 246-810-0299 to establish health equity CE requirements and implement ESSB 5229 (chapter 276, Laws of 2021).

Additionally, proposed amendments to WAC 246-810-027 and 246-810-0298 will clarify and streamline rule language without changing its effect.

Hearing Location(s): On September 13, 2023, at 12:30 p.m. The public hearing will be virtual, without a physical meeting space. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_IKWoAdhRS-2R_1ETAHvsCw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: September 20, 2023.

Submit Written Comments to: Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, www.doh.wa.gov, by September 13, 2023.

Assistance for Persons with Disabilities: Contact Ted Dale, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov, www.doh.wa.gov, by August 30, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the department must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The department is proposing to amend WAC 246-810-027 and create new WAC 246-810-0299 to implement ESSB 5229. The department is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for certified counselors and certified advisers to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every four years. The proposed rule does not change total CE hours but requires two hours in health equity CE every four years, which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Additionally, the department is proposing amendments to clarify and streamline WAC 246-810-027 and 246-810-0298. These proposed amend-

ments will remove unnecessary or outdated details about the required suicide prevention trainings.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 43.70.613 and 18.19.050.

Statute Being Implemented: RCW 43.70.613; ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Dale, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2991.

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 Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Requirements apply to behavioral health care providers, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

July 28, 2023
Kristen Peterson, JD
Chief of Policy
for Umair A. Shah MD, MPH
Secretary

OTS-4695.2

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

WAC 246-810-027 Continuing education requirements for a certified counselor or certified adviser. (1) A certified counselor or a certified adviser must complete (~~(thirty-six)~~) 36 credit hours of continuing education every two years.

(2) At least six hours of the (~~(thirty-six)~~) 36 credit hours must be in law and professional ethics related to counseling.

(3) (~~(Beginning January 1, 2014,)~~) At least once every six years a certified counselor or a certified adviser must complete three hours of training in suicide assessment, including screening and referral, as specified in WAC 246-810-0298.

(a) Except as provided in (b) of this subsection, the first training must be completed during the first full continuing education reporting period (~~(after January 1, 2014, or the first full continuing education period)~~) after initial licensure (~~(, whichever occurs later)~~).

(b) An individual applying for initial certification as a certified counselor or a certified adviser (~~(on or after January 1, 2014,)~~) may delay completion of the first required training for six years after initial certification if (~~(he or she)~~) they can demonstrate successful completion of a three-hour training in suicide assessment, screening, and referral that:

(i) Was completed no more than six years prior to the application for initial certification; and

(ii) Meets the requirements listed in WAC 246-810-0298 (~~((1))~~).

(c) The hours spent completing training in suicide assessment count towards the total (~~(thirty-six)~~) 36 hours of continuing education.

(4) Beginning January 1, 2024, at least once every four years, a certified counselor or certified adviser must complete two hours of health equity training as specified in WAC 246-810-0299.

(5) Nothing in this section is intended to expand or limit the existing scope of practice of a certified counselor or a certified adviser as defined by WAC 246-810-0201 and 246-810-021.

[Statutory Authority: RCW 43.70.442(7). WSR 14-09-102, § 246-810-027, filed 4/22/14, effective 4/22/14. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-027, filed 7/8/09, effective 7/8/09.]

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-0298 Suicide assessment training standards. (1) Approved qualifying training in suicide assessment, including screening and referral must (~~(+~~

~~(a) Until July 1, 2017, be approved by the American Foundation for Suicide Prevention, the Suicide Prevention Resource Center, entities listed in WAC 246-810-0293, or an equivalent organization, educational institution or association which approves training based on observation and experiment or best available practices. The training must be empirically supported training and meet other requirements in RCW 43.70.442;~~

~~(b) Beginning July 1, 2017, must)) be on the department's model list developed in accordance with RCW 43.70.442. ((Nothing in this section invalidates trainings completed according to this chapter before July 1, 2017; and~~

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

(2) A certified counselor or certified adviser who is an employee of a state or local government employer is exempt from the requirements of this section if ~~((he or she))~~ they receive~~((s))~~ a total of at least three hours of training in suicide assessment including screening and referral from ~~((his or her))~~ their employer every six years. ~~((For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.))~~

(3) A certified counselor or certified adviser who is an employee of a licensed or certified behavioral health agency under chapter 71.05 or 71.24 RCW is exempt from the requirements of this section if ~~((he or she))~~ they receive~~((s))~~ a total of at least three hours of training in suicide assessment, including screening and referral from ~~((his or her))~~ their employer every six years.

(4) For purposes of this ~~((subsection))~~ section, the training may be provided in one three-hour block or ~~((may be spread among))~~ shorter training sessions ~~((at the employer's discretion))~~.

~~((4))~~ (5) A certified counselor or certified adviser that obtained training under the exemptions listed in subsections (2) and (3) of this section may obtain ~~((CE))~~ continuing education credit subject to documentation as defined in WAC 246-810-0297.

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-810-0298, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 18.19.050 and 43.70.442. WSR 17-07-025, § 246-810-0298, filed 3/7/17, effective 4/7/17. Statutory Authority: RCW 43.70.442(7). WSR 14-09-102, § 246-810-0298, filed 4/22/14, effective 4/22/14.]

NEW SECTION

WAC 246-810-0299 Health equity training standards. (1) Beginning January 1, 2024, a certified counselor or certified adviser must complete training in health equity as a part of their continuing education requirements. The certified counselor or certified adviser must complete at least two hours of health equity trainings every four years. The training may be in person or virtual but must meet the course requirements in WAC 246-12-830, including strategies to reduce implicit bias and assess the providers ability to apply health equity concepts into practice.

(2) The hours spent completing training in health equity education count towards the total of 36 hours of continuing education.

[]

WSR 23-16-132
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 1, 2023, 3:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-070.

Hearing Location(s): On September 14, 2023, at 9:30 a.m., at the Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at www.wsgc.wa.gov. Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: September 14, 2023.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by September 11, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie-anderson@wsgc.wa.gov, www.wsgc.wa.gov, by September 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amended and new rules would allow for the use of ticket-in ticket-out (TITO) devices in house-banked card rooms. The devices would enable players to purchase chips directly at the gaming table and move from table to table without having to go to the cage cashier. The TITO bill acceptor facilitates accounting and verification of cash in and cash out at the gaming table.

Reasons Supporting Proposal: The TITO device would be able to detect counterfeit bills and potentially could be used to flag money laundering. The device would keep cash secure, enable a full audit of transactions at the tables, and reduce the amount of cage cash needed. It would also create efficiencies in the number of table fills and credits as players would not carry chips from table to table or to the cage.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Tim Merrill, Maverick Gaming, Kirkland, Washington, public.

Name of Agency Personnel Responsible for Drafting: Lisa C. McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3456; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5) (b) (iii).

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).

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023

OTS-4707.2

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-03-200 Defining "gambling equipment." "Gambling equipment" means any device, gambling-related software, expendable supply, or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

- (1) Amusement games;
- (2) Punch boards and pull-tabs;
- (3) Devices for dispensing pull-tabs;
- (4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities including, but not limited to:
 - (a) Components of a tribal lottery system;
 - (b) Electronic devices for reading and displaying outcomes of gambling activities; and
 - (c) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:
 - (i) Bet totalizers; or
 - (ii) Progressive jackpot meters; or
 - (iii) Keno systems;
- (5) Bingo equipment;
- (6) Electronic raffle systems;
- (7) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:
 - (a) Gambling chips;
 - (b) Cards;
 - (c) Dice;
 - (d) Card shuffling devices;
 - (e) Graphical game layouts for table games;
 - (f) Ace finders or no-peek devices;
 - (g) Roulette wheels;
 - (h) Keno equipment; and
 - (i) Tables manufactured exclusively for gambling purposes;
- (8) Debit card reading devices used at gambling tables to sell chips to players;
- (9) Ticket in ticket out (TITO) systems to include, but are not limited to:
 - (a) TITO-enabled bill validators;
 - (b) Ticket redemption kiosks.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-03-200, filed 5/19/23, effective 6/19/23; WSR 21-21-079, § 230-03-200, filed 10/18/21, effective 11/18/21; WSR 06-07-157 (Order 457), § 230-03-200, filed 3/22/06, effective 1/1/08.]

OTS-4708.4

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-150 Selling and redeeming chips. Card game licensees must:

- (1) Sell chips and redeem chips at the same value; and
- (2) Sell chips for cash at gambling tables. Provided that house-banked card game licensees may allow players to use debit cards to purchase chips at house-banked card game tables in accordance with WAC 230-15-506 and 230-15-507. Provided further that house-banked card game licensees may allow players to purchase chips at gambling tables with valid tickets generated by TITO-enabled bill validators; and
- (3) Keep all funds from selling chips separate and apart from all other money received; and
- (4) Not extend credit to a person purchasing chips, including to card room employees playing cards.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-150, filed 5/19/23, effective 6/19/23; WSR 07-10-034 (Order 611), § 230-15-150, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-280 Surveillance requirements for house-banked card games. House-banked card game licensees must use a closed circuit television system (CCTV) to closely monitor and record all gambling activities and areas, including, at least:

- (1) Each table, including:
 - (a) Cards; and
 - (b) Wagers; and
 - (c) Chip tray; and
 - (d) Drop box openings; and
 - (e) Table number; and
 - (f) Card shoe; and
 - (g) Shuffling devices; and
 - (h) Players; and
 - (i) Dealers; and
 - (j) Debit card reading devices at gambling tables; and
 - (k) TITO-enabled bill validators at tables and the cashier's cage; and
- (1) Ticket redemption kiosks; and
- (2) The designated gambling areas; and
- (3) The cashier's cage, including:
 - (a) Outside entrance; and
 - (b) Fill/credit dispenser; and
 - (c) Customer transactions; and
 - (d) Cash and chip drawers; and
 - (e) Vault/safe; and
 - (f) Storage cabinets; and
 - (g) Fill or credit transactions; and
 - (h) Floor; and

- (4) The count room, including:
- (a) The audio; and
 - (b) Count table; and
 - (c) Floor; and
 - (d) Counting devices; and
 - (e) Trolley; and
 - (f) Drop boxes; and
 - (g) Storage shelves/cabinets; and
 - (h) Entrance and exit; and
- (5) The movement of cash, gambling chips, and drop boxes; and
- (6) Entrances and exits to the card room.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-280, filed 5/19/23, effective 6/19/23; WSR 07-09-033 (Order 608), § 230-15-280, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-500 Accounting for table inventory. (1) House-banked card game licensees must establish procedures to ensure proper accounting for chips and coins stored at gambling tables, known as the "table inventory."

(2) Licensees must not add or remove chips or coins from the table inventory except:

- (a) In exchange for cash from players; or
- (b) In exchange for debit card transactions from players according to WAC 230-15-506; or

(c) In exchange for tickets generated by TITO-enabled bill validators; or

(d) To pay winning wagers and collect losing wagers made at the gambling table; or

~~((d))~~ (e) In exchange for chips received from a player having an equal total face value (known as "coloring up" or "coloring down"); or

~~((e))~~ (f) In compliance with fill and credit procedures.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-500, filed 5/19/23, effective 6/19/23; WSR 07-09-033 (Order 608), § 230-15-500, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-505 Selling gambling chips to players. House-banked card game licensees must accurately account for all chips, debit card transaction receipts, tickets generated by TITO-enabled bill validators, and cash when they sell chips to players. Licensees must sell chips only at the gambling table.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-505, filed 5/19/23, effective 6/19/23. Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-11-021 (Order 699), § 230-15-505, filed 5/9/14, ef-

fective 7/1/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-505, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 08-03-062, filed 1/14/08, effective 2/14/08)

WAC 230-15-553 Defining "cash equivalent." "Cash equivalent" means a:

- (1) Treasury check; or
- (2) Personal check; or
- (3) Traveler's check; or
- (4) Wire transfer of funds; or
- (5) Money order; or
- (6) Certified check; or
- (7) Cashier's check; or
- (8) Check drawn on the licensee's account payable to the patron or to the licensee; or
- (9) Voucher recording cash drawn against a credit card or debit card; or
- (10) Tickets generated by TITO-enabled bill validators.

[Statutory Authority: RCW 9.46.070. WSR 08-03-062 (Order 623), § 230-15-553, filed 1/14/08, effective 2/14/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-585 Using drop boxes. (1) House-banked card game licenses must use a drop box to collect all cash, tickets redeemed by TITO-enabled bill validators, chips, coins, debit card transaction receipts, requests for fill, fill slips, requests for credit, credit slips, and table inventory forms.

(2) The dealer or the floor supervisor must deposit these items in the drop box.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-585, filed 5/19/23, effective 6/19/23; WSR 07-09-033 (Order 608), § 230-15-585, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-615 Conducting the count. (1) All house-banked card room licenses must have a three person count team except as set forth in subsections (2) and (3) of this section. The three person count team must conduct the count as follows:

- (a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and
- (b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable,

loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) Count team member(s) must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and cash and by type of form, record, or document; and

(f) At least two count team members must count, either manually or mechanically, each denomination of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators separately and independently. Count team members must place individual bills and coins of the same denomination ~~((and))~~, debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators on the count table in full view of the closed circuit television cameras, and at least one other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted (the drop) on the master games report; and

(h) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(i) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(2) The two person count team for licensees with card game gross gambling receipts of less than ~~((\$5 million))~~ \$5,000,000 in their previous fiscal year must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) A count team member must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and cash and by type of form, record, or document; and

(f) One count team member must count, either manually or mechanically, each denomination of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators separately and independently. The count team member must place individual bills and coins of the same denomination ~~((and))~~, debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted (the drop) on the master games report; and

(h) As the count is occurring, a surveillance employee must record in the surveillance log the total chips cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted for each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(i) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(j) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(3) The two person count team for licensees with card game gross gambling receipts between ~~((\$5 million and \$15 million))~~ \$5,000,000 and \$15,000,000 in their previous fiscal year and use a currency counter must conduct the count as follows:

(a) The currency counter to be used must meet the following requirements:

(i) Automatically provides two separate counts of the funds at different stages in the count process. If the separate counts are not in agreement during the count process and the discrepancy cannot be resolved immediately, the count must be suspended until a third count team member is present to manually complete the count as set forth in subsection (1) of this section until the currency counter is fixed; and

(ii) Displays the total bill count and total dollar amount for each drop box on a screen, which must be recorded by surveillance.

(b) Immediately prior to the count, the count team must verify the accuracy of the currency counter with previously counted currency for each denomination actually counted by the currency counter to ensure the counter is functioning properly. The test results must be recorded on the table games count documentation and signed by the two count team members performing the test; and

(c) The currency counter's display showing the total bill count and total dollar amount of each drop box must be recorded by surveillance during the count; and

(d) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(e) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable,

loudly enough to be heard by all persons present and be recorded by the audio recording equipment; and

(f) A count team member must empty the contents onto the count table; and

(g) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to the other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(h) Count team member(s) must combine all cash into one stack and separate the contents of each drop box into separate stacks on the count table by denomination of coin and chips, by type of form, record, or document; and

(i) Count team members must place all of the cash from a drop box into the currency counter which will perform an aggregate count by denomination of all of the currency collected from the drop box; and

(j) One count team member must count each denomination of coin, chips, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators separately and independently by placing coins and chips of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(k) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted (the drop) on the master games report; and

(l) As the count is occurring, a surveillance employee must record in the surveillance log the currency counter accuracy information in (b) of this subsection, currency verification amount, debit card transaction receipt amount, ticket redemption amount, total bill and dollar count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(m) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(n) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-615, filed 5/19/23, effective 6/19/23; WSR 18-23-074, § 230-15-615, filed 11/19/18, effective 1/1/19; WSR 07-09-033 (Order 608), § 230-15-615, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

WAC 230-15-620 Concluding the count. (1) After the count team finishes their count, the cage cashier or accounting department employee must verify the contents of the drop boxes.

(2) In the presence of the count team and before looking at the master game report, the verifier must recount the cash, coin, chips, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators either manually or mechanically.

(3) The verifier must sign the master game report verifying that the cash and debit card transaction receipt counts are accurate.

(4) Each count team member must sign the report attesting to the accuracy of the information recorded.

(5) After the report is signed, the master game report must be taken directly to the accounting department, along with the debit card transaction receipts, requests for fills, the fill slips, the requests for credit, the credit slips, tickets redeemed by TITO-enabled bill validators, and the table inventory slips removed from drop boxes. The cage cashiers must not be allowed access to any of these records.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-620, filed 5/19/23, effective 6/19/23. Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-11-021 (Order 699), § 230-15-620, filed 5/9/14, effective 7/1/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-620, filed 4/10/07, effective 1/1/08.]

TICKET IN TICKET OUT (TITO) SYSTEM REQUIREMENTS IN HOUSE-BANKED CARD ROOMS

NEW SECTION

WAC 230-15-755 "Ticket in ticket out (TITO) system" defined.

For the purposes of this chapter, "ticket in ticket out (TITO) system" refers to electromechanical devices equipped with a ticket in ticket out (TITO) enabled bill validator and a ticket validation system that allows for the reporting issuance, validation, and acceptance of tickets.

[]

NEW SECTION

WAC 230-15-758 "Ticket" defined. For the purposes of this chapter, a "ticket" means an encoded paper ticket or voucher dispensed by an approved TITO-enabled bill validator.

[]

NEW SECTION

WAC 230-15-761 "Invalid ticket" defined. For the purposes of this chapter, "invalid ticket" means an encoded paper ticket or voucher that is expired, damaged/unreadable, and/or voided.

[]

NEW SECTION

WAC 230-15-764 "TITO-enabled bill validator" defined. For the purposes of this chapter, "TITO-enabled bill validator" means an electromechanical device that accepts United States currency (bills) and issues, validates, and accepts encoded paper tickets or vouchers.

[]

NEW SECTION

WAC 230-15-767 "Ticket redemption kiosk" defined. For the purposes of this chapter, "ticket redemption kiosk" means an electromechanical device that accepts redeemable encoded tickets or vouchers issued from TITO-enabled bill validators for cash.

[]

NEW SECTION

WAC 230-15-770 Ticket requirements. Tickets printed by TITO-enabled bill validators must have the following minimum standards:

- (1) Card room name; and
 - (2) Date and time the ticket was generated; and
 - (3) Dollar value of ticket, printed both numerically and in text;
- and
- (4) A unique identifier such as a magnetic strip or bar code; and
 - (5) A primary and secondary validation number; and
 - (6) A statement that the ticket will expire in 30 days; and
 - (7) Be the same size and dimension as United States currency (bills); and
 - (8) Include a problem gambling message on the printed ticket.

[]

NEW SECTION

WAC 230-15-773 Requirements for ticket validation system. Ticket validation systems must:

- (1) Not use, permit the use of, validate, or redeem tickets issued by another licensee; and
- (2) Be able to identify invalid tickets and issued tickets, and notify the cashier, dealer, or kiosk, which is applicable, if:
 - (a) The validation number cannot be found; or
 - (b) The ticket has already been redeemed; or
 - (c) The amount on file for the ticket does not match; and
- (3) Uniquely identify TITO-enabled bill validators and ticket redemption kiosks connected to it; and
- (4) Be able to generate the following reports to be reconciled with all validated/redeemed tickets:
 - (a) Ticket issuance report; and
 - (b) Ticket redemption report; and
 - (c) Ticket liability report; and
 - (d) Ticket drop variance report; and
 - (e) Transaction detail report that shows all tickets generated and redeemed by a TITO-enabled bill validator and ticket redemption kiosk; and
 - (f) Cashier report, which is to detail individual tickets and the sum of tickets paid by a cage cashier or ticket redemption kiosk; and
- (5) Employ encryption standards suitable for the transmission and storage of all confidential or sensitive information between all components of the system; and
- (6) Not allow for any wireless connections or communication; and
- (7) Can only be connected to authorized gambling equipment; and
- (8) Have all servers and components that store sensitive information in a locked secure enclosure with both camera coverage and key controls in place; and
- (9) Have a machine entry authorization log (MEAL) for all entries into a locked area that indicates the date, time, purpose of entering the locked area(s), and the name and employee number of the employee doing so; and
- (10) Maintain an internal clock that reflects the current time and date that shall be used to provide the following:
 - (a) Time stamping of significant events; and
 - (b) Reference clock for reporting; and
 - (c) Time stamping of configuration changes; and
- (11) Have a recent backup that is securely stored, separate from the system, in case of catastrophic failure and the ticket validation system cannot be restarted. Backups must be retained for a period of at least two years. Backups must contain:
 - (a) Significant events; and
 - (b) Accounting information; and
 - (c) Auditing information; and
 - (d) All information utilized in the ticket redemption and issuance process; and
- (12) Be connected to a device that provides surge protection and a temporary power source, such as a uninterruptible power supply (UPS), to provide a means for an orderly shutdown in the event of a main power system failure; and
- (13) Have no built-in facility where a casino user/operator can bypass system auditing to modify any database(s) directly; and

- (14) Log any changes made by a user to accounting or significant event log information that was received from a device on the system. The log must include:
- (a) Date data was altered; and
 - (b) Value prior to alteration; and
 - (c) Value after alteration; and
 - (d) Identification of personnel that made the alteration; and
- (15) Record significant events generated by any TITO devices on the system. Each event must be stored in a database(s) and include the following information:
- (a) Date and time the event occurred; and
 - (b) Identify the device that generated the event; and
 - (c) A unique number/code that identifies the event; and
 - (d) A brief text that describes the event in the local language;
- and
- (16) Have a means by which any user accessing the system software, either by password, keycard, or PIN have a username or user number unique to that individual and log the date and time of access.

[]

NEW SECTION

WAC 230-15-776 Requirements for TITO-enabled bill validators.

TITO-enabled bill validators must:

- (1) Only be used in conjunction with approved ticketing (TITO) systems; and
- (2) Be secure from unauthorized access, tampering, and bill/ticket removal; and
- (3) Only be installed at house-banked card game tables or in the cashier's cage; and
- (4) Only accept United States bills (no foreign currency) and be able to differentiate between genuine and counterfeit bills to a high degree of accuracy; and
- (5) Only accept tickets from the licensed card room they are installed at; and
- (6) Be able to identify invalid tickets; and
- (7) Not accept promotional tickets, coupons, or vouchers such as free play or match play; and
- (8) Not allow redemption of tickets for cash at house-banked card game tables; and
- (9) Be equipped with a drop box/cassette to collect the bills and/or tickets inserted into the bill validator; and
- (10) Be equipped with a ticket printer designed to detect paper jams, paper out, and print failure; and
- (11) Not be capable of offering an element of chance and/or skill in the determination of prizes; and
- (12) Not contain some form of activation to initiate a wager; and
- (13) Not be capable of delivering or determining an outcome from a gambling activity.

[]

NEW SECTION

WAC 230-15-779 Requirements for drop boxes/cassettes in TITO-enabled bill validators. Ticket-enabled bill validators must be equipped with a drop box/cassette to collect, store, and secure currency and tickets.

- (1) Drop boxes/cassettes must:
 - (a) Be housed in a locked compartment; and
 - (b) (i) Have a separate lock to open the drop box/cassette; and
(ii) The locks to secure the compartment housing and drop box/cassette must be different from each other; and
 - (c) Have labels on the lockable drop boxes/cassettes with a permanent number clearly visible which corresponds to a permanent number on the gambling table to which the electronic bill acceptor is affixed; and
- (2) The transportation and storing of drop boxes/cassettes in TITO-enabled bill validators must adhere to WAC 230-15-590 and 230-15-600.

[]

NEW SECTION

WAC 230-15-782 Requirements for ticket redemption kiosks. Ticket redemption kiosks must:

- (1) Only be used in conjunction with approved ticketing (TITO) systems; and
- (2) Be secure from unauthorized access, tampering, and bill/ticket removal; and
- (3) Contain a lockable ticket and currency storage box which retains tickets and currency accepted by the kiosk. The kiosk must have:
 - (a) One lock securing the compartment housing the currency drop boxes/cassettes; and
 - (b) (i) One lock securing the contents of the storage box; and
(ii) The locks to secure the compartment housing and storage box must be different from each other.
- (4) Only accept tickets from the licensed card room they are installed at; and
- (5) Be capable of validating ticket values and dispensing an equivalent amount of cash; and
- (6) Only validate and pay out tickets up to \$1,000; and
- (7) Be able to identify invalid tickets; and
- (8) Not be allowed to accept cash to exchange for a ticket; and
- (9) Not be allowed to accept debit, credit, or EBT cards; and
- (10) Have a mechanism to generate a transaction history report with at least the following information:
 - (a) Date, time, ticket validations numbers, and amount of all ticket redemptions; and
 - (b) Total amount of ticket vouchers accepted; and
 - (c) Total count of ticket vouchers; and
- (11) Have a machine entry authorization log (MEAL) for all entries into locked areas of the kiosk that indicates the date, time, purpose of entering the locked area(s), and the name and employee number of the employee doing so; and

- (12) Not be capable of offering an element of chance and/or skill in the determination of prizes; and
- (13) Not contain some form of activation to initiate a wager; and
- (14) Not be capable of delivering or determining an outcome from a gambling activity.

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WSR 23-16-133
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 1, 2023, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-105.

Title of Rule and Other Identifying Information: WAC 230-10-460, regarding shared bingo facilities, needs to be amended to bring it in-to alignment with amendments made to RCW 9.46.0205 in the most recent legislative session.

Hearing Location(s): On September 14, 2023, at 9:30 a.m., at the Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "About Us" and then select "Public Meetings" to confirm the hearing date, location, start time and agenda items.

Date of Intended Adoption: September 14, 2023.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by September 8, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie-anderson@wsgc.wa.gov, www.wsgc.wa.gov, by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: With the passage of HB 1707, An act relating to bingo conducted by bona fide charitable and nonprofit organizations, WAC 230-10-460, regarding shared bingo facilities, needs to be amended to be consistent with the amendments made to RCW 9.46.0205. Specifically, HB 1707 eliminated the need for a bona fide charitable or nonprofit organization to locate their head office or principal location in the same county where they operate bingo, which requires a similar amendment to WAC 230-10-460.

Reasons Supporting Proposal: The law has changed, which requires amending the WAC to bring it into alignment.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa C. McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3456; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(iii).

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).

Scope of exemption for rule proposal:

Is fully exempt.

August 1, 2023

Lisa C. McLean
Legislative and Policy Manager

OTS-4651.1

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-460 Shared bingo facilities. Multiple bingo licensees must enter into a written agreement before sharing a facility. Before operating in a shared facility, licensees must:

(1) Send us written notification of intent to share facilities at least (~~thirty~~) 30 days before operating bingo in a shared facility. The notification must include, at least:

- (a) The name of all organizations sharing the facility; and
- (b) Names and signatures of the highest ranking officer for each organization involved; and
- (c) Copies of any written agreements between organizations; and
- (d) The method used to share expenses.

(2) Maintain management over their individual gambling activities.

(3) Be solely responsible for their individual records, inventory, management, equipment, and operation of the gambling activities for which they hold a license.

(4) Complete a separate quarterly activity report according to the gambling receipts and expenses it is responsible for under the terms of the written agreement between the licensees.

~~((5) Locate their head office or principal location in the same county where they operate bingo, or as otherwise defined in RCW 9.46.0205.))~~

[Statutory Authority: RCW 9.46.070. WSR 07-10-033 (Order 610), § 230-10-460, filed 4/24/07, effective 1/1/08.]

WSR 23-16-134
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 1, 2023, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-106.

Title of Rule and Other Identifying Information: Qualified sports teams.

Hearing Location(s): On September 14, 2023, at 9:30 a.m., at the Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at www.wsgc.wa.gov. Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: September 14, 2023.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by September 7, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie-anderson@wsgc.wa.gov, www.wsgc.wa.gov, by September 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amended rule would change the definition of "qualified sports team" in WAC 230-03-138 to include professional MLB-affiliated minor league teams and the Western Hockey League. The change would allow charitable and nonprofit organizations established by or directly affiliated with these sports teams to apply for a license to operate electronic raffles.

Reasons Supporting Proposal: Currently, WAC 230-03-138 defines "qualified sports team" as major league or highest level team organized in Washington state and excludes "lower level teams including, but not limited to, minor, farm or development league teams." Changing the definition to include professional MLB-affiliated minor league teams and the Western Hockey League will enable additional teams and communities in Washington state to operate electronic 50/50 raffles, which are easier and more efficient than traditional 50/50 raffles. As a consequence, additional communities in Washington state will be able to enjoy the benefits from the charitable efforts that flow from the electronic 50/50 raffle proceeds.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Andy Billig, Spokane Chiefs Hockey Club, Spokane, Washington, public.

Name of Agency Personnel Responsible for Drafting: Lisa C. McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3456; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a).

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).
Scope of exemption for rule proposal:
Is fully exempt.

August 1, 2023
Lisa C. McLean
Legislative and Policy Manager

OTS-4640.2

AMENDATORY SECTION (Amending WSR 21-21-079, filed 10/18/21, effective 11/18/21)

WAC 230-03-138 Defining "qualified sports team." "Qualified sports team" as used in WAC 230-03-153 means a Major League or highest-level team organized in Washington state as a member of Major League Baseball, National Hockey League, National Football League, National Basketball Association, Women's National Basketball Association, Major League Soccer, ~~((or))~~ National Women's Soccer League, Professional MLB-affiliated Minor League teams, or the Western Hockey League. ~~((This does not include lower level teams including, but not limited to, minor, farm, or development league teams.))~~

[Statutory Authority: RCW 9.46.070. WSR 21-21-079, § 230-03-138, filed 10/18/21, effective 11/18/21.]

WSR 23-16-136

PROPOSED RULES

SKAGIT VALLEY COLLEGE

[Filed August 2, 2023, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-016.

Title of Rule and Other Identifying Information: WAC

132D-150-050(9), hazing.

Hearing Location(s): On September 5, 2023, at 2:00 - 3:00 p.m.,
<https://skagitvalleycollege.zoom.us/j/2889345409>.

Date of Intended Adoption: September 6, 2023.

Submit Written Comments to: Sandy Jordan, 2405 East College Way,
Mount Vernon, WA 98273, email sandy.jordan@skagit.edu, fax
360-416-7773, by September 1, 2023.

Assistance for Persons with Disabilities: Contact Pam Davis,
phone 360-416-7995, fax 360-416-7773, TTY 360-416-7718, email
pam.davis@skagit.edu, by September 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: 2SHB 1751 Sam's Law is the name of new
antihazing legislation recently adopted in Washington state. It's
named after Sam Martinez, a freshman at Washington State University
who died of alcohol poisoning at a fraternity party in November 2019.
The new law updates the definition of hazing and requires institutions
of higher education (IHEs) to implement antihazing programming for em-
ployees and students. It also requires IHEs to publish an annual re-
port identifying student organizations, athletic teams, and living
groups found responsible for engaging in hazing.

Reasons Supporting Proposal: The proposed changes will ensure
compliance with 2SHB 1751 Sam's Law.

Statutory Authority for Adoption: RCW 28B.10.901 and 28B.10.902.

Rule is necessary because of state court decision, [no further
information supplied by agency].

Name of Proponent: Skagit Valley College, public.

Name of Agency Personnel Responsible for Drafting and Implementa-
tion: Sandy Jordan, 2405 East College Way, Mount Vernon, WA 98273,
360-416-7923; and Enforcement: Claire Peinado, 2405 East College Way,
Mount Vernon, WA 98273, 360-416-7961.

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 because the agency has completed the pilot rule process
defined by RCW 34.05.313 before filing the notice of this
proposed rule.

Scope of exemption for rule proposal:

Is fully exempt.

July 31, 2023

Pam Davis

Executive Assistant to the President

Rules Coordinator

OTS-4453.1

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities

include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

- (a) The college or state;
- (b) Any student or college officer, employee, or organization;
- (c) Any other member of the college community or organization; or
- (d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical, religious, or other purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

(9) **Hazing.** ~~((Hazing includes, but is not limited to, any initiation into a student organization))~~ Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious ((mental)) psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana

na, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
 - (c) Unauthorized use or distribution of someone else's password or other identification;
 - (d) Use of such time or resources to interfere with someone else's work;
 - (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
 - (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
 - (g) Use of such time or resources in violation of applicable copyright or other law;
 - (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
 - (i) Failure to comply with the college's electronic use policy.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.
- (19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.
- (20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-050, filed 2/2/16, effective 3/4/16.]

WSR 23-16-144

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed August 2, 2023, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-083 [23-12-083].

Title of Rule and Other Identifying Information: WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule.

Hearing Location(s): On September 5, 2022 [2023], at 10:00 a.m. This meeting will be conducted over the internet/telephone. In-person option also available. Contact Cathy Holder at CathyH@dor.wa.gov for dial-in/login information. To attend in person, contact CathyH@dor.wa.gov by August 22, 2023.

Date of Intended Adoption: September 22, 2023.

Submit Written Comments to: Ryan Becklean, P.O. Box 47453, Olympia, WA 98504-7453, email RyanBe@dor.wa.gov, fax 360-534-1576, by September 8, 2023.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.49.040 requires the department of revenue (department) to prepare a depreciation schedule (at minimum annually) for use in the determination of fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to evaluate the watercraft depreciation table values in WAC 458-20-23801. The department is proposing amendments to the watercraft depreciation schedule for the following reason: Watercraft valuation, sales, and registration data indicated an adjustment to several values in the table was necessary (as required by RCW 82.49.040). This proposal was based upon the department's own analysis of watercraft valuation, sales, and registration data. The department will solicit additional comments and feedback from external stakeholders regarding the proposed watercraft depreciation schedule.

Reasons Supporting Proposal: RCW 82.49.040 requires the department to engage in rule-making activities in the adoption of the watercraft excise tax depreciation schedule. The rule is intended to clarify the department's policies on a number of watercraft excise tax issues and provide taxpayers with an annually updated schedule that reflects the recent vessel valuation, sales, and registration data.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, 82.49.040.

Statute Being Implemented: RCW 82.49.040.

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: Ryan Becklean, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1576; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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 Ryan

Becklean, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1576, fax 360-534-1606.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as the depreciation rate schedule proposed in the rule is not materially different from the depreciation rate schedule used by the same taxpayers last year. The only changes are depreciation rates, not the method for determining the measure of the watercraft excise tax.

August 2, 2023
Atif Aziz
Rules Coordinator

OTS-4649.1

AMENDATORY SECTION (Amending WSR 22-24-056, filed 12/1/22, effective 1/1/23)

WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule. (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest, and penalties.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal

action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

(d) **"Vessel"** means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

(e) **"Waters of this state"** means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) **Overview of the watercraft excise tax.**

(a) The watercraft excise tax generally applies to vessels measuring 16 feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax under subsection (5) of this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than 12 months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding 12 month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) **Example 1. Watercraft excise tax computation - Initial vessel registration.**

Facts: Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

Result: The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 ($\$20,000$ (purchase price) \times .005 (watercraft excise tax rate) \times .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

(a) Those exempt from vessel registration under RCW 88.02.570;

(b) Those used exclusively for commercial fishing purposes;

(c) Those measuring less than 16 feet in overall length, including personal watercraft;

(d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;

(e) Those owned by a nonprofit organization or association engaged in character building of children under 18 years of age and solely used for such purposes;

(f) Those held for sale by a dealer, but not rented on a regular commercial basis; and

(g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) Depreciation schedule.

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for two categories of vessels, including a column for the vessel's year of ownership and columns for the depreciated percentage of the vessel's value by vessel length. First, vessel owners must determine the appropriate column to use, depending on the length of the vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

Year of Ownership	Vessels less than 30 feet	Vessels 30 feet or more
1	1.00	1.00
2	((0.85)) <u>0.86</u>	((0.83)) <u>0.84</u>
3	((0.76)) <u>0.79</u>	((0.75)) <u>0.77</u>
4	((0.70)) <u>0.73</u>	((0.68)) <u>0.70</u>
5	((0.65)) <u>0.68</u>	((0.63)) <u>0.66</u>
6	((0.61)) <u>0.64</u>	((0.59)) <u>0.62</u>
7	((0.57)) <u>0.60</u>	((0.55)) <u>0.59</u>
8	((0.54)) <u>0.57</u>	((0.53)) <u>0.56</u>
9	((0.51)) <u>0.55</u>	((0.50)) <u>0.53</u>
10	((0.49)) <u>0.52</u>	((0.48)) <u>0.52</u>
11	((0.47)) <u>0.50</u>	((0.46)) <u>0.50</u>
12	((0.45)) <u>0.47</u>	((0.45)) <u>0.47</u>
13	((0.43)) <u>0.45</u>	((0.43)) <u>0.45</u>
14	((0.42)) <u>0.44</u>	((0.42)) <u>0.44</u>
15	((0.40)) <u>0.42</u>	((0.42)) <u>0.43</u>
16	((0.39)) <u>0.40</u>	((0.41)) <u>0.42</u>
17	((0.37)) <u>0.39</u>	((0.41)) <u>0.42</u>
18	((0.35)) <u>0.37</u>	((0.40)) <u>0.41</u>
19	((0.34)) <u>0.36</u>	((0.39)) <u>0.40</u>
20	((0.33)) <u>0.35</u>	0.39
21	((0.32)) <u>0.34</u>	((0.38)) <u>0.39</u>
22	((0.31)) <u>0.33</u>	((0.37)) <u>0.38</u>
23	((0.30)) <u>0.32</u>	((0.36)) <u>0.37</u>
24	((0.29)) <u>0.32</u>	((0.35)) <u>0.36</u>
25 or more	((0.28)) <u>0.32</u>	((0.34)) <u>0.36</u>

(b) Example 2. Standard vessel registration renewal.

Facts: Deborah Peters purchased a 28-foot sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washing-

ton waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

Result: Deborah will use the column titled "Vessels less than 30 feet" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to 61 percent of Deborah's initial purchase price of \$40,000, or \$24,400. Deborah is subject to watercraft excise tax in the amount of \$122 ($\$24,400$ (fair market value) \times .005 (watercraft excise tax rate)).

(7) **Vessel appraisal.**

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within 30 days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and independent appraisals in order to ascertain the fair market value of a vessel.

(8) **Disputes related to a vessel's appraised value or taxability.**

(a) Any vessel owner who disputes a vessel's appraised value under RCW 82.49.050, or taxable status, may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

(9) **Administration.**

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to receive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, and 82.49.040. WSR 22-24-056, § 458-20-23801, filed 12/1/22, effective 1/1/23; WSR 21-22-009, § 458-20-23801, filed 10/21/21, effective 1/1/22.]

WSR 23-16-145

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 2, 2023, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-082.

Title of Rule and Other Identifying Information: WAC 182-513-1625 Tailored supports for older adults (TSOA)—Applications, 182-513-1635 Tailored supports for older adults (TSOA)—Income eligibility, and 182-513-1640 Tailored supports for older adults (TSOA)—Resource eligibility.

Hearing Location(s): On September 5, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_04stu61aT4G3VvAU34ihaA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 6, 2023.

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 September 5, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email johanna.larson@hca.wa.gov, by August 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to update application information and to revise the income and resource limits.

Reasons Supporting Proposal: These revisions provide current application information and allow more people to participate in the TSOA program.

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: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-0757.

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).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 2, 2023
Wendy Barcus

OTS-4345.3

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

WAC 182-513-1625 Tailored supports for older adults (TSOA)—Applications. (1) Applications for tailored supports for older adults (TSOA) are submitted:

(a) Online at Washington Connection at www.washingtonconnection.org;

(b) By sending a completed HCA ((~~18-008~~) 18-005) application for TSOA form to P.O. Box 45826, Olympia, WA 98605;

(c) By faxing a completed HCA ((~~18-008~~) 18-005) application for TSOA form to 1-855-635-8305;

(d) By contacting the local area agency on aging (AAA) office at 1-855-567-0252; or

(e) By contacting the local home and community services (HCS) office. To find the local HCS office, see ((~~www.altsa.dshs.wa.gov/Resources/clickmap.htm~~)) <https://www.dshs.wa.gov/ALISA/resources>.

(2) Help filing an application:

(a) The medicaid agency or the agency's designee provides help with the application or renewal process in a manner that is accessible to people with disabilities, limitations, or other impairments as described in WAC 182-503-0120 and to those who are limited-English proficient as described in WAC 182-503-0110;

(b) For help filing an application, a person may:

(i) Contact a local AAA office;

(ii) Contact a local HCS office; or

(iii) Have an authorized representative apply on the person's behalf.

(3) The following people can apply for the TSOA program:

(a) The applicant (the person receiving care);

(b) The applicant's spouse;

(c) The applicant's caregiver (person providing in-home caregiver services);

(d) A legal guardian; or

(e) An authorized representative, as defined in WAC 182-500-0010.

(4) A phone interview is required to establish TSOA financial eligibility, but may be waived if the applicant is unable to comply:

(a) Due to the applicant's medical condition; and

(b) Because the applicant does not have another person that is able to conduct the interview on the applicant's behalf.

(5) The agency or the agency's designee processes TSOA applications using the same timelines under WAC 182-503-0060.

(6) TSOA begins on the date the person is determined presumptively eligible for TSOA under WAC 182-513-1620, or on the date all eligibility requirements are established if the person is not found presumptively eligible.

(7) When the person withdraws an application for TSOA, or is determined ineligible for TSOA services, the agency or the agency's designee denies the application under WAC 182-503-0080.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1625, filed 5/30/17, effective 7/1/17.]

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

WAC 182-513-1635 Tailored supports for older adults (TSOA)—Income eligibility. (1) To determine income eligibility for the tailored supports for older adults (TSOA) program, the medicaid agency or the agency's designee uses the following rules depending on whether the person is single or married.

(2) If the TSOA applicant is single, the agency or the agency's designee:

(a) Determines available income under WAC 182-513-1325;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares remaining gross nonexcluded income to ~~((the special income level (SIL)))~~ 400 percent of the federal benefit rate (FBR) for the supplemental security income (SSI) cash grant program. To be eligible, a person's gross income must be equal to or less than ~~((the SIL (three hundred percent)))~~ 400 percent of the ~~((federal benefit rate (FBR)))~~ FBR.

(3) If the TSOA applicant is married, the agency or the agency's designee:

(a) Determines available income under WAC 182-513-1330 with the exception of subsections (5) and (6) of that section;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares the applicant's remaining gross nonexcluded income to ~~((the SIL))~~ 400 percent of the FBR. To be eligible, a person's gross income must be equal to or less than ~~((the SIL (three hundred percent of the FBR)))~~ 400 percent of the FBR.

(4) The FBR changes annually on January 1st.

(5) The current TSOA income standard is found on the Washington apple health income and resource standards chart, institutional standards section; see www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1635, filed 5/30/17, effective 7/1/17.]

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

WAC 182-513-1640 Tailored supports for older adults (TSOA)—Resource eligibility. (1) The resource standard for a single applicant for tailored supports for older adults (TSOA) is ~~((\$53,100))~~ six times the Washington state average monthly private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW.

(2) The resource standard for a married couple is ~~((\$53,100))~~ six times the Washington state average monthly private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW, for the TSOA applicant plus the state spousal resource standard for the spousal impoverishment protections community (SIPC) spouse. The state spousal resource standard may change annually on July 1st. ~~((The resource standards are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.)~~

(3) The medicaid agency or the agency's designee uses rules in WAC 182-513-1350 (1), (3) and (4) to determine general eligibility relating to resources, availability of resources, and which resources count.

(4) The TSOA recipient has one year from the date of initial eligibility of TSOA to transfer resources in excess of the TSOA standard to the SIPC spouse.

(5) The resource standard for TSOA changes annually on January 1st based on the current average private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW.

(6) The current TSOA standards and the current average private nursing facility rate are found on the Washington apple health income and resource standards chart, institutional standards section; see www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1640, filed 5/30/17, effective 7/1/17.]

WSR 23-16-146
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed August 2, 2023, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-115.

Title of Rule and Other Identifying Information: Washington state liquor and cannabis board (LCB) proposes amendments to existing rules to implement ESHB 1731 (chapter 257, Laws of 2023): Amending WAC 314-24-180 Wine distributors, wine importers—Certain rights granted and 314-24-190 Wine suppliers and distributors.

Hearing Location(s): On September 13, 2023, at 10:00 a.m. All public board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also log in using a computer or device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: No earlier than September 27, 2023.

Submit Written Comments to: Daniel Jacobs, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by September 5, 2023.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by September 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed amended rules are to implement ESHB 1731 (chapter 257, Laws of 2023) passed during the 2023 legislative session. This law allows short term rental operators to obtain permits to allow them to provide a complimentary bottle of wine to rental guests over the age of 21. The new law, enacted in RCW 66.20.010(18), allows short term rental operators to obtain a permit to provide complimentary bottles of wine to rental guests who they verify are 21 years of age or older by way of in-person validation of identification, so long as they provide advanced notice to the rental guests that the complimentary wine will be provided, and an opportunity for the rental guests to decline the bottle of wine. The new law also amends RCW 66.24.200 to allow wine distributors to provide wine to short term rental operators obtaining wine pursuant to this permit.

The proposed changes to WAC 314-24-180 and 314-24-190 reflect that wine distributors are now allowed to sell wine directly to holders of the short term rental permit.

Reasons Supporting Proposal: Amendments to current rule sections are needed to implement ESHB 1731, align agency rules with the law, and inform licensees about the option for short term rental operators to obtain wine directly from wine distributors for use under the newly-created permit.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.20.010(18), 66.24.200.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5)(a)(ii). In this case, since the proposed amended rules implement a legislatively mandated permit, the agency did not decide to complete a cost-benefit analysis.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.025(3) through the exemptions in RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: The proposed amended rules are exempt from the Regulatory Fairness Act's (RFA) small business economic impact statement (SBEIS) requirement under RCW 34.05.310 (4)(c) and (e) for the following reasons identified below:

The amendment to WAC 314-24-180 reflects the new language in section 2, chapter 257, Laws of 2023, which amends RCW 66.24.200 to allow wine distributors to sell wine to holders of annual special permits issued under RCW 66.20.010(18), which is the new section of RCW 66.20.010 added by ESHB 1731. The amendment to WAC 314-24-180 is limited to stating that wine distributors may participate in the activity newly permitted by statute. As such, this amended proposed rule is incorporating the new language of section 2, chapter 257, Laws of 2023, meeting the requirement of RCW 34.05.310 (4)(c). The new language of RCW 66.24.200 now permits wine distributors to sell directly to holders of the annual special permit, and if the language of WAC 314-24-180 were left unchanged, the agency rules would no longer align with the statutory language. Therefore, the proposed amendment to WAC

314-24-180 is dictated by statute, meeting the requirement of RCW 34.05.310 (4) (e), and thus exempt from the RFA's SBEIS requirement.

The amendment to WAC 314-24-190 reflects the new language in section 2, chapter 257, Laws of 2023, which amends RCW 66.24.200 to allow wine distributors to sell wine to holders of annual special permits issued under RCW 66.20.010(18), which is the new section of RCW 66.20.010 added by ESHB 1731. The amendment to WAC 314-24-190 amends the definition of "wine distributor" to include the activity newly permitted by statute. As such, this amended proposed rule is incorporating the new language of section 2, chapter 257, Laws of 2023, meeting the requirement of RCW 34.05.310 (4) (c). The new language of RCW 66.24.200 now permits wine distributors to sell directly to holders of the annual special permit, and if the language of WAC 314-24-190 were left unchanged, the agency rules would no longer align with the statutory language. Therefore, the proposed amendment to WAC 314-24-190 is dictated by statute, meeting the requirement of RCW 34.05.310 (4) (e), and thus exempt from the RFA's SBEIS requirement.

Scope of exemption for rule proposal:

Is fully exempt.

August 2, 2023
David Postman
Chair

OTS-4828.1

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-24-180 Wine distributors, wine importers—Certain rights granted. (1) Wine distributors may sell to retailers, export wine from the state, and purchase wine from or sell wine to another wine distributor.

(2) Wine distributors must sell and deliver product from their licensed premises.

(3) Wine importers may sell to the board, export wine from the state, or sell to wine distributors, but may not sell to another wine importer or to retailers.

(4) Wine distributors may sell to holders of annual special permits for short-term rental operators under RCW 66.20.010.

[Statutory Authority: RCW 66.08.030 and 66.08.050. WSR 12-17-006, § 314-24-180, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. WSR 98-18-097, § 314-24-180, filed 9/2/98, effective 10/3/98; Order 5, § 314-24-180, filed 8/7/69, effective 9/8/69; Rule 78, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-24-190 Wine suppliers and distributors. (1) Definitions

- For the purposes of this chapter:

(a) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(b) A "wine distributor" means a distributor selling to a retailer or a holder of an annual special permit for short-term rental owners under RCW 66.20.010, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** - All products must be made available to all retail licensees to the extent it is reasonably practical to do so.

(3) **Distributor changes:**

(a) The following guidelines apply when a wine supplier makes a distributor change. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Accommodation sales** - The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-24-190, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030 and 66.08.050. WSR 12-17-006, § 314-24-190, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030 and 66.28.320. WSR 10-01-090, § 314-24-190, filed 12/16/09, effective 1/16/10. Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206, 66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. WSR 07-02-076, § 314-24-190, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW 66.08.030, 66.28.180, and 2004 c 160. WSR 04-19-155, § 314-24-190, filed 9/22/04, effective 10/23/04. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. WSR 98-18-097, § 314-24-190, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. WSR 87-15-111 (Order 222, Resolution No. 231), § 314-24-190, filed 7/22/87. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. WSR 86-16-060 (Order 173, Resolution No. 182), § 314-24-190, filed 8/5/86. Statutory Authority: RCW 66.08.030. WSR 82-16-069 (Order 91,

Resolution No. 100), § 314-24-190, filed 8/2/82. Statutory Authority: RCW 66.08.030 and 66.98.070. WSR 81-22-026 (Order 85, Resolution No. 94), § 314-24-190, filed 10/28/81. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. WSR 78-02-056 (Order 62), § 314-24-190, filed 1/20/78, effective 7/1/78; Order 54, § 314-24-190, filed 5/24/77, effective 7/1/77; Order 51, § 314-24-190, filed 12/15/76; Order 26, § 314-24-190, filed 8/14/73; Order 18, § 314-24-190, filed 1/13/72, effective 2/14/72; Order 15, § 314-24-190, filed 5/13/71, effective 7/1/71; Order 5, § 314-24-190, filed 8/7/69, effective 9/8/69; Rule 81, filed 6/13/63.]

WSR 23-16-147

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 2, 2023, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-005.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for respiratory care practitioners under chapter 246-928 WAC, Respiratory care practitioners.

The department of health (department) proposes amending WAC 246-928-442 and creating new WAC 246-928-445 to establish health equity CE requirements and implement ESSB 5229 (chapter 276, Laws of 2021). Additionally, the department proposes making additional amendments to update and clarify WAC 246-928-442.

Hearing Location(s): On September 13, 2023, at 12:30 p.m. The public hearing will be virtual, without a physical meeting space. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_IKWoAdhRS-2R_1ETAHvsCw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: September 20, 2023.

Submit Written Comments to: Kathy Weed, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, kathy.weed@doh.wa.gov, by September 13, 2023.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, TTY 711, email kathy.weed@doh.wa.gov, by August 31, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the department must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The department is proposing to amend WAC 246-928-442 and create new WAC 246-928-445 to implement ESSB 5229. The department is proposing to adopt the health equity model rules, WAC 246-12-800 through 246-12-830, for respiratory care therapists to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every two years. The proposed rule does not change total CE hours but requires two hours in health equity CE every two years, which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Additionally, the department is proposing amendments to clarify and streamline WAC 246-928-442. Updating language and creating clearly labeled subsections will create clear, understandable regulations for providers.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 18.89.050, 18.89.140.

Statute Being Implemented: ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

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 Kathy Weed, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, TTY 711, email kathy.weed@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules regulate professional licenses and do not affect businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 2, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-4756.1

AMENDATORY SECTION (Amending WSR 22-11-013, filed 5/9/22, effective 7/1/22)

WAC 246-928-442 Continuing education. To renew a respiratory care practitioner license, the licensee shall acquire 30 credit hours of ~~((continuing))~~ respiratory care continuing education every two

years as required in RCW 18.89.140. Licensees shall meet the continuing education requirements outlined in this section and report ~~((such))~~ completed continuing education as required in WAC 246-12-170 through 246-12-240.

(1) The following are categories of ~~((accepted))~~ required continuing education activities for licensed respiratory care practitioners:

(a) A minimum of 10 credit hours of continuing education during each two-year reporting cycle must be earned in courses approved by the American Association for Respiratory Care (AARC).

(b) Beginning January 1, 2024, a respiratory care practitioner must complete two hours of health equity training each reporting cycle, as specified in WAC 246-928-445.

(c) The remaining ((20)) 18 hours of continuing education during each two-year reporting cycle may be in any of the following areas:

(i) Sponsored courses. Continuing education courses sponsored or approved by entities listed in subsection (2) of this section;

(ii) Certifications and examinations. Completing professional certifications or examinations listed in subsection (3) of this section;

(iii) Education and instruction. Completing or instructing coursework as described in subsection (4) of this section; and

(iv) Related studies. Completing up to 10 hours per reporting cycle of activities listed in subsection (5) of this section.

(2) Sponsored courses. ((Courses)) Eligible courses are sponsored or approved by the:

~~((A))~~ (a) American Academy of Pediatrics;

~~((B))~~ (b) American Academy of Physician Assistants;

~~((C))~~ (c) American Association of Critical Care Nurses;

~~((D))~~ (d) American Association ~~((of))~~ for Respiratory Care;

~~((E))~~ (e) American College of Chest Physicians;

~~((F))~~ (f) American College of Emergency Physicians;

~~((G))~~ (g) American College of Physicians;

~~((H))~~ (h) American Medical Association;

~~((I))~~ (i) American Nurses Association;

~~((J))~~ (j) American Osteopathic Association;

~~((K))~~ (k) American Thoracic Society;

~~((L))~~ (l) Society of Critical Care Medicine;

~~((M))~~ (m) Washington academy of physician assistants;

~~((N))~~ (n) Washington osteopathic medicine association;

~~((O))~~ (o) Washington state medical association;

~~((P))~~ (p) Washington state nurses association;

~~((Q))~~ (q) Extracorporeal life support organization; or

~~((R))~~ (r) American Society of Extracorporeal Technology.

~~((ii))~~ (3) Certifications ~~((and))~~ and examinations. The following certifications and examinations are valid for continuing education credit ~~((-))~~:

~~((A))~~ (a) Ten credit hours each may be claimed for the following initial or renewal certifications:

~~((I))~~ (i) Advanced cardiac life support (also known as ACLS);

~~((II))~~ (ii) Neonatal advanced life support (also known as NALS, or neonatal resuscitation program or NRP); and

~~((III))~~ (iii) Pediatric advanced life support (also known as PALS).

~~((B))~~ (b) Five credit hours may be claimed for initial or renewal certification in basic life support (also known as BLS).

~~((C))~~ (c) Ten credit hours each may be claimed for passing either of the following National Board of Respiratory Care (NBRC) advanced practitioner examinations:

~~((I))~~ (i) The NBRC therapist multiple-choice examination combined with the clinical simulation examination that awards NBRC registration; or

~~((II))~~ (ii) Registered pulmonary function technologist.

~~((D))~~ (d) Five credit hours each may be claimed for passing any of the following:

~~((I))~~ (i) The NBRC therapist multiple-choice examination that awards NBRC certification;

~~((II))~~ (ii) Any NBRC specialty examination;

~~((III))~~ (iii) The NBRC self-assessment competency examination with a minimum score of 75; or

~~((IV))~~ (iv) National Asthma Educator Certification Board certified asthma educator examination.

~~((iii) Educational settings.~~

~~((A) A licensee may claim))~~ (4) Education and instruction. A licensee may claim continuing education credit for:

(a) Courses completed at a regionally accredited college, university, or institute of higher education. Such courses must focus on the clinical practice of respiratory care or education related to the cardiopulmonary system. Credit hours for such courses may be claimed as either:

~~((I))~~ (i) Actual semester contact hours (such as 15 semester contact hours shall be equal to 15 continuing education credits); or

~~((II))~~ (ii) An academic credit formula that multiplies the academic credits by a factor of three (such as four academic credits shall be equal to 12 continuing education credits).

~~((B) A licensee may claim))~~ (b) Respiratory care educational offerings provided by hospitals or health organizations.

~~((C) A licensee may claim continuing education credit hours for))~~ (c) Serving as an instructor of educational offerings in respiratory care provided by hospitals or health organizations; or at a regionally accredited college, university, or institute of higher education. Such educational offerings must include learning objectives. The number of credit hours claimed for serving as an instructor shall be the same number as those earned by attendees. The credit hours for presenting a specific topic, lecture, or education course may only be used for continuing education once during each reporting cycle.

~~((e) No more than))~~ (5) Related studies. Up to 10 credit hours of continuing education during a two-year reporting cycle may be in any of the following areas:

~~((i))~~ (a) Self-study. Journal reading of publications related to respiratory care;

~~((ii))~~ (b) Practice related topics. Formal, internet-based, or video-format courses offered by organizations not listed in (b) of this subsection including, but not limited to, the American Association of Cardiovascular and Pulmonary Rehabilitation, the Association for the Treatment of Tobacco Use and Dependence, or the Council for Tobacco Treatment Training Programs; or

~~((iii))~~ (c) Nonclinical practice topics. Courses or activities including, but not limited to, health promotion, health care cost management, mandatory reporting, professional ethics, and regulatory affairs.

~~((2))~~ (6) Documentation requirements. A licensee is responsible for acquiring and maintaining all acceptable documentation of their

continuing education activities, as required in WAC 246-12-170 through 246-12-240. Acceptable documentation must include transcripts, letters from course instructors, or certificates of completion or other formal certifications provided by hospitals, course instructors, and health organizations. In all cases other than transcripts, the documentation must show the participant's name, activity title, number of continuing education credit hours, date(s) of activity, instructor's name(s) and degree and the signature of the verifying individual program sponsor.

[Statutory Authority: RCW 18.89.050 and 2021 c 114. WSR 22-11-013, § 246-928-442, filed 5/9/22, effective 7/1/22. Statutory Authority: RCW 18.89.050 and 19.89.140 [18.89.140]. WSR 15-24-095, § 246-928-442, filed 11/30/15, effective 12/31/15. Statutory Authority: RCW 18.89.050(1) and 18.89.140. WSR 01-21-136, § 246-928-442, filed 10/24/01, effective 11/24/01.]

NEW SECTION

WAC 246-928-445 Health equity training standards. (1) Beginning on January 1, 2024, a respiratory care practitioner must complete training in health equity as a part of their continuing education requirements. The respiratory care practitioner must complete at least two hours of health equity training every two-year renewal cycle. The training must meet the minimum standards under RCW 43.70.613 and comply with course requirements in WAC 246-12-800 through 246-12-830.

(2) Health equity continuing education counts toward the 30 total hours of continuing education required under WAC 246-928-442.

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WSR 23-16-154
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 2, 2023, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-087.

Title of Rule and Other Identifying Information: Chapter 296-21 WAC, Reimbursement policies: Psychiatric services, biofeedback, physical medicine; WAC 296-21-270 Mental health services.

Hearing Location(s): On September 7, 2023, at 9:00 a.m., Zoom meeting <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/9361655337>. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 31, 2023.

Submit Written Comments to: Suzy Campbell, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by 5:00 p.m. on September 7, 2023.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email cristina.gaffoglio@lni.wa.gov, by August 31, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I rules don't currently allow master's level therapists (MLTs) to treat injured workers. This rule making proposes to allow for this new provider type. L&I initiated a pilot on January 1, 2020, to determine how MLTs can best be incorporated into the workers' compensation setting and learned adding this provider type significantly expanded worker access to care.

Reasons Supporting Proposal: The pilot has shown increased worker access to mental health services, both in rural and urban areas. Providers are generally satisfied with the pilot, demonstrated by pilot participant surveys used to gauge program quality. L&I anticipates adding MLTs to its list of providers will further the goal of expanding access to care for injured workers.

Statutory Authority for Adoption: RCW 34.05.313, 51.04.020, and 51.04.030.

Statute Being Implemented: RCW 51.04.030.

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: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Kim Wallace, Tumwater, Washington, 360-867-8753; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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 Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@lni.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendment adds three additional provider types to the list of providers eligible to deliver certain mental health services. All permitted mental health services are within the scope of practice for the three new provider types. The proposed rule does not change the mental health services that can be provided to injured workers, nor the injured workers eligible for mental health treatment, nor the types of mental health conditions for which treatment can be provided. As the proposed rule only allows for the additional provider types to provide and bill for services already provided by psychiatrists, doctoral level psychologists, and psychiatric advanced registered nurse practitioners, it is not expected to increase costs for providing these services. Under L&I policy, the additional three provider types cannot diagnose or comment on causality or ability to work.

August 2, 2023
Joel Sacks
Director

OTS-4609.1

AMENDATORY SECTION (Amending WSR 15-19-139, filed 9/22/15, effective 10/23/15)

WAC 296-21-270 Mental health services. (1) The following rule supplements information contained in the fee schedules regarding coverage and reimbursement for mental health services.

(2) Treatment of mental conditions to workers is to be goal directed, time limited, intensive, targeted on specific symptoms and functional status and limited to conditions caused or aggravated by the industrial condition. Specific functional goals of treatment must be identified and treatment must have an emphasis on functional, measurable improvement towards the specific goals.

(3) Mental health services to workers are limited to those provided by psychiatrists, doctoral level psychologists ((and)), psychiatric advanced registered nurse practitioners, licensed independent clinical social workers, licensed marriage and family therapists, licensed mental health counselors, and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "mental health services" refers to treatment by psychologists, psychiatric advanced registered nurse practitioners, ((and)) psychiatrists, licensed independent clinical social workers, licensed marriage and family therapists, and licensed mental health counselors.

(4) Initial evaluation, and subsequent treatment must be authorized by department staff or the self-insurer, as outlined by department policy. The report of initial evaluation, including test results, and treatment plan is to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of the ((sixty))

60-day narrative reports are to be sent to the department or self-insurer and to the attending provider.

(5) (a) All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required: Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. Explanation of the numerical scales is required.

(b) Providers must use the edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association designated by the department in the initial evaluation, follow-up evaluations and (~~sixty~~) 60-day narrative reports.

(c) A report to the department or self-insurer will contain, at least, the following elements:

(i) Subjective complaints;

(ii) Objective observations;

(iii) Identification and measurement of target symptoms and functional status;

(iv) Assessment of the worker's condition and goals accomplished in relation to the target symptoms and functional status; and

(v) Plan of care.

(6) The codes, reimbursement levels, and other policies for mental health services are listed in the fee schedules.

(7) When providing mental health services, providers must track and document the worker's functional status using validated instruments such as the World Health Organization Disability Assessment Schedule (WHODAS) or other substantially equivalent validated instruments recommended by the department. A copy of the completed functional assessment instrument must be sent to the attending provider and the department or self-insurer, as required by department policy or treatment guideline.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-21-270, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 51.04.020, 51.04.030. WSR 09-14-104, § 296-21-270, filed 6/30/09, effective 7/31/09. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 93-16-072, § 296-21-270, filed 8/1/93, effective 9/1/93.]