

WSR 24-23-002
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed November 6, 2024, 12:21 p.m., effective December 7, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to update Title 314 WAC to replace gender-specific language with gender-neutral language. This rule making was initiated in response to a petition for rule making previously accepted by the liquor and cannabis board requesting these changes. The changes aim to promote a regulatory framework that is inclusive, equitable, clear, and accessible. Additionally, written numbers were replaced with the numerical value. These changes are technical in nature and are not intended to alter the meaning or substance of the rules.

Citation of Rules Affected by this Order: Amending WAC 314-02-030, 314-02-038, 314-02-0415, 314-02-108, 314-03-020, 314-03-030, 314-03-035, 314-03-040, 314-09-005, 314-10-110, 314-11-020, 314-11-030, 314-11-040, 314-11-105, 314-12-040, 314-12-210, 314-12-215, 314-16-110, 314-16-150, 314-17-020, 314-17-040, 314-17-045, 314-17-065, 314-18-030, 314-18-040, 314-20-100, 314-21-025, 314-24-115, 314-24-190, 314-25-040, 314-28-100, 314-29-007, 314-29-040, 314-34-020, 314-35-060, 314-42-120, 314-44-005, 314-60-080, and 314-60-085.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 24-19-026 on September 9, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 39, Repealed 0.

Date Adopted: November 6, 2024.

David Postman
Chair

OTS-5797.1

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

WAC 314-02-030 Can a spirits, beer, and wine restaurant exclude persons under (~~twenty-one~~) 21 years of age from the premises? A spirits, beer, and wine restaurant licensee may exclude minors from the entire premises at all times as approved by the board.

(1) To exclude minors from the entire licensed premises at all times the applicant or licensee must:

(a) Indicate during the liquor license application process that (~~(he/she does)~~) they do not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine restaurant that allows minors, the applicant may request permission from the board's licensing and regulation division to exclude minors at all times or for a specific event. See WAC 314-02-130 for instructions on requesting this approval.

(c) Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times or at certain times must meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035.

(d) During the times that a spirits, beer, and wine restaurant licensee excludes minors from the entire premises, the licensee may not employ minors. (See RCW 66.44.316 for more information on employing minors.)

(2) Restaurants that have less than (~~(fifteen)~~) 15 percent of their total customer service area dedicated to dining must exclude minors from the entire premises. The licensee:

(a) Must pay the largest annual license fee (less than (~~(fifty)~~) 50 percent dedicated dining);

(b) Must meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035; and

(c) May not employ minors at any time. (See RCW 66.44.316 for information on employing certain persons (~~(eighteen)~~) 18 years and over under specific conditions.)

(3) See WAC 314-11-060(1) regarding requirements for "minors prohibited" signage.

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

WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under (~~(twenty-one)~~) 21 years of age from the premises? A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

(1) To exclude minors from the entire licensed premises at all times, the applicant must:

(a) Indicate during the liquor license application process that (~~(he/she does)~~) they do not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.

(2) Spirits, beer, and wine nightclub licensees who exclude minors from the premises may not employ minors. (See RCW 66.44.310 for more information on employing minors.)

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-0415 What are the requirements for instructing employees on spirits, beer, or wine? (1) Per RCW 66.24.590, a licensee or its manager may furnish spirits, beer, or wine to the licensee's employees who are (~~twenty-one~~) 21 years of age or older, free of charge, as a necessary part of instruction and training on spirits, beer, and wine.

(2) The licensee must use spirits, beer, and wine (~~he or she obtains~~) they obtain under the license for purposes of instruction.

(3) The instruction must be given at the hotel premises.

AMENDATORY SECTION (Amending WSR 14-15-075, filed 7/16/14, effective 8/16/14)

WAC 314-02-108 Responsible vendor program. (1) **What is the purpose of this chapter?** The purpose of this section is to establish standards and procedures for a responsible vendor program for spirits retail and beer and wine retail licensees selling alcohol for off-premises consumption.

(2) **What is the responsible vendor program for spirits retail licensees?** This program is free, voluntary, and self-monitoring. Spirits retail licensees who hold a responsible vendor certificate and maintain all requirements are eligible for reduced sanctions on their first single violation within any period of (~~twelve~~) 12 calendar months.

(3) **How does a spirits retail licensee become a responsible vendor?** Any spirits retail licensee who meets the program standards may participate. To apply for a responsible vendor certificate, the licensee must have no public safety violations within the last two years and must complete and submit a board-provided application form. Board staff will review the application for completeness, and will:

(a) Certify the completed application clearly indicates the licensee has all program standards in place and send a certificate to the licensee; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will notify the licensee of the reason(s) the application is being returned.

(4) **To qualify as a responsible vendor, a spirits retail licensee must:**

(a) Post their responsible vendor program certificate for public viewing at the main entrance of the premises;

(b) Train each employee supervising or selling alcohol in responsible liquor sales. Licensees may require employees to obtain a mandatory alcohol server training permit from a board certified provider or train employees themselves using the training criteria specified in subsection (5) of this section; and

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(i) A list of acceptable forms of identification which are accepted at the premises;

(ii) Directions for checking identification for customers; and

(iii) The consequences for selling spirits to a minor or apparently intoxicated person.

(d) In an area visible to patrons, post signs to deter illegal purchases of alcohol. Examples of information include, it is illegal to purchase alcohol under (~~twenty-one~~) 21 years of age or while apparently intoxicated. Other information may include acceptable forms of identification at the premises;

(e) Have an on-going training plan for employees, to include annual training at a minimum. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, training must cover the topics listed in subsection (5) of this section; and

(f) Retain employee training records and signed house policies for three years and must be able to present employee training records upon request.

(5) **What are the program standards, program content, and other requirements for the responsible vendor program?** All training must include, at a minimum, the following:

(a) Guidelines for recognizing minors and apparently intoxicated persons;

(b) Forms of identification for purchasing alcohol;

(c) How to check identification and how to recognize false or altered identification;

(d) A requirement to check identification in accordance with house policies;

(e) Recommended actions for refusing sales of alcohol to minors or apparently intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or apparently intoxicated persons;

(g) A review of house policies on alcohol sales. Each licensee must ensure that (~~his/her~~) their employees receive training that covers the licensee's own house policies; and

(h) The standards and requirements for the mandatory alcohol server training stipulated in WAC 314-17-060 are deemed sufficient for employee's initial training for the responsible vendor training.

(6) **What are the sanctions when a licensee violates liquor laws or regulations?** For violations, as outlined in WAC 314-29-020 through 314-29-040, involving the sales of spirits, the prescribed penalty is doubled. If a licensee has a certified responsible vendor program having all program standards in place, the board will impose the standard penalty detailed in WAC 314-29-020 through 314-29-040 for that violation. Any subsequent violation involving spirits within any period of (~~twelve~~) 12 calendar months will be double the standard penalties. Regardless of the type of alcohol sold; beer, wine, or spirits, WAC 314-29-020 through 314-29-040 are applicable.

OTS-5798.1

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

WAC 314-03-020 Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops. A grocery store or beer and wine specialty shop licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes payment for the sale; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in ~~((his or her))~~ their application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of ~~((six))~~ 6:00 a.m. and ~~((two))~~ 2:00 a.m. Delivery must be fully completed by ~~((two))~~ 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under ~~((twenty-one))~~ 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person ~~((twenty-one))~~ 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory-sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in (~~one hundred~~) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be (~~twenty one~~) 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

WAC 314-03-030 Consumer orders, internet sales, and delivery for spirits retail licensees. A spirit retail licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed retail location.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits retail licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits retail licensee, except for transmittal of payment through a third-party service. The use of internet or mo-

bile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

- (i) The sale must be made by the licensee;
- (ii) The licensee processes the payment for the sale; and
- (iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell spirits via the internet, a new spirits retail license applicant must request internet-sales privileges in (~~his or her~~) their application. An existing spirits retail licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits retail licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under (~~twenty-one~~) 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person (~~twenty-one~~) 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in (~~one hundred~~) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

- (i) The package contains liquor;
- (ii) The recipient must be (~~twenty-one~~) 21 years of age or older; and
- (iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

- (i) Name of the purchaser;
- (ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display the spirits retail licensee's registered trade name.

(12) **Accountability.** A spirits retail licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

AMENDATORY SECTION (Amending WSR 24-04-042, filed 1/31/24, effective 3/2/24)

WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. An on-premises beer and/or wine licensee may accept orders for beer or wine from, and deliver beer or wine to, customers, if the licensee obtains a delivery endorsement under RCW 66.24.710.

(1) **Resale.** Beer and wine shall not be for resale.

(2) **Stock location.** Beer and wine must come directly from a licensed on-premises retail location.

(3) **How to place an order.** Beer and wine may be ordered in person at a licensed location, by mail, telephone, internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state is allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell beer and wine via the internet, a new licensee applicant must request internet-sales privileges in (~~his or her~~) their application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all li-

censee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States Postal Service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Beer and wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under 21 years of age is prohibited from purchasing, delivering, or accepting delivery of beer and wine.

(b) A delivery person must verify the age of the person accepting delivery before handing over beer and wine.

(c) If no person 21 years of age or older is present to accept a beer and wine order at the time of delivery, the beer and wine shall be returned to the licensee.

(8) **Intoxication.** Delivery of beer and wine is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of beer and wine must be factory sealed in bottles, cans, or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a beer and wine package must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) An employee delivering beer or wine must obtain the signature of the person who receives beer and wine upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of beer and wine must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of beer and wine made by employees.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses. A beer and/or wine gift delivery licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in (~~his or her~~) their application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under (~~twenty-one~~) 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person (~~twenty-one~~) 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) Containers and packaging.

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. For the purposes of this subsection, "factory sealed" means that a unit is in (~~one hundred~~) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be (~~twenty-one~~) 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) Required information.

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

OTS-5799.1

AMENDATORY SECTION (Amending WSR 01-03-087, filed 1/17/01, effective 2/17/01)

WAC 314-09-005 What is the purpose of chapter 314-09 WAC? The purpose of chapter 314-09 WAC is to outline:

(1) The process for persons, entities, and governmental jurisdictions to object to the issuance or renewal of a liquor license or permit; and

(2) An applicant or licensee's options when (~~his/her~~) their liquor license or permit is denied or action is taken to not renew (~~his/her~~) their liquor license or permit.

OTS-5854.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-10-110 Penalties, suspension notices, posting or advertising of—Other closing notices prohibited. (1) The liquor and cannabis board may suspend or revoke a retailer's or sampler's license for violation of the board's administrative rules governing tobacco. Further, the board may impose a monetary penalty in lieu of license suspension for violation of said rules not covered by statute.

(2) Licensees are required to maintain compliance with all tobacco laws and regulations during any period of suspension. Whenever the board shall suspend the license of any licensee, the board shall on the date the suspension becomes effective cause to be posted in a conspicuous place on or about the licensed premises a notice in a form to be prescribed by the board, stating that the license or licenses have been suspended by order of board because of violation of the Washington state laws or the regulations.

(3) During the period of suspension:

(a) No person shall remove, alter, cover, or in any way disturb the posted notice(s) of suspension;

(b) No person shall place, permit or allow to be placed in, at, or upon the licensed premises, any notice or statement of reasons or purpose indicating that the premises have been closed or that sale of tobacco products has been discontinued for any reason other than as stated in the notice of suspension; Provided Further, That the prohibition of this subsection shall apply to any nearby or adjacent property, such as a parking lot area that is owned by or under the control of the licensee.

(c) Neither the licensee nor (~~his/her or its~~) their employees shall advertise, either by newspaper, radio, television, handbill, brochure, flyer or by any means whatever, that the licensed premises are closed or discontinuing the sale of tobacco products for any reason(s) other than those stated in the board's suspension notices.

(4) A tobacco licensee may operate the business during the period of suspension provided there is no sale or distribution of tobacco products.

OTS-5800.1

AMENDATORY SECTION (Amending WSR 04-15-162, filed 7/21/04, effective 8/21/04)

WAC 314-11-020 What are the guidelines regarding sales to persons under (~~twenty-one~~) 21 years of age and where persons under (~~twenty-one~~) 21 are allowed on a licensed premises? (1) Per RCW 66.44.270, licensees or employees may not supply liquor to any person under (~~twenty-one~~) 21 years of age, either for (~~his/her~~) their own use or for the use of any other person.

(2) Per RCW 66.44.310, licensees or employees may not allow persons under (~~twenty-one~~) 21 years of age to remain in any premises or area of a premises classified as off-limits to persons under (~~twenty-~~

one)) 21. (See RCW 66.44.310 (1)(b) regarding nonprofit, private club licensees.)

(3) Per RCW 66.20.180, at the request of any law enforcement officer, a holder of a card of identification must present ~~((his/her))~~ their card of identification if the person is on a portion of a premises that is restricted to persons over ~~((twenty-one))~~ 21 years of age, or if the person is purchasing liquor, attempting to purchase liquor, consuming liquor, or in the possession of liquor. If the person fails or refuses to present a card of identification it may be considered a violation of Title 66 RCW and:

(a) The person may not remain on the licensed premises after being asked to leave by a law enforcement officer; and

(b) The person may be detained by a law enforcement officer for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth.

AMENDATORY SECTION (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

WAC 314-11-030 What if a person's identification meets the legal requirements but I still have doubts about ~~((his or her))~~ their age?

(1) Per RCW 66.20.190 and 66.20.210, if a patron presents proper identification as outlined in WAC 314-11-025 but the licensee or employee still has doubts about the patron's age, the licensee or employee may require the patron to sign a certification card. Certification cards are provided by the board's enforcement and education division.

(2) The certification card must be completely filled out and filed alphabetically by the licensee or employee by the close of business on the day used. Certification cards are subject to examination by any law enforcement officer.

~~((RCW 01-06-014, § 314-11-030, filed 2/26/01, effective 3/29/01.]))~~

AMENDATORY SECTION (Amending WSR 24-04-042, filed 1/31/24, effective 3/2/24)

WAC 314-11-040 Permissible duties of an employee under 21 years of age on a licensed premises. A person must be 21 years of age or older to be employed in the sale, handling, or service of liquor, except as provided in this chapter.

(1) Per RCW 66.44.340 and RCW 66.44.350, persons between 18 and 21 years of age may perform the following duties:

	Duties 18, 19, and 20 year old employees may perform, as long as there is a person 21 years of age or older on duty supervising the sale of liquor	Duties 18, 19, and 20 years old employees may not perform
(a) In a grocery store or beer/wine specialty shop:	<ul style="list-style-type: none"> ■ Sell, stock, and handle beer and wine; and ■ Deliver beer and/or wine to a customer's car with the customer (for the purposes of this rule, there is no minimum age requirement for an employee of a grocery store or a beer/wine specialty shop to deliver beer and/or wine to a customer's car with the customer). 	Supervise employees who sell, stock, or handle beer and/or wine.
(b) In a spirits retail business:	<ul style="list-style-type: none"> ■ As long as there are at least two supervisors at least 21 years of age on duty, persons 18, 19, and 20 years old may sell, stock, and handle spirits. ■ Deliver spirits to a customer's car with the customer (for purposes of this rule, there is no minimum age requirement for an employee of a spirits retailer to deliver spirits to a customer's car with the customer). 	Supervise employees who sell, stock, or handle spirits.
(c) In an establishment that sells liquor for on-premises consumption:	<ul style="list-style-type: none"> ■ Take orders for, serve, and sell liquor in areas classified as open to persons under 21 years of age; and ■ Enter areas designated as off-limits to persons under 21 years of age to perform duties such as picking up liquor for service in other parts of the establishment; cleaning up, setting up, and arranging tables; delivering messages; serving food; and seating patrons; provided the employee does not remain in the area any longer than is necessary to perform the duties. 	Functions of a bartender, including: <ul style="list-style-type: none"> ■ Pouring spirits or mixing cocktails; ■ Drawing beer or wine from a tap or spigot; ■ Opening or pouring beer or wine in an area classified by the board as off limits to any person under the age of 21; and ■ Providing an employee spirits or beer by the pitcher or glass, or wine by the carafe or glass for delivery to a customer.
(d) In a spirits retail business:		Supervise employees who sell, stock, or handle spirits.

(2) Per RCW 66.44.316 and 66.44.318, the following persons that are 18, 19, or 20 years of age may remain on licensed premises or portions of premises that are restricted from persons under 21 years of age, but only during the course of (~~his or her~~) their employment:

- (a) Persons performing janitorial services during the hours when there is no sale, service, or consumption of liquor on the premises;
- (b) Employees of amusement device companies for the purpose of installing, maintaining, repairing, or removing any amusement device;
- (c) Security or law enforcement officers and firefighters during the course of their official duties and if they are not the direct employees of the licensee; and
- (d) Professional musicians, per WAC 314-11-045.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-11-105 What can the board do with lawfully seized liquor? (1) Per RCW 66.08.030(20) and chapter 66.32 RCW, the board may destroy lawfully seized liquor under the following conditions:

(a) The board must maintain a record of the type, brand, and amount of liquor seized for at least one year.

(b) The lawfully seized liquor may be destroyed only after:

(i) The board's charges of a violation of Title 66 RCW or board regulations have been sustained after an administrative proceeding pursuant to chapter 314-29 WAC as now or hereafter amended, in which the liquor to be destroyed has been the subject of, or evidence in, the administrative proceeding; or

(ii) The board's charges of a violation of Title 66 RCW or board regulations have been admitted or are not contested by the person from whom the liquor was seized and the liquor seized was the subject of the charged violation; or

(iii) The liquor was seized pursuant to lawful arrest and liquor was held as evidence in a criminal proceeding where a final disposition has been reached; or

(iv) When no administrative or judicial proceedings are held, all parties who claim a right, title, or interest in the seized liquor have been given notice and opportunity for a hearing to determine (~~his or her~~) their right, title, or interest in the subject liquor. Claims of right, title, or interest in seized liquor must be made to the board, in writing, within (~~thirty~~) 30 days of the date of seizure.

(2) If the liquor lawfully seized is in its original, sealed container, the board may either:

(a) Sell the unopened beer, wine, or spirits to the distributor selling the product at a negotiated price. The bill of sale must be kept for three years; or

(b) Upon written request from a law enforcement agency, provide the liquor to the law enforcement agency for bona fide training.

OTS-5801.1

AMENDATORY SECTION (Amending WSR 88-16-025, filed 7/27/88)

WAC 314-12-040 Prorating and refunding of fees—Discontinuance of business. (1) Unless otherwise provided by law, there will be no prorating of any license fee.

(2) Upon denial or withdrawal of an application for license, adoption or change of trade name, or change of location, the fee tendered therewith shall be returned: Provided, however, such return shall not apply to the nonrefundable (~~seventy-five dollar~~) \$75 fee submitted with an application for a new annual retail license.

(3) When a license is suspended or (~~cancelled~~) canceled, or the licensed business is discontinued, no refund of the license fee shall be made.

(4) Upon discontinuance of business for (~~twenty-one~~) 21 days or more by a licensee, (~~he~~) they shall forthwith deliver up (~~his~~) their license to the board, or representative of the board. A licensee who is not operating as a seasonal business and who has voluntarily discontinued sale of liquor in excess of (~~forty-five~~) 45 days will not be eligible for renewal of license for a subsequent year unless sale of liquor under the license is resumed on a permanent basis prior to the beginning of the next subsequent licensing period.

AMENDATORY SECTION (Amending WSR 10-19-065, filed 9/15/10, effective 10/16/10)

WAC 314-12-210 Chronic public inebriation and alcohol impact areas—Purpose. (1) What is the purpose of the rules concerning chronic public inebriation and alcohol impact areas?

(a) The enabling statutes for the board are contained in chapter 66.08 RCW. These statutes authorize the board to exercise the police powers of the state for the protection of the welfare, health, peace, and safety of the people of Washington.

(b) The board's mandate to protect the welfare, health, peace, and safety of the people is to ensure that a liquor licensee conducts (~~his or her~~) their business in a lawful manner and that the presence of a licensee's liquor sales does not unreasonably disturb the welfare, health, peace or safety of the surrounding community.

(c) The purpose of the rules concerning chronic public inebriation and alcohol impact areas is to establish a framework under which the board, in partnership with local government and community organizations, may act to mitigate negative impacts on a community's welfare, health, peace or safety that result from the presence of chronic public inebriation.

(d) For the purpose of these rules, chronic public inebriation exists when the effects of the public consumption of liquor or public intoxication occur in concentrations that endanger the welfare, health, peace or safety of a neighborhood or community.

(2) What do the rules concerning chronic public inebriation and alcohol impact areas seek to do? WAC 314-12-210 and 314-12-215 seek to:

(a) Establish an expanded local review process for liquor license applications, license assumptions, and renewals of active liquor licenses for businesses located within a recognized alcohol impact area;

(b) Establish standards under which the board may refuse to issue a liquor license; may refuse to permit a license assumption or renewal of a liquor license; may place conditions or restrictions upon the issuance, assumption or renewal of a license; or may place conditions or restrictions on an existing license located within the geographical boundaries of a recognized alcohol impact area; and

(c) Allow the board in specific circumstances to restrict the off-premises sale of certain liquor products or liquor product containers inside a recognized alcohol impact area.

OTS-5855.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-12-215 Alcohol impact areas—Definition—Guidelines. (1)

What is an alcohol impact area?

(a) An alcohol impact area is a geographic area located within a city, town or county, and that is adversely affected by chronic public inebriation or illegal activity associated with liquor sales or consumption.

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve board recognition of an alcohol impact area.

(a) The geographic area of an alcohol impact area must not include the entire geographic area under the jurisdiction of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) The local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

(c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate a pervasive pattern of public intoxication or public consumption of liquor as documented in: Crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, community group petitions, public testimony or testimony by current or former chronic public inebriates.

(d) **Minimum requirements for an alcohol impact area petition packet:**

(i) Litter/trash survey and documented results. A litter/trash survey must be conducted within the proposed alcohol impact area boundaries for at least a four week period. Litter/trash surveys must be

completed a minimum of twice a week. Use a GIS data map, or similar tool, to point out the "hot spots" of heavy alcohol consumption based on the litter/trash survey. Provide a list of alcohol products found in the litter/trash survey.

(ii) Photographic evidence of litter and drinking in public.

(iii) Law enforcement testimonial(s). Law enforcement testimonial must be from at least one law enforcement officer who frequently works within the proposed alcohol impact area boundaries. A testimonial must discuss the impact of high alcohol content or volume products within the proposed alcohol impact area boundaries and how implementation of an alcohol impact area would benefit the community.

(iv) Letters of support submitted by neighborhood councils, local agencies, schools or universities, business associations, fire departments, local businesses, or private citizens in the community.

(v) Crime statistics and police reports. Crime statistics and police reports must show the statistics for alcohol-related criminal activity within the proposed alcohol impact area boundaries, and must show evidence linking specific products with chronic public inebriation activity.

(e) After reviewing the alcohol impact area petition packet, the board may request supplemental materials to prove the necessity of an alcohol impact area. The supplemental materials may include:

(i) Additional testimonials submitted by citizens who would be directly affected by the proposed alcohol impact area.

(ii) Emergency medical response data. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of medical emergency care.

(iii) Sanitation reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area boundaries creates an abnormally high amount of sanitation problems.

(iv) Detoxification reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of detoxification services.

(f) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section). The voluntary compliance report must:

(i) Provide an executive summary of the results of the voluntary compliance period;

(ii) Provide evidence of the local authorities' efforts to control the problem through voluntary measures; and

(iii) Explain why the voluntary measures were not effective and how mandatory restrictions will help address the problem.

(g) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(3) What conditions or restrictions may the board recognize for an alcohol impact area?

(a) Restrictions may include, but are not limited to:

(i) Limitations on business hours of operation for off-premises liquor sales;

(ii) Restrictions on off-premises sale of certain liquor products within an alcohol impact area; and

(iii) Restrictions on container sizes available for off-premises sale.

(b) The board has adopted a standardized list of products that will be banned in alcohol impact areas. The list can be found on the LCB website. The list contains products that are banned in the majority of current alcohol impact areas. Requests for additional product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriates; litter pickup; or other statistically documented evidence.

(c) After the board has recognized an alcohol impact area the local authority may request the board approve additional products to their banned products list provided that the products are reasonably linked to the problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriates; litter pickup; or other statistically documented evidence.

(d) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.

(4) What types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Attempts to achieve voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Requesting licensees to voluntarily discontinue selling products that are considered contributing to the problem;

(iv) Distribution of educational materials to chronic public inebriates or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

(c) A local authority must implement these voluntary agreements for at least six months before a local authority may present documentation to the board that voluntary efforts failed to adequately mitigate the effects of chronic public inebriation and need augmentation.

(5) What will the board do once it recognizes an alcohol impact area?

(a) The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

(b) The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

(6) What is the review process for liquor license applications, license assumptions, and renewals inside an alcohol impact area?

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of 60 calendar days for a local authority to comment upon the application.

(i) A local authority may, and is encouraged to, submit comment before the end of a comment period. A local authority may request an extension of a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) A local authority will notify a licensee or applicant when a local authority requests the board to extend a 60-day comment period.

(b) For renewals, the board will notify a local authority at least 90 calendar days before a current license expires. The same requirements in (a) (i) and (ii) of this subsection apply to the 90-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

(7) When and for how long will an alcohol impact area be in effect, and may an alcohol impact area be changed?

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than 30 calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation as contained in subsections (2) and (3) of this section.

(d) Prohibition of a new product added to an existing prohibited products list takes effect no sooner than 30 calendar days following the board's recognition of a modified prohibited products list.

(8) Reporting requirements and five-year assessments.

(a) A year after the implementation of the alcohol impact area a local authority shall submit a report to the board that clearly demonstrates the intended effectiveness of an alcohol impact area's conditions or restrictions. The report is due no later than 60 calendar

days following the first anniversary of the implementation of the alcohol impact area. The report must include the same categories of information and statistics that were originally used to request the alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, 10th, 15th, et cetera, anniversary of the board's recognition of the alcohol impact area. The five-year assessment process is as follows:

(i) Within 20 calendar days of receiving a local authority's fifth, 10th, 15th, et cetera, report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has 20 calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one 20 calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why (~~he or she is~~) they are unable to meet the initial 20-day deadline.

(iii) The board will complete an assessment within 60 calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) The same categories of information and statistics that were originally used to request the alcohol impact area; and

(ii) Comments or petitions submitted by affected parties.

An assessment may also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will affect chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one 20-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why (~~he or she is~~) they are unable to meet the 20-day deadline.

OTS-5802.1

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-16-110 Liquor purchases by spirits, beer, and wine licensees. (1) Any employee authorized by the board may sell spirituous liquor at a discount of (~~fifteen~~) 15 percent from the retail price fixed by the board, together with all taxes, to any spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee upon presentation to such employee at the time of purchase of a special permit issued by the board to such licensee or through such other means of insuring identification of the authorized purchaser as are approved by the board. Prior to license delivery, a new licensee may, with board authorization, be sold discount liquor and beer and wine purchased under Title 66 RCW for the purpose of stocking the premises. The employee shall at the time of selling any spirituous liquor to a spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee make a record of the liquor so sold, together with the name of the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee making the purchase. No sale of beer, wine, or spirituous liquor shall take place until the premises of the new licensee have been inspected by the board and the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility license is delivered.

(2) Every spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee, upon purchasing any spirituous liquor from the board, shall immediately cause such liquor to be delivered to (~~his or her~~) their licensed premises, and (~~he or she~~) they shall not remove or permit to be removed from said premises any bottle or other container containing such liquor, except pursuant to chapter 314-70 WAC or to return it to a state liquor store or agency, nor shall (~~he or she~~) they dispose or allow to be disposed the liquor contained therein in any manner except as authorized by (~~his or her~~) their license. A delivery service business may pick up more than one liquor order on the same day so long as each of said orders are delivered in the normal course of business on the same day without detour or diversion, except for those stops and deliveries as may be necessary to make deliveries to the other licensees whose order is also on the particular delivery vehicle. The possession of any bottle or other container purchased from the board at a discount by any person other than the licensee or said licensee's agents or employees who purchased the same, or the possession thereof at any place which is not the licensed premises of the licensee who purchased such liquor, shall be prima facie evidence that the licensee unlawfully permitted the removal thereof from (~~his or her~~) their licensed premises. The licensee who permanently discontinues business, other than as a result of a legal distraint action, may remove open bottles of liquor from the premises for personal use upon payment to the board of an amount to be determined by the board in lieu of the discount and tax exemption in effect at that time.

(3) No licensee shall keep in or on the licensed premises any spirituous liquor which was not purchased from the board at a discount. Spirituous liquor not purchased at a discount from the board may be kept in or on the licensed premises under authority of a ban-

quet permit issued pursuant to RCW 66.20.010(3) and chapter 314-18 WAC, but only during the specific date and time for which the banquet permit was issued. Notwithstanding any other provision of Title 314 WAC, a spirits, beer and wine licensee may display antique, unusual, or unique liquor bottles with or without liquor on the licensed premises if such bottles are used as part of the decor, and any such bottles containing liquor are locked securely in display cases, and are not for sale.

(4) No person, including anyone acting as the agent for another other than a spirits, beer and wine licensee shall keep or possess any bottle or other container containing spirituous liquor which was purchased from the board at a discount except as provided in subsection (2) of this section.

(5) All spirituous liquor in and on the licensed premises shall be made available at all times by every licensee for inspection by the board, and such licensee shall permit any authorized inspector of the board to make such tests or analyses, by spirit hydrometer or otherwise, as the inspector deems proper. Such inspectors are authorized to seize as evidence any bottles or other containers and the contents thereof which they have determined have been reused, refilled, tampered with, adulterated, diluted, fortified or substituted.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-16-150 No sale of liquor to minors, intoxicated persons, etc. (1) No retail licensee shall give or otherwise supply liquor to any person under the age of (~~twenty-one~~) 21 years, either for (~~his/her~~) their own use or for the use of (~~his/her~~) their parent or of any other person; or to any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person under the said age or in said condition to consume liquor on (~~his/her~~) their premises, or on any premises adjacent thereto and under (~~his/her~~) their control.

(2) No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

OTS-5803.1

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

WAC 314-17-020 How long are class 12 and 13 permits good for?

(1) Class 12 and 13 permits are valid for five years. A class 12 or 13 permit expires on the first day of the month, five years following the month a student passes the standardized exam. For example, if a student passes the standardized exam on June 15, 2010, (~~his or her~~) their class 12 or 13 permit will expire on July 1, 2015.

(2) A permit holder must retake a class 12 or 13 training course and pass the standardized exam to obtain a subsequent class 12 or 13 permit.

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

WAC 314-17-040 May an ((eighteen to twenty)) 18 to 20 year-old student who takes and passes a class 12 training course upgrade to a class 12 permit upon turning ((twenty-one)) 21 without retaking the training course? Yes.

(1) An ((eighteen, nineteen or twenty)) 18, 19, or 20 year-old person may take a class 12 training course and pass the corresponding exam; however, ((he or she)) they may be issued only a class 13 permit. Upon turning ((twenty-one)) 21 years of age, such a person who obtains a class 13 permit after taking and passing a class 12 training course and exam may request that a provider or trainer upgrade ((his or her)) their class 13 permit to a class 12 permit.

(2) The expiration date of an upgraded class 12 permit shall be the same expiration date as the original class 13 permit.

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

WAC 314-17-045 How do I get a class 12 or 13 permit in Washington if I was trained in another state? (1) If a person completes an alcohol server training course in another state and that training course is also certified in the state of Washington, ((he or she)) they may receive a class 12 or 13 permit in Washington by completing the provider's board-certified Washington state supplement to the program and passing the standardized exam.

(2) A trainer or provider shall issue a class 12 or 13 permit, which will expire five years from the first day of the month following the date an original training course was taken. For example, if you complete a training course on June 15, 2010, your class 12 or 13 permit will expire on July 1, 2015.

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

WAC 314-17-065 How does a provider receive certification for its trainers? (1) To certify one of its trainers, a provider must complete a form provided by and returned to the board.

(2) A provider will contract only with a trainer who:

(a) Has a minimum of two years of post-secondary education in, or equivalent years of work experience in, one or more of the following fields:

- (i) Training;
- (ii) Education;
- (iii) Law;
- (iv) Law enforcement;

- (v) Substance abuse rehabilitation; or
- (vi) Sale and service of alcoholic beverages;
- (b) Holds a class 12 permit;
- (c) Meets the criminal history requirements (see WAC 314-17-070);

and

(d) Meets the continuing education requirements (see WAC 314-17-050).

(3) The board may consider any information pertaining to a trainer's certification in any state, including any certification suspensions or revocations in the past five years. The board, at its discretion and in consideration of public safety, may also consider criminal history (see WAC 314-17-070), administrative violations, patterns of misconduct, and other applicable occurrences or circumstances when deciding to approve, deny, suspend or revoke a trainer's certification.

(4) The board will respond to a request for trainer certification within (~~(thirty)~~) 30 calendar days of receipt of a request, and then will either certify an applicant trainer or explain why an applicant trainer fails to meet the qualifications.

(5) A trainer may not begin to teach a training course until a trainer receives (~~(his or her)~~) their certification from the board.

(6) A trainer must teach a provider's training program in its entirety as approved, and may not change the method of presentation or course content without approval from a provider and the board.

(7) It is the responsibility of a provider to keep the board informed of its current trainers. In this effort, a provider must notify the board within (~~(seventy-two)~~) 72 hours of the termination of a trainer or within (~~(seventy-two)~~) 72 hours of when a provider is notified that a trainer has terminated (~~(his or her)~~) their employment.

OTS-5804.1

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-18-030 Applicants—Retail liquor licensees ineligible—

Exceptions. (1) Any person (~~(twenty-one)~~) 21 years of age or older, either for (~~(himself/herself)~~) themselves or in a representative capacity on behalf of a society, organization, or business entity, may apply for a banquet permit which authorizes the service and consumption of liquor at a specific place upon a specific date.

(2) Retail liquor licensees are NOT eligible to apply for banquet permits for events to be held at, in, or upon such licensee's premises: Provided, however, that the licensee's ineligibility will not apply:

(a) When the application is by an established organization of members or auxiliary within a licensed club;

(b) Where grand openings, or special openings following new construction or substantial alterations, or when conventions are to be held on the licensed premises;

(c) Where special occasions such as employee Christmas parties, business anniversaries, etc., are held on the licensed premises;

(d) For functions held at locations other than the licensed premises.

(3) Banquet permits may be issued to qualified applicants for private functions on a chartered bus, chartered boat, chartered plane, or a chartered passenger car on a train.

(4) A banquet permit is not required for:

(a) Spirit, beer and wine sampling conducted in accordance with RCW 66.28.040 as implemented by chapter 314-64 WAC.

(b) Beer or wine provided by a brewery, winery, or distributor as part of a course of instruction for liquor licensees and/or their employees pursuant to RCW 66.28.150.

(5) The board interprets and will apply the relevant portions of the Liquor Act (RCW 66.20.010, 66.04.010(23), 66.04.010(26), 66.24.480, 66.24.481, and 66.44.100), reading them in pari materia, as not requiring a banquet permit to be obtained by an individual for a function when that individual is not acting with a business purpose or on behalf of an organization or business entity, where each of the following conditions are met:

(a) The function to be held by the individual is of a personal, noncommercial type which would normally be held in the individual's private home but for space considerations. Examples being a birthday party, wedding reception, bar mitzvah, etc. In lieu of holding the function in (~~his or her~~) their home, the individual has arranged for use of a facility which is to be closed off from the public during the function and which is not on any licensed premises.

(b) The function is hosted by the individual personally. That is, there is no charge in any manner whatsoever for attendance, whether by admission charge, donation, dues, fees, or otherwise, and there is no charge in any manner whatsoever for anything provided at the function (i.e., mixer, setups, ice, food, hors d'oeuvres, etc.).

(c) That there is no business purpose for the function and that no pecuniary gain is intended or realized by the individual from the holding of the function.

(d) That those persons attending the function are the personal invitees of the individual holding it.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-18-040 Issuance fee—Restrictions. (1) Banquet permits may be issued by the board's stores and agencies to qualified applicants on forms provided by the board; the fee for each banquet permit will be (~~ten dollars~~) \$10.

(2) Except for outdoor areas, banquet permits will only be issued for use at premises that are or can be arranged so that the general public can be excluded therefrom.

(3) Where the application is for a banquet to be held either partially or wholly out-of-doors, the following restrictions will apply:

(a) State parks: State parks are exempt from the law requiring a license or permit to consume liquor in a public place (RCW 66.04.011). Banquet permits shall not be issued for the service and consumption of liquor in state parks.

(b) City and county parks: Applicants will be issued banquet permits only upon presentation of written approval from the appropriate local authority for the banquet applied for.

(c) Commercial parks (privately owned and operated): Store and agency managers may issue banquet permits for use in such commercial parks even though the event is to be held partly or wholly out-of-doors.

(d) All other outdoor areas: Issuance is conditioned upon approval of the area liquor enforcement officer.

(4) Where the application is for a banquet permit for an event to be held on a college or university campus or upon the premises of an elementary or high school, public or private; permits will be issued provided that approval, in writing, by an appropriate official of the college, university, elementary, or high school is furnished with the application.

(5) When the application is for a banquet permit for an event to be held in or at a state armory used for military purposes, permits will be issued provided that approval, in writing, by the adjutant general or ((his/her)) their designee is furnished by the applicant to the board and to the chief of police of the incorporated city or town in which the armory is located or to the county sheriff if the armory is located outside the boundaries of incorporated cities or towns.

(6) Banquet permits will not be issued for use at premises that have a license issued by the board that is or will be suspended on the date of the scheduled banquet.

(7) The event for which the banquet permit application is made cannot be open to the public through general admission ticket sales.

(8) The event for which the banquet permit application is made cannot be open to the public or advertised to the public.

(9) Approval of the area enforcement officer is required for banquet permits intended for use in the cocktail lounge facilities or tap rooms of hotels, restaurants, and clubs, unless the entire premises under the control of the licensee is devoted to the banquet, and then only if all licensee liquor is removed from view and securely isolated.

(10) Where the application is for a banquet permit for an event to be held on a vessel under the jurisdiction of the Washington state ferry system; permits will be issued provided that approval, in writing, by an appropriate official of the Washington state ferry system is furnished with the application.

OTS-5805.1

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-20-100 Beer suppliers and distributors. RCW 66.28.180 requires beer distributors and suppliers to maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions** - For the purposes of this chapter:

(a) A "price list" means a declaration of the prices at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain

a price list showing all such prices for sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(d) Third-party delivery is prohibited.

(2) **Products and price lists** - If a beer supplier or distributor lists selected items on which prices are temporarily reduced, these prices must clearly reflect all items and the selling price. All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

(3) **Distributor changes**

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines. The supplier must notify the board in writing that (~~he/she~~ wishes) they wish to change (~~his/her~~) their current distributor and appoint a new distributor to be effective immediately.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Price lists for new distributors** - When the board issues a new beer distributor license, the licensee must have a price list available.

(5) **Accommodation sales** - The provisions of this rule do not apply when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer 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.

OTS-5856.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-21-025 What are the guidelines for controlled purchase programs? A retail liquor licensee may conduct an in-house controlled purchase program under the following conditions:

(1) The licensee must keep a statement on file signed by the licensee and each employee indicating that the employee has received

training regarding the sale of liquor to persons under 21 years of age. Restaurant, tavern, or sports/entertainment facility licensees must keep on file either such a statement for each employee or a copy of the employee's mandatory alcohol server training permit. These records must be maintained on the licensed premises, available for inspection by the board, unless otherwise approved in writing by the liquor and cannabis board's enforcement and education division.

(2) During an in-house controlled purchase program, the person supervising the program must possess:

(a) The licensee's controlled purchase program procedures,

(b) The board's written approval of the in-house controlled purchase program, and

(c) Valid identification (see WAC 314-11-025 for a list of acceptable identification).

(3) The persons participating in the in-house controlled purchase program must be at least 18 years of age.

(4) The persons participating in the in-house controlled purchase program may not use fraudulent identification and should not be deceptively mature in appearance.

(5) The licensee must ensure that two photos are taken of the persons participating in the in-house controlled purchase program on the day of the program. One photo must be full face and one photo must show the employee from head to toe. These photos must be maintained on the licensed premises, available for inspection by the board.

(6) If persons participating in the in-house controlled purchase program are paid for their time, the compensation of such persons may not be based on the number of successful purchases made during the course of the in-house controlled purchase program.

(7) The licensee must have written procedures that ensure any liquor purchased by an 18, 19, or 20 year old person during an in-house controlled purchase program is adequately secured by the licensee or an employee who is at least 21 years of age immediately following an occurrence of any purchase.

(8) Per RCW 66.44.290, the licensee must provide ((his/her)) their employees a written description of the employer's in-house controlled purchase program, which must include a notice of action an employer may take as a consequence of an employee's failure to comply with the employer's policies regarding the sale of alcohol during an in-house controlled purchase program.

(9) Per RCW 66.44.290, a licensee may not terminate an employee solely for a first-time failure to comply with the licensee's policies regarding the sale of alcohol during an in-house controlled purchase program.

(10) If a licensee's controlled purchase program fails to meet any of the requirements of RCW 66.44.290, WAC 314-21-015, or 314-21-025, the board may revoke its approval to conduct in-house controlled purchase programs. The licensee may reapply for approval to conduct in-house controlled purchase programs not less than one year following the board's revocation of approval.

OTS-5857.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-24-115 Wine importers—Requirements. (1) Principal office: Each wine importer shall keep the board informed at all times of the location of the principal office required by the Washington State Liquor Act and shall, not less than 30 days prior thereto notify the board in writing of any change in the location of such office.

(2) Warehouses: Wine importers maintaining warehouses at which wine imported by such importer is stored shall have the location approved by the board.

(3) Certain duties: No wine importer shall import or transport or cause to be transported into the state of Washington any brand of wine manufactured within the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of (~~his~~) their intention so to do, and shall have ascertained from the board that the winery manufacturing such wine has obtained from the Washington state liquor and cannabis board a certificate of approval as provided in the Washington State Liquor Act (section 10, chapter 21, Laws of 1969 ex. sess.).

OTS-5806.1

AMENDATORY SECTION (Amending WSR 23-20-039, filed 9/27/23, effective 10/28/23)

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~~) they wish to change (~~his/her~~) their 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.

OTS-5807.1

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-25-040 Delivery of beer and wine—Records. (1) Sales made by a ships chandler of beer and wine to an approved recipient may only be delivered to another ships chandler, a vessel for use in foreign commerce, a contracted Interstate Common Carrier, or employees thereof.

(2) Beer and wine may only be delivered when the ships chandler has on file a signed statement, in a format approved by the board, which indicates the captain of the ship or manager of the authorized purchasing business understands and agrees that:

(a) No beer or wine purchased will be consumed in Washington waters or territory or within three miles of the shores of the state of Washington;

(b) No beer or wine purchased will be consumed while the ship is docked in a Washington port; and

(c) Local law enforcement officers and board enforcement officers have the right to board and inspect the vessel while in Washington waters.

(3) Every statement will be notarized and remain valid for (~~twelve~~) 12 calendar months after the date of signing and be signed by the master of the ship or (~~his/her~~) their agent with the ships stamp affixed and countersigned by the ships chandler or their employee.

(4) A ships chandler or their employee must deliver any beer and wine directly to an authorized recipient purchasing the alcoholic beverage and it must be immediately placed into a locked storage area. The ships chandler must obtain the signature and printed name of the master or agent of the ship, ships chandler licensee or contracted Interstate Common Carrier on the delivery document which will contain the following information:

(a) Name of ship;

(b) Country of registry, if known;

(c) Type and amount of product delivered;

(d) Date of delivery;

(e) Name and address of ships chandler making the sale; and

(f) Signature and printed name of crew member receiving the liquor.

(5) The ships chandler will maintain records of all sales to ships, ships chandler licensees and Interstate Common Carrier approved licensees doing business in foreign commerce to include all federally mandated documents including order forms, bills of lading, affidavits, delivery to auxiliary location, etc., for a period of two years. Such records, or their computerized equivalent, will be available for inspection and copying by employees of the board upon request.

(6) Board employees have the right to enter and inspect, without warrant, any business, ship, aircraft, vessel, or transport vehicle from which beer and wine is delivered to or from a licensed ships chandler.

OTS-5808.1

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees. A distillery or craft distillery licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed distillery or craft distillery possession.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits distillery or craft distillery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits distillery or craft distillery licensee, except for transmittal of payment through a third-party service.

The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The internet sale will be made by the distillery;

(ii) The payment for the sale will be processed by the distillery; and

(iii) The distillery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's possession.

(c) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's or craft distillery's possession.

(d) **Payment method.** Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(e) **Internet.** To sell spirits via the internet, a new spirits distillery or craft distillery license applicant must request internet sales privileges in ((his or her)) their application. An existing spirits distillery or craft distillery licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits distillery or craft distillery licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under (~~(twenty-one)~~) 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person (~~(twenty-one)~~) 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in (~~(one-hundred)~~) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be (~~(twenty-one)~~) 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display the spirits distillery or craft distillery licensee's registered trade name.

(12) **Accountability.** A spirits distillery or craft distillery licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

OTS-5809.1

AMENDATORY SECTION (Amending WSR 08-17-038, filed 8/14/08, effective 9/14/08)

WAC 314-29-007 How may a licensee challenge the summary suspension of ((his or her)) their liquor license? (1) Upon summary suspension of a license or permit by the board pursuant to WAC 314-29-006, an affected licensee or permit holder may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within ((fifteen)) 15 days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within ((fourteen)) 14 days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee or permit holder is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee or permit holder will suffer irreparable injury. For purposes of this section, elimination of income from licensed or permitted activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

AMENDATORY SECTION (Amending WSR 18-21-115, filed 10/17/18, effective 11/17/18)

WAC 314-29-040 Information about liquor license suspensions.

(1) On the date a liquor license suspension goes into effect, a liquor and cannabis board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor and cannabis board due to a violation of a board law or rule.

(2) During the period of liquor license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable liquor laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for

any reason other than as stated in the suspension notice (see WAC 314-01-005 for the definition of "licensed premises").

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor and cannabis board's suspension notice.

(3) During the period of liquor license suspension:

(a) A retail liquor licensee may operate ((his/her)) their business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor. No banquet permit or special occasion function may be held on the premises during a period of liquor license suspension.

(b) A nonretail licensee may operate ((his/her)) their business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor.

(c) A manufacturer of alcohol may do whatever is necessary as a part of the manufacturing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsaleable during a suspension, provided it does not include bottling the product. The manufacturer may not receive any agricultural products used in the production of alcohol, crush fruit, or bottle alcohol during the period of suspension.

OTS-5858.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions. (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor and cannabis board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor and cannabis board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate ((his/her)) their business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate (~~his/her~~) their business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

OTS-5810.1

AMENDATORY SECTION (Amending WSR 20-01-074, filed 12/11/19, effective 1/1/20)

WAC 314-35-060 Seizure of vapor products. (1) Any vapor products in the possession of a person acting as a distributor or retailer of vapor products, and who is not licensed as required under this chapter, chapter 70.345 RCW or both, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the board. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, retailer, or a manufacturer's representative, and who transports vapor products for sale without having provided notice to the board as required under WAC 314-35-053, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without (~~his or her~~) their knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the board upon process issued by any superior court or district court having jurisdiction over the property.

(5) Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant; or

(b) The board has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(6) This section may not be construed to require the seizure of vapor products if the board's agent reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(7) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

OTS-5811.1

AMENDATORY SECTION (Amending WSR 12-24-032, filed 11/28/12, effective 12/29/12)

WAC 314-42-120 Conduct of brief adjudicative proceedings. (1)

Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in ~~((his or her))~~ their discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ~~((ten))~~ 10 business days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

OTS-5812.1

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-44-005 Agent's license required—Eligible employers defined—Certain classes limited—Bona fide entity defined—Prohibited practices. (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of a person, firm, or corporation within the state of Washington holding any of the following licenses:

(a) A beer certificate of approval license;

- (b) A beer distributor's license;
- (c) A brewer's license;
- (d) A beer importer's license;
- (e) A wine certificate of approval license;
- (f) A wine distributor license;
- (g) A domestic winery license;
- (h) A wine importer's license;
- (i) A spirits certificate of approval license;
- (j) A spirits distributor license;
- (k) A distiller or craft distiller license; or
- (l) A spirits importer license.

(3) An agent's license may be issued to the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer shall apply to the board for such an agent's license for ~~((his))~~ their accredited representatives on application forms prescribed and furnished by the board. This subsection shall not apply to drivers who deliver beer or wine or to domestic wineries or their employees. Employees of a domestic winery must have identification on them that indicates they work for the winery. Identification may be in the form of a winery's business card, employee badge, or similar identification.

(4) Any person acting as an independent contractor for a winery must have an agent's license. An independent contractor is defined as an independent business person who runs ~~((his or her))~~ their own business that provides services to another individual or business. The independent contractor is a separate business entity. The earnings of a person who is working as an independent contractor are subject to self-employment tax.

(5) Every firm which applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof that such firm is in fact a bona fide business entity.

(6) Only the licensed agent of a distiller, manufacturer, importer, or distributor of spirituous liquor may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

(7) No distiller, manufacturer, importer, or distributor, or agent thereof, shall allow, pay or rebate, directly or indirectly, any cash or merchandise to any retail licensee to induce or promote the sale of liquor, including the payment of tips to such licensees or their employees and the purchasing of drinks "for the house." Such persons, firms and licensees must operate in conformity with WAC 314-12-140, RCW 66.28.010, 66.28.040, and other applicable laws and rules.

(8) Upon the termination of the employment of a licensed agent, ~~((his))~~ their employer shall immediately notify the board and with such notice return to the board the agent's license issued to such person.

OTS-5859.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-60-080 Requests for public records. An individual may request a public record orally or in writing. The LCB encourages all public records requests be submitted in writing. Public records requests may be sent to the LCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the LCB is available at its main office and on its website at lcb.wa.gov. A written request or public records request form must be submitted or presented to the public records officer or designee and may be sent to the LCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number, and email address of the requestor;

(b) The date and time of day of the request;

(c) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described; and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the LCB.

(2) If the public records officer or designee accepts a request other than in writing, (~~he or she~~) they will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

WAC 314-60-085 Processing public records requests. (1) **Order of processing public records requests.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days after receipt of the request, the public records officer or designee will do one or more of the following:

(a) Provide the records or make the records available for inspection and copying depending on the nature of the request;

(b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **If no response is received.** If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider

contacting the public records officer to ensure that the LCB received the request.

(4) **Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask (~~(him or her)~~) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the LCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the LCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, (~~(he or she)~~) they should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must review the assembled records within 30 days of the LCB's notification to (~~(him or her)~~) them that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that (~~(he or she)~~) they should contact the agency to make arrangements to review the records. If the requestor or a representative of the requestor fails to review the records within the 30-day period or make other arrangements, the LCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(7) **Providing copies of records.**

(a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the LCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the LCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the LCB's offices, the requestor must pay for and pick up the copies within 30 days of the LCB's notification to (~~(him or her)~~) them that the copies are available for pickup. The LCB will notify the requestor in writing of this requirement and inform the requestor that (~~(he or she)~~) they should contact the LCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the 30-day period, or fails to

make other arrangements, the LCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the LCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the LCB keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection or copies of records in installments, if ~~((he or she))~~ they reasonably determines that it would be practical to provide the records in that way. Costs for each installment of copies of records must be paid to the LCB prior to delivery of the installment. If, within 30 days, the requestor fails to pay for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the LCB has completed the records request and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate the closure to the requestor.

(12) **Later discovered documents.** If, after the LCB has informed the requestor that it has provided all available records and closed a request, the LCB becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional records and provide them on an expedited basis.

WSR 24-23-009

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 8, 2024, 8:11 a.m., effective December 9, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (agency) reorganized rules related to enrollment and payment into proper sections, adding clarity, and removing the reconsideration process. WAC 182-502-0005 was revised to allow for back dating on the provider enrollment application and the nonbilling provider language was moved into this section from WAC 182-502-0006. WAC 182-502-0006 was repealed and incorporated into the other sections. WAC 182-502-0010 was updated to clarify requirements for nonbilling providers and requirements for servicing providers. WAC 182-502-0012 was revised to reflect that if the agency denies a request for enrollment, there is no longer a reconsideration process, but the provider can reapply. WAC 182-502-0030 added "failure to submit or failure to retain adequate documentation" to clarify that failed documentation can be considered a significant risk factor that can affect the provider's credibility or honesty. WAC 182-502-0040 was revised to reflect that terminations for convenience are the agency's final decision and there is no reconsideration process. WAC 182-502-0050 was revised to add a cross reference to chapter 182-502A WAC for additional information for disputes regarding overpayment. WAC 182-502-0100 was revised to add language that providers must be enrolled with the agency to receive payment for health care services, and other section additions include payment language that was removed from the previously listed WAC and moved to WAC 182-502-0100.

Citation of Rules Affected by this Order: Repealing WAC 182-502-0006; and amending WAC 182-502-0005, 182-502-0010, 182-502-0012, 182-502-0030, 182-502-0040, 182-502-0050, and 182-502-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-17-079 on August 18, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-502-0005(5)		
Proposed	(5) A nonbilling provider enrolled only for purposes of ordering, prescribing, or referring health care services for a billing provider, is exempt from the rules in WAC 182-502-0160 and may bill a client for health care services when; (a) The provider is not acting in their capacity as an ordering, prescribing, or referring of health care services for a billing provider; (b) The provider is not enrolled with a managed care organization (MCO) that has a contract with the agency under WAC 182-538-067; and (c) The provider documents the client was informed the client would be billed for the health care services being provided.	Revised this section as a result of stakeholder comment. Provided additional clarity around billing the client policy including notifying the client prior to the delivery of services that they may be billed for the services provided.

Proposed/ Adopted	WAC Subsection	Reason
Adopted	(5) An individual who is enrolled through a nonbilling provider agreement is exempt from the rules in WAC 182-502-0160 and may bill a client for health care services when: (a) The provider is not enrolled with a managed care organization (MCO) that has a contract with the agency under WAC 182-538-067; (b) The provider is not acting in their capacity as an ordering, prescribing, or referring provider of health care services for clients; and (c) The provider documents that the client was informed prior to the delivery of services that: (i) The provider is enrolled only for purposes of ordering, prescribing, or referring health care services for clients; and (ii) The client may be billed for the health care services being provided.	
WAC 182-502-0100(2)		
Proposed	The agency pays claims only for health care services provided by or on behalf of a provider that is enrolled with the agency.	Restructured sentence for clarity.
Adopted	The agency pays for health care services only when the services are provided by or on behalf of a provider that is enrolled with the agency.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 1.

Date Adopted: November 8, 2024.

Wendy Barcus
Rules Coordinator

OTS-5352.5

AMENDATORY SECTION (Amending WSR 23-21-061, filed 10/12/23, effective 11/12/23)

WAC 182-502-0005 Provider enrollment—Core provider agreement (CPA) or nonbilling provider agreement. (1) The agency only ((pays claims submitted for services provided by or on behalf of:

~~(a) A health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency;~~

~~(b) A servicing provider enrolled under an approved CPA with the agency; or~~

~~(c) A provider who has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.~~

~~(2) Servicing providers performing services for a client must be enrolled under the billing providers' CPA.~~

~~(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.~~

~~(4)) enrolls a health care professional, health care entity, supplier, or contractor of service through approval of an application for:~~

~~(a) A core provider agreement (CPA);~~

~~(b) A nonbilling provider agreement; or~~

~~(c) Adding a servicing provider under either a CPA or a nonbilling provider agreement.~~

~~(2) The agency may enter into a single case agreement or other forms of written agreements with a health care professional, health care entity, supplier, or contractor of service.~~

~~(3) Servicing providers must comply with the requirements for providers in the agreement under which they are enrolled and agency rules.~~

~~(4) Only a licensed health care professional whose scope of practice includes ordering, prescribing, or referring under their licensure may enroll as a nonbilling provider.~~

~~(5) An individual who is enrolled through a nonbilling provider agreement is exempt from the rules in WAC 182-502-0160 and may bill a client for health care services when:~~

~~(a) The provider is not enrolled with a managed care organization (MCO) that has a contract with the agency under WAC 182-538-067;~~

~~(b) The provider is not acting in their capacity as an ordering, prescribing, or referring provider of health care services for clients; and~~

~~(c) The provider documents that the client was informed prior to the delivery of services that:~~

~~(i) The provider is enrolled only for purposes of ordering, prescribing, or referring health care services for clients; and~~

~~(ii) The client may be billed for the health care services being provided.~~

~~(6) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, ((and)) 182-501-0184, and 182-502-0120.~~

~~((5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).~~

~~(6)) **(7) Effective date of enrollment of a provider.**~~

~~(a) Enrollment of a provider applicant is effective on the date the agency approves the provider application for enrollment or a date designated by the agency.~~

~~((a)) (b) A provider applicant may ((ask for)) request an exception allowing an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency ((s chief medical officer)).~~

(c) The request for an exception must specify the requested effective date and include an explanation justifying the earlier effective date.

(d) The ~~((chief medical officer))~~ agency will not authorize an effective date requested by the provider that is ~~((+~~

~~(i))~~ earlier than the effective date of any required license or certification ~~((; or~~

~~(ii) More than 365 days prior to the agency's approval of the provider application))~~.

~~((b))~~ (e) The ~~((chief medical officer or designee))~~ agency may approve an exception ~~((s))~~ as requested by the provider as follows for:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need ~~((as determined by the agency's chief medical officer or designee))~~.

~~((e))~~ (f) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

~~((d))~~ (g) Exceptions granted under this subsection ~~((+6))~~ do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-502-0006 Enrollment for nonbilling individual providers.

OTS-5654.1

AMENDATORY SECTION (Amending WSR 15-10-003, filed 4/22/15, effective 5/23/15)

WAC 182-502-0010 When the medicaid agency enrolls. (1) Nothing in this chapter obligates the medicaid agency to enroll any eligible health care professional, health care entity, supplier, or contractor of service who requests enrollment.

(2) To enroll as a provider (as defined in WAC 182-500-0085) with the agency, a health care professional, health care entity, supplier, or contractor of service rendering services in the state of Washington (persons or entities providing services out of Washington state see WAC 182-502-0120 and 182-501-0175) must, on the date of application:

(a) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules, or, if exempt under federal law, according to the laws and rules of any other state ~~((Persons or entities outside of Washington state, see WAC 182-502-0120))~~;

- (b) Be enrolled with medicare, when required in specific program rules;
- (c) Have current professional liability coverage, individually or as a member of a group, to the extent the health care professional, health care entity, supplier or contractor is not covered by the Federal Tort Claims Act, including related rules and regulations;
- (d) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;
- (e) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;
- (f) Sign, without modification, a core provider agreement (CPA) (~~((HCA 09-015), disclosure of ownership form, and debarment form (HCA 09-016) or a contract with the agency))~~ or nonbilling provider agreement, and a debarment form. Servicing providers are not required to sign as their enrollment is based upon being included under an organizational CPA or nonbilling provider agreement;
- (g) Agree to accept the payment from the agency as payment in full ~~((+))~~ in accordance with 42 C.F.R. § 447.15 requiring acceptance of state payment as payment in full ~~((and))~~ (see also WAC 182-502-0160 billing a client);
- (h) Fully disclose ownership, employees who manage, and other control interests (e.g., member of a board of directors or office), as requested by the agency. Indian health services clinics are exempt from this requirement ~~((. If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll and provide its national provider identifier (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider));~~
- (i) Have screened employees and contractors with whom they do business prior to hiring or contracting to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;
- (j) Pass the agency's screening process, including license verifications, database checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450.
- (i) The agency uses the same screening level risk categories that apply under medicare.
- (ii) For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare; and
- (k) ~~((Agree to))~~ Pay an application fee, if required by CMS under 42 C.F.R. 455.460.
- (3) Servicing providers performing services for a client must be enrolled under the billing providers' CPA or a nonbilling provider agreement.
- (4) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

OTS-5655.1

AMENDATORY SECTION (Amending WSR 19-21-067, filed 10/11/19, effective 11/11/19)

WAC 182-502-0012 When the medicaid agency does not enroll. (1)

The medicaid agency does not enroll a health care professional, health care entity, supplier, or contractor of service for reasons which include, but are not limited to, the following:

(a) The agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health, or safety, or both (see WAC 182-502-0030(1) ~~((a))~~); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030(1) ~~((b))~~).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(iv) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(v) Is noncompliant with the department of health or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(vi) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(vii) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014 and 182-502-0016; or

(viii) Does not have sufficient liability insurance according to WAC 182-502-0016 for the scope of practice, to the extent the health care professional, health care entity, supplier or contractor of service is not covered by the Federal Tort Claims Act, including related rules and regulations.

(c) A site visit under 42 C.F.R. 455.432 reveals that the provider has failed to comply with a state or federal requirement.

~~(2) ((The agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.~~

~~(3) The agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the agency when the agency determines there is a potential danger to a client's health and/or safety.~~

~~(4) Nothing in this chapter precludes the agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.~~

~~(5)) If the agency denies an enrollment application under this section, the applicant may ((request that the agency reconsider the denial.~~

~~(a) The agency's decision at reconsideration is the agency's final decision.~~

~~(b) The agency reconsiders the applicant according to the process and guidelines outlined in subsections (1) through (4) of this section.~~

~~(c) The reconsideration process in this section is unrelated to the reconsideration process described in chapter 182-526 WAC)) reap-
ply.~~

~~((+6)) (3) Under 42 C.F.R. 455.470, the agency:~~

~~(a) Will impose a temporary moratorium on enrollment when directed by CMS; or~~

~~(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.~~

AMENDATORY SECTION (Amending WSR 19-21-067, filed 10/11/19, effective 11/11/19)

**WAC 182-502-0040 Termination of ((a)) provider ((agreement)) en-
rollment—For convenience.** (1) Either the medicaid agency or the pro-
vider may terminate the provider's ((participation)) enrollment with
the agency for convenience with ((thirty)) 28 calendar days written
notice ((served upon the other party)) in a manner which provides
proof of receipt or proof of valid attempt to deliver the notice.

~~(2) Termination((s)) of enrollment for convenience ((are not eli-
gible for the dispute resolution process described in WAC
182-502-0050. Terminations for convenience are eligible for reconsid-
eration as described in WAC 182-502-0012)) is the agency's final deci-
sion.~~

(3) If a provider is terminated for convenience, the agency pays
for authorized services provided up to the date of termination only.

AMENDATORY SECTION (Amending WSR 13-17-047, filed 8/13/13, effective 10/1/13)

WAC 182-502-0050 Provider dispute of an agency action. The
process described in this section applies only when agency rules allow
a provider to dispute an agency decision under this section.

(1) In order for the agency to review a decision previously made
by the agency, a provider must submit the request to review the deci-
sion:

(a) Within ((twenty-eight)) 28 calendar days of the date on the
agency's decision notice;

(b) To the address listed in the decision notice; and

(c) In a manner that provides proof of receipt.

(2) A provider's dispute request must:

(a) Be in writing;

(b) Specify the agency decision that the provider is disputing;

(c) State the basis for disputing the agency's decision; and

(d) Include documentation to support the provider's position.

(3) The agency may request additional information or documenta-
tion. The provider must submit the additional information or documen-

tation to the agency within (~~twenty-eight~~) 28 calendar days of the date on the agency's request.

(4) The agency closes the dispute without issuing a decision and with no right to further review under subsection (6) of this section when the provider:

(a) Fails to comply with any requirement of subsections (2), (3), and (4) of this section;

(b) Fails to cooperate with, or unduly delays, the dispute process; or

(c) Withdraws the dispute request in writing.

(5) The agency will send the provider a written notice of dispute closure or written dispute decision.

(6) The provider may request the director of the health care authority or designee to review the written dispute decision according to the process in WAC 182-502-0270.

(7) This section does not apply to disputes regarding overpayment. For disputes regarding overpayment, see WAC 182-502-0230 and chapter 182-502A WAC.

OTS-5656.1

AMENDATORY SECTION (Amending WSR 23-21-061, filed 10/12/23, effective 11/12/23)

WAC 182-502-0030 Termination of provider enrollment—For cause.

(1) The medicaid agency may immediately terminate a provider's enrollment for any one or more of the following reasons, each of which constitutes cause:

(a) Provider exhibits significant risk factors that endanger client health or safety. These factors include, but are not limited to:

(i) Moral turpitude;

(ii) Sexual misconduct according to chapter 246-16 WAC or in profession specific rules of the department of health (DOH);

(iii) A statement of allegations or statement of charges by DOH or equivalent from other state licensing boards;

(iv) Restrictions or limitations placed by any state licensing, credentialing, or certification agency on the provider's current credentials or practice;

(v) Limitations, restrictions, or loss of hospital privileges or participation in any health care plan or failure to disclose the reasons to the agency;

(vi) Negligence, incompetence, inadequate or inappropriate treatment, or lack of appropriate follow-up treatment;

(vii) Patient drug mismanagement, failure to identify substance use disorder, or failure to refer the patient for substance use disorder treatment once identified;

(viii) Use of health care providers or health care staff who are unlicensed to practice or who provide health care services that are outside their recognized scope of practice or the standard of practice in the state of Washington;

(ix) Failure of the health care provider to comply with the requirements of WAC 182-502-0016;

(x) Failure of the health care provider with a substance use disorder(s) to furnish documentation or other assurances as determined by the agency to adequately safeguard the health and safety of Washington apple health clients that the provider:

(A) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(B) Is receiving treatment adequate to ensure that the disorder will not affect the quality of the provider's practice.

(xi) Infection control deficiencies;

(xii) Failure to maintain adequate professional malpractice coverage;

(xiii) Medical malpractice claims or professional liability claims that constitute a pattern of questionable or inadequate treatment, or contain any gross or flagrant incident of malpractice; or

(xiv) Any other act that the agency determines is contrary to the health and safety of its clients.

(b) Provider exhibits significant risk factors that affect the provider's credibility or honesty. These factors include, but are not limited to:

(i) Failure to meet the requirements in WAC 182-502-0010 and 182-502-0020;

(ii) Dishonesty or other unprofessional conduct;

(iii) Civil or criminal findings of fraudulent or abusive billing practices through an investigation or other review (e.g., audit or record review);

(iv) Exclusion from participation in medicare, medicaid, or any other federally funded health care program;

(v) Any conviction, no contest plea, or guilty plea relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;

(vi) Any conviction, no contest plea, or guilty plea of a criminal offense;

(vii) Failure to comply with a DOH request for information or an ongoing DOH investigation;

(viii) Noncompliance with a DOH or other state health care agency's stipulation to disposition, agreed order, final order, or other similar licensure restriction;

(ix) Misrepresentation or failure to disclose information to the agency during or after enrollment including on the application for a core provider agreement (CPA), a nonbilling provider agreement, or servicing providers enrolled under a core provider agreement;

(x) Failure to comply with an agency request for information;

(xi) Failure to submit adequate documentation to the agency or failure to retain adequate documentation as required by the agency;

~~(xii)~~ Failure to cooperate with an agency investigation, audit, or review;

~~((~~xii~~))~~ (xiii) Providing health care services that are outside the provider's recognized scope of practice or the standard of practice in the state of Washington;

~~((~~xiii~~))~~ (xiv) Unnecessary medical, dental, or other health care procedures;

~~((~~xiv~~))~~ (xv) Discriminating in the furnishing of health care services, supplies, or equipment as prohibited by 42 U.S.C. § 2000d; and

~~((~~xv~~))~~ (xvi) Any other dishonest or discreditable act that the agency determines is contrary to the interest of the agency or its clients.

(2) If a provider's enrollment is terminated for cause, the agency pays only for authorized services provided up to the date of termination of enrollment if other program requirements are met including, but not limited to, the requirements in WAC 182-502-0016.

(3) When the agency terminates enrollment of a servicing provider who is also a full or partial owner of an enrolled group practice, the agency terminates the enrolled group practice and all enrolled servicing providers who are not linked to another enrolled group practice contracted with the agency. The remaining practitioners in the group practice may reapply for participation with the agency subject to WAC 182-502-0010.

(4) Effective date. The effective date of the termination of a provider's enrollment is the date stated in the notice. The filing of an appeal as provided in subsection (5) of this section does not stay the effective date of termination.

(5) Administrative hearing.

(a) The provider may appeal the agency decision to terminate the provider's enrollment for cause by submitting a written request to the address contained in the decision notice within 28 calendar days of the date on the notice and in a manner that provides proof of receipt by the agency. The agency does not allow good cause exception related to this subsection.

(b) If the agency receives a timely appeal, the presiding officer will schedule a prehearing conference in accordance with WAC 182-526-0195.

(c) The administrative hearing process is governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 182-526 WAC.

(d) Burden of proof.

(i) The provider has the burden of proof.

(ii) The standard of proof in a provider termination hearing is "clear and convincing evidence" meaning the evidence is highly and substantially more likely to be true than untrue. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

OTS-5657.3

AMENDATORY SECTION (Amending WSR 23-24-026, filed 11/29/23, effective 1/1/24)

WAC 182-502-0100 General conditions of payment. (1) The medic-aid agency (~~(reimburses for medical)~~) pays for health care services furnished to an eligible client when the claim satisfies agency rules including all the following ((apply)):

(a) The service is within the scope of care of the client's Washington apple health program;

(b) The service is medically necessary;

(c) The service is properly authorized;

(d) The provider bills within the time frame set in WAC 182-502-0150;

(e) The provider bills according to agency rules and billing instructions; and

(f) The provider follows third-party payment procedures.

(2) The agency pays for health care services only when the services are provided by or on behalf of a provider that is enrolled with the agency.

(3) In order for any services or supplies ordered, prescribed, or referred by a provider to be paid:

(a) The provider must be enrolled with the agency under their national provider identifier (NPI); and

(b) The NPI for the referring, prescribing, or ordering provider must be included on the claim form.

(4) If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll with the agency and provide its national provider identifier (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider.

(5) The agency is the payer of last resort, unless the other payer is:

(a) An Indian health service;

(b) A crime victims program through the department of labor and industries; or

(c) A school district for health services provided under the Individuals with Disabilities Education Act.

~~((3))~~ (6) The agency does not (~~reimburse~~) pay providers for (~~medical~~) health care services identified by the agency as client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following:

(a) Copayments (copays) (unless the criteria in chapter 182-517 WAC or WAC 182-501-0200 are met);

(b) Deductibles (unless the criteria in chapter 182-517 WAC or WAC 182-501-0200 are met); and

(c) Spenddown (see WAC 182-519-0110).

~~((4))~~ (7) The agency does not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier, or contractor of service not currently enrolled with the agency.

(8) The agency does not pay for services provided to clients during the application process for provider enrollment, regardless of whether the agency later approves or denies the application, unless an exception for earlier enrollment is approved by the agency in accordance with WAC 182-502-0005.

(9) The agency does not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier, or contractor of services whose application for enrollment has been denied or terminated.

(10) The provider must accept medicare assignment for claims involving clients eligible for both medicare and Washington apple health before the agency makes any payment.

~~((5))~~ (11) The provider is responsible for verifying whether a client has Washington apple health coverage for the dates of service.

~~((6))~~ (12) The agency may reimburse a provider for services provided to a person if it is later determined that the person was ineligible for the service when it was provided if:

(a) The agency considered the person eligible at the time of service;

(b) The service was not otherwise paid for; and

(c) The provider submits a request for payment to the agency.

((7)) (13) The agency does not pay on a fee-for-service basis for a service for a client who is enrolled in a managed care plan when the service is included in the plan's contract with the agency.

((8)) (14) Information about (~~medical care~~) health care services for jail inmates is found in RCW 70.48.130.

((9)) (15) The agency pays for medically necessary services on the basis of usual and customary charges or the maximum allowable fee established by the agency, whichever is lower.

WSR 24-23-011
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed November 8, 2024, 2:10 p.m., effective December 8, 2024, 2:10 p.m.]

Effective Date of Rule: Thirty one days after filing.

Purpose: The health care authority (agency) amended this rule to add language about data sharing between the prescription drug affordability board and the health care cost transparency board to align with language in RCW 70.390.050 (revised under ESHB 1508, section 2 (2)(a), chapter 80, Laws of 2024). Additionally, the agency added a new section regarding a time frame of 30 days for public comment prior to the board setting an upper payment limit to align with RCW 42.30.250 (new section created by SHB 1105, section 1(1), chapter 171, Laws of 2024).

Citation of Rules Affected by this Order: New WAC 182-52-0095; and amending WAC 182-52-0050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 70.390.050, 42.30.250; ESHB 1508, section 2 (2)(a), chapter 80, Laws of 2024, SHB 1105, section 1(1), chapter 171, Laws of 2024.

Adopted under notice filed as WSR 24-20-117 on October 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: November 8, 2024.

Wendy Barcus
Rules Coordinator

OTS-5831.1

AMENDATORY SECTION (Amending WSR 24-02-078, filed 1/2/24, effective 6/10/24)

WAC 182-52-0050 Prescription drug affordability board—Data and confidentiality. (1) For the purpose of reviewing drug prices and conducting affordability reviews, the board (as established in chapter 70.405 RCW) and the health care cost transparency board (established in chapter 70.390 RCW) may share data with each other and access all data collected under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.

(2) Advisory group members may not access or review any confidential information.

(3) The information collected by the board pursuant to RCW 70.405.040 is not subject to public disclosure under chapter 42.56 RCW.

(4) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

(5) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

(b) Having a public policy purpose to access and use the confidential information according to chapter 70.405 RCW;

(c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures in alignment with the agency information system security plan, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas;

(d) Destroying all confidential information according to document retention requirements;

(e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under chapter 70.405 RCW; and

(f) Acknowledging that the data recipient may be responsible for liability arising from misuse of the data.

(6) Data recipients must not:

(a) Disclose any confidential information, as defined by WAC 182-52-0010, or otherwise publicly release the confidential information;

(b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 70.405 RCW;

(c) Attempt to identify people who are the subject of the confidential information;

(d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;

(e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;

(f) Have any conflicts of interests under the Ethics in Public Service Act that would prevent the data recipient from accessing or using confidential information; and

(g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.

OTS-5830.1

NEW SECTION

WAC 182-52-0095 Prescription drug affordability board—Upper payment limits—Public comment. The board must allow 30 calendar days

for the submission of public comment before setting an upper payment limit. Prior to the 30-day comment period, the authority will notify the public of both the beginning and ending dates that written comment will be accepted.

WSR 24-23-012

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 8, 2024, 2:17 p.m., effective December 9, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (agency) amended this rule to provide more general language due to frequent changes of percentages and dollar amounts. Added psychiatric per diem rate information and psychiatric unit-specific budget target adjuster. The agency will only do cost-based rates once per year; an average is applied if contracting period is between fiscal years.

Citation of Rules Affected by this Order: Amending WAC 182-550-3800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-20-072 on September 27, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 8, 2024.

Wendy Barcus
Rules Coordinator

OTS-5846.3

AMENDATORY SECTION (Amending WSR 23-20-048, filed 9/28/23, effective 10/29/23)

WAC 182-550-3800 Rebasing. The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598;
and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency (~~uses one of two methods to estimate costs. The agency may perform an aggregate cost determination~~) estimates costs by multiplying the ratio of costs-to-charges (RCC) by the total billed charges (~~, or the agency may use the following detailed costing method:~~

~~(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;~~

~~(b) The agency estimates costs for each claim in the dataset as follows:~~

~~(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and~~

~~(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and~~

~~(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:~~

~~(i) Routine cost components:~~

~~(A) Routine care;~~

~~(B) Intensive care;~~

~~(C) Intensive care-psychiatric;~~

~~(D) Coronary care;~~

~~(E) Nursery;~~

~~(F) Neonatal ICU;~~

~~(G) Alcohol/substance abuse;~~

~~(H) Psychiatric;~~

~~(I) Oncology; and~~

~~(J) Rehabilitation.~~

~~(ii) Ancillary cost components:~~

~~(A) Operating room;~~

~~(B) Recovery room;~~

~~(C) Delivery/labor room;~~

~~(D) Anesthesiology;~~

~~(E) Radio, diagnostic;~~

~~(F) Radio, therapeutic;~~

~~(G) Radioisotope;~~

~~(H) Laboratory;~~

~~(I) Blood administration;~~

~~(J) Intravenous therapy;~~

~~(K) Respiratory therapy;~~

~~(L) Physical therapy;~~

~~(M) Occupational therapy;~~

~~(N) Speech pathology;~~

~~(O) Electrocardiography;~~

~~(P) Electroencephalography;~~

- ~~(Q) Medical supplies;~~
- ~~(R) Drugs;~~
- ~~(S) Renal dialysis/home dialysis;~~
- ~~(T) Ancillary oncology;~~
- ~~(U) Cardiology;~~
- ~~(V) Ambulatory surgery;~~
- ~~(W) CT scan/MRI;~~
- ~~(X) Clinic;~~
- ~~(Y) Emergency;~~
- ~~(Z) Ultrasound;~~
- ~~(AA) NICU transportation;~~
- ~~(BB) GI laboratory;~~
- ~~(CC) Miscellaneous; and~~
- ~~(DD) Observation beds).~~

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by ((3M™)) Solventum Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter. The agency models the rebased system to be budget neutral on a prospective basis, including global adjustments to the budget target determined by the agency. The agency ensures that base DRG conversion factors and per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its website.

~~(5) ((To maintain budget neutrality, the agency makes global adjustments as needed.~~

~~(a) Claims paid under the DRG, rehab per diem, and withdrawal management per diem payment methods were reduced to support an estimated \$3,500,000 increase in psychiatric payments to acute hospitals.~~

~~(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by \$3,500,000.~~

~~(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with 200 or more psychiatric bed days.~~

~~(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities utilizing cost report information for hospital fiscal years ending in 2016.~~

~~(ii) The distribution of funds for each fiscal year is as follows:~~

~~(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.~~

~~(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.~~

~~(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.~~

~~(iv))~~ Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(ii) The amount in (a) (i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(iii) The agency adds the nonlabor portion of the base rate to the amount in (a) (ii) of this subsection to produce a hospital-specific wage adjusted factor.

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

(6) To maintain budget neutrality, the agency makes global adjustments as needed.

(7) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (5) and (6) of this section.

(8) When rebasing psychiatric per diem rates, the agency uses medicaid claims data and medicare cost report data from the calendar year base period ending two years prior to the effective date of rebasing, using the methodology described for psychiatric per diem rates effective January 1, 2024.

(a) When rebasing, the agency will determine new budget target adjusters, not to exceed a factor of 100 percent.

(b) Hospital psychiatric units with at least 200 Washington medicaid bed days in the base period will receive a cost-based rate with a psychiatric unit-specific budget target adjuster applied.

(c) Hospital psychiatric units with less than 200 Washington medicaid psychiatric bed days in the base period will receive a psychiatric per diem rate equal to the statewide average per diem.

(d) The agency conducts annual reviews for updated cost information to determine whether new ~~(and)~~ or existing providers continue to meet the 200 or more bed days criteria.

~~((v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.~~

~~(6) Effective July 1, 2020,))~~ (9) The agency sets psychiatric per diem rates specific to long-term civil commitments separately from other psychiatric per diem rates.

(a) In order to qualify for a provider-specific long-term civil commitment psychiatric per diem, the provider must be contracted with the agency to provide long-term civil commitment beds.

(b) The agency sets the provider-specific rate at the ~~(time of contracting))~~ beginning of the state fiscal year. If a provider contracts with the agency during the state fiscal year, their initial rate will be set at the greater of:

(i) The in-state, state-wide average long-term psychiatric per diem for their category of hospital; or

(ii) Their current provider-specific short-term psychiatric per diem.

(c) The agency sets the rate for acute care hospitals under chapter 70.41 RCW with distinct psychiatric units as follows:

(i) Hospitals that have a 12-month medicare cost report with at least 200 psychiatric bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the costs documented on the medicare cost report.

(ii) Hospitals that do not have a 12-month cost report with at least 200 bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the greater of:

(A) The average long-term psychiatric per diem of all acute care hospitals providing long-term psychiatric services in-state ((, provider-specific long-term psychiatric per diem rates, or the)); or

(B) Their current provider-specific short-term psychiatric per diem.

(iii) The long-term psychiatric rate is applied to ((any hospital that accepts patients committed to a psychiatric facility for a period of 90 days or greater.)) agency-contracted hospitals for long-term psychiatric services. The acute care hospital long-term psychiatric per diem will be rebased annually at the beginning of the state fiscal year using most recently available medicare cost report data.

(iv) The agency sets the rate so as not to exceed the amount provided by the legislature.

(d) The agency sets the rates for free-standing psychiatric hospitals under chapter 71.12 RCW as follows:

~~(i) Hospitals ((without an existing long-term rate receive a per diem rate equivalent to either the greater of the short-term rate or the state-wide average long-term psychiatric rate for free-standing psychiatric hospitals.~~

~~(ii) Hospitals that have an existing long-term per diem will continue to receive the \$940 established for July 1, 2021)) will receive a long-term psychiatric per diem rate as approved by the legislature.~~

(ii) In addition to ((the \$940)) a long-term psychiatric per diem rate, the hospital may annually submit supplemental cost data ((with the cost report)) to the agency for consideration by May 1st for the upcoming state fiscal year. If approved, the agency will make appropriate adjustments to the medicaid inpatient long-term psychiatric per diem payment rate of the hospital. Adjustment of costs may include any of the following:

(A) Costs associated with professional services and fees not accounted for in the hospital's medicare cost report or reimbursed separately;

(B) Costs associated with the hospital providing the long-term psychiatric patient access to involuntary treatment court services that are not reimbursed separately;

(C) Other costs associated with caring for long-term psychiatric patients that are not reimbursed separately.

(iii) The agency sets the rate so as to not exceed the amount provided by the legislature.

~~((7) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:~~

~~(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.~~

- ~~(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then~~
- ~~(ii) The amount in (a) (i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then~~
- ~~(iii) The agency adds the nonlabor portion of the base rate to the amount in (a) (ii) of this subsection to produce a hospital-specific wage adjusted factor.~~
- ~~(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and~~
- ~~(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.~~
- ~~(8) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (6) and (7) of this section.)~~

WSR 24-23-014
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-14—Filed November 8, 2024, 3:10 p.m., effective December 9, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposed rule will help the Washington department of fish and wildlife (WDFW) better manage its wildlife areas and the public use that is occurring on them. It will give WDFW law enforcement remedies to discourage the construction, creation, and maintenance of roads, trails, and structures without WDFW approval, which can otherwise pose a threat to natural or cultural resources and create safety hazards for public users.

Citation of Rules Affected by this Order: New WAC 220-500-041.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.210, and 77.15.230.

Adopted under notice filed as WSR 24-17-022 on August 29 [9], 2024.

Changes Other than Editing from Proposed to Adopted Version: (1) WDFW has identified several written documents that will satisfy the requirement of having express written permission to modify an existing trail or road. These referenced documents must include express written permission from WDFW to make trail or road modifications;

(2) WDFW has changed the requirement to have a copy of the written permission at the work site to having a copy of written permission that must be made available upon request from WDFW staff.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 8, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-041 Construction, creation and maintenance of roads, trails, and structures. (1) A person must obtain the express written permission of the department to construct, create, modify, repair, relocate, or maintain a new or existing road, trail, sign, structure, or other facility or improvement. Such express written permission may be included in a volunteer agreement, cooperative agreement, or memorandum of understanding with the department. A copy of the written permission must be provided upon request.

(2) Violating this section is a misdemeanor pursuant to RCW 77.15.230.

(3) This section does not apply to erecting and using temporary camp and blind structures pursuant to WAC 220-500-130.

WSR 24-23-037

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 22-05—Filed November 14, 2024, 7:32 a.m., effective December 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state department of ecology (ecology) is adopting amendments to chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. We are adopting revisions to natural conditions provisions in our surface water quality standards to provide water quality protection for aquatic life organisms and to establish possible methods for deriving those protective values.

The state's water quality standards set limits on pollution in our lakes, rivers, and marine water in order to protect beneficial uses, such as swimming and fishing. The water quality standards are implemented through discharge permits and other regulatory mechanisms under the federal Clean Water Act (CWA). They are also used to identify polluted waters and set levels for water cleanup.

We adopted the following revisions in the rule making:

WAC 173-201A-020 Definitions, adding a definition for a performance-based approach method and a definition for local and regional sources of human-caused pollution.

WAC 173-201A-200 (1)(c)(i) aquatic life temperature criteria, updating the allowable insignificant changes to freshwater temperature criteria when natural conditions are the applicable criteria.

WAC 173-201A-200 (1)(d)(i) aquatic life dissolved oxygen (D.O.) criteria, updating the allowable insignificant changes to freshwater D.O. criteria when natural conditions are the applicable criteria.

WAC 173-201A-210 (1)(c)(i) aquatic life temperature criteria, updating the allowable insignificant changes to marine water temperature when natural conditions are the applicable criteria.

WAC 173-201A-210 (1)(d)(i) aquatic life D.O., updating the allowable insignificant changes to marine water D.O. when natural conditions are the applicable criteria.

WAC 173-201A-260(1) natural and irreversible human conditions, updating the natural conditions criteria language and describing methods for determining natural conditions criteria values.

WAC 173-201A-430 Site-specific criteria, updating how analyses must be conducted and document references.

WAC 173-201A-470 Performance-based approach, adding this new section to describe and reference the methodology to determine natural conditions criteria values.

We evaluated the latest scientific data, methods, modeling tools, and approaches to update the natural conditions provisions necessary for refining aquatic life protection in Washington's surface waters. As part of this process, we considered the Environmental Protection Agency's (EPA) recommended approaches for natural conditions in water quality standards. This includes developing a performance-based approach for site-specific criteria, a methodology document titled "A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington" referenced in the rule that sufficiently details a process that ensures predictable, repeatable outcomes that could be used to develop criteria that would protect the designated uses for a specific waterbody.

After rule adoption, we will submit the final rule language to EPA for review and approval. After we submit the final rule to EPA,

they have 60 days to approve or 90 days to disapprove the updated water quality standards. EPA must also consult with the United States Fish and Wildlife Service and National Marine Fisheries Service to determine if the rule adequately protects endangered species. The rule goes into effect for CWA purposes, such as for the water quality assessment and water quality permits, after it has been approved by EPA.

We are not including a final performance-based approach document with this rule adoption. We will continue to revise the performance-based approach based on public comment. As of now, our approach is to narrow the scope of this document to marine D.O. Our goal is to share our progress early next year and go back out for public comment in spring 2025. We will carefully consider comments received and publish a final version of the publication alongside our response to comments in summer 2025. After we finalize the performance-based approach document next year, the office of the attorney general will certify that the document is legally binding, then we will send the performance-based approach document to EPA for review and approval.

Because the performance-based approach document is only referenced, and not part of the water quality standards regulations at WAC 173-201A-470 and revisions to the document would not change the adopted rule language, we are not required nor will be conducting a separate formal rule making for this document. However, we feel it is important to provide another opportunity for public and tribal input on a revised draft. Further, this document, which governs how ecology will use the performance-based approach for site-specific criteria development, must meet CWA requirements, which includes a public review process and EPA review and approval before use in CWA actions.

Until we publish a final version of this document and receive EPA approval following their review, we will not be able to use the performance-based approach document for site-specific criteria under CWA, such as for water clean up plans (alternate restoration plans and total maximum daily loads).

Citation of Rules Affected by this Order: Amending chapter 173-201A WAC.

Statutory Authority for Adoption: Water pollution control, chapter 90.48 RCW, provides clear and direct authority to ecology to revise the surface water quality standards (RCW 90.48.035).

Other Authority: State review and revision of water quality standards, 40 C.F.R. § 131.20, requires states to periodically review and update the water quality standards.

Adopted under notice filed as WSR 24-15-036 on July 11, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Changes to WAC 173-201A-020 Definitions: Edits were made to the definition of a performance-based approach (WAC 173-201A-020) for clarity and to remove references to federal regulations which were not applicable.

"Performance-based approach" means a water quality standard that is a transparent process (i.e., methodology) which is sufficiently detailed and has suitable safeguards that ensures predictable and repeatable outcomes, rather than a specific outcome. The outcomes from the performance-based approach are site-specific criteria (i.e., concentration limit for a pollutant) consistent with 40 C.F.R. 131.11 and 40 C.F.R. 131.13.

Changes to WAC 173-201A-200 Freshwater designated uses and criteria, and 173-201A-210 Marine water designated uses and criteria: We clarified in the human-use allowance for D.O. in fresh (WAC 173-201A-200 (1)(d)(i)) and marine (WAC 173-201A-210 (1)(d)(i)) waters

that D.O. refers to the D.O. concentration and the criteria in the applicable tables are numeric criteria. This was done to make clear that the human-use allowances apply to numeric criteria and not saturation state-based criteria.

(i) When a water body's D.O. concentration is lower than the numeric criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then ((human actions)) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. concentration of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

Changes to WAC 173-201A-260 Natural conditions and other water quality criteria and applications: We revised the general natural conditions provision at WAC 173-201A-260 (1)(a) to make it clearer the required processes when ecology pursues natural conditions criteria development for a site.

(a) It is recognized that portions of many water bodies cannot meet the assigned aquatic life criteria due to the natural conditions of the water body. When a water body does not meet its assigned aquatic life criteria due to natural climatic or landscape attributes, the following will be used to determine site-specific numeric aquatic life criteria representing conditions unique to a water body: natural conditions constitute the water quality criteria.

(i) Aquatic life criteria based on natural conditions for temperature or dissolved oxygen for fresh or marine waters, or pH for fresh waters, will be derived by following either the site-specific criteria approach pursuant to WAC 173-201A-430 or the performance-based approach pursuant to WAC 173-201A-470.

(ii) For all aquatic life parameters other than those listed in WAC 173-201A-260 (1)(a)(i), aquatic life criteria based on natural conditions will be derived by following the site-specific criteria approach pursuant to WAC 173-201A-430.

~~When natural conditions constitute the aquatic life water quality criteria, criteria values may be established using site-specific criteria (see WAC 173-201A-430), use attainability analysis (see WAC 173-201A-440), or the performance-based approach (see WAC 173-201A-470).~~

Changes to WAC 173-201A-430 Site-specific criteria: We made minor edits to WAC 173-201A-430 that remove language regarding the attainable conditions of a water body, as site-specific criteria protect existing and designated uses. We also removed the reference and associated citation to designated uses in 173-201A-430 (1)(a), as this process is for development of criteria to protect uses, not designating new uses.

(1) ~~Where the attainable condition of existing and designated uses for the water body would be fully protected using an alternative criterion, site-specific criteria may be adopted.~~

(a) The site-specific criterion must be consistent with the federal regulations on ~~designating and~~ protecting uses (currently 40 C.F.R. ~~131.10 and~~ 131.11); and

(3) The decision to approve the site-specific criterion must be based on a demonstration that it will protect the existing and ~~attainable~~ designated uses of the water body.

Changes to WAC 173-201A-470 Performance-based approach: In the new section for the performance-based approach at WAC 173-201A-470, we made changes to clarify for what purpose and water quality constituents, and under what circumstances the performance-based approach may

be used. This includes simplifying language in WAC 173-201A-470 and removing the "as revised" qualifier in WAC 173-201A-470(1), as any updates to this document must go through a public process and EPA review and approval before use for state and CWA actions.

WAC 173-201A-470 Performance-based approach. ~~Where the natural water quality of a water body constitutes the aquatic life water quality criteria, a~~ The performance-based approach may be used by the Department to establish numeric criteria based on natural conditions that are fully protective of existing and designated aquatic life uses.

(1) Aquatic life water quality criteria must be derived using the procedures referenced in ecology publication 24-10-017, "A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington," ~~as revised.~~

(2) ~~Use~~ Application of the performance-based approach for establishing aquatic life water quality criteria is limited to the following listed water quality constituents:

- (a) Aquatic life temperature criteria in fresh water;
- (b) Aquatic life dissolved oxygen criteria in fresh water;
- (c) Aquatic life pH criteria in fresh water;
- (d) Aquatic life temperature criteria in marine water;
- (e) Aquatic life dissolved oxygen criteria in marine water.

(4) ~~If the requirements set forth in the development of aquatic life criteria using the performance-based approach cannot be met, then site-specific criteria can be established by following the alternatives listed at the requirements set forth in these procedures, then alternatives specified in the paragraph following WAC 173-201A-260~~

(1) (a) ~~(i)~~ may be used.

A final cost-benefit analysis is available by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696, phone 360-407-6600, for Washington relay service or TTY call 711 or 877-833-6341, email swgs@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/summarypages/2410053.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 14, 2024.

Laura Watson
Director

OTS-5282.3

AMENDATORY SECTION (Amending WSR 24-01-088, filed 12/18/23, effective 1/18/24)

WAC 173-201A-020 Definitions. The following definitions are intended to facilitate the use of chapter 173-201A WAC:

"1-DMax" or "1-day maximum temperature" is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of 30 minutes or less.

"7-DADMax" or "7-day average of the daily maximum temperatures" is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

"Action value" means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

"Actions" refers broadly to any human projects or activities.

"Acute conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

"Ambient water quality" refers to the conditions and properties of a surface water of the state as determined by the results of water samples, measurements, or observations.

"Background" means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

"Best management practices (BMP)" means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

"Bog" means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environ-

mental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Chronic conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

"Combined sewer overflow (CSO) treatment plant" is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and stormwater from a combined sewer system.

"Compliance schedule" or **"schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

"Created wetlands" means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

"Critical condition" is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

"Department" means the state of Washington department of ecology.

"Designated uses" are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

"Director" means the director of the state of Washington department of ecology.

"Drainage ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Ecoregions" are defined using EPA's *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

"Enterococci" refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

"E. coli" is a bacterium in the family Enterobacteriaceae named *Escherichia coli* and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

"Existing uses" means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

"Fecal coliform" means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within 24 hours at 44.5 plus or minus 0.2 degrees Celsius.

"Geometric mean" means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

"Ground water exchange" means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow downgradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

"Hardness" means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO₃).

"Intake credit" is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

"Intragravel dissolved oxygen" means the concentration of dissolved oxygen in the spaces between sediment particles in a streambed.

"Irrigation ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Lakes" shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than 15 days.

"Lake-specific study" means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

"Local and regional sources of human-caused pollution" means sources of pollution caused by human actions, and the pollution originates from: (1) Within the boundaries of the state; or (2) Within the boundaries of a U.S. jurisdiction abutting to the state that impacts surface waters of the state.

"Mean detention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the 30-day 10-year low-flow from the reservoir.

"Migration" or **"translocation"** means any natural movement of an organism or community of organisms from one locality to another locality.

"Migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid rearing and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Mixing zone" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

"Natural conditions" or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

"New or expanded actions" mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

"Nonpoint source" means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"Outstanding resource waters" are high quality waters designated by the state due to their exceptional water quality, ecological or recreational significance, unique habitat, or cold water refuge. Outstanding resource waters are given the highest level of protection under the state antidegradation policy.

"Performance-based approach" means a water quality standard that is a transparent process (i.e., methodology) which is sufficiently detailed and has suitable safeguards that ensures predictable and repeatable outcomes, rather than a specific outcome. The outcomes from the performance-based approach are site-specific criteria.

"Permit" means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

"pH" means the negative logarithm of the hydrogen ion concentration.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, det-

rimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

"Salmonid spawning, rearing, and migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid spawning, rearing, and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Shoreline stabilization" means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

"Spatial median" is the middle value of multiple ranked measurements taken within the sampling area.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

"Stormwater attenuation" means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

"Surface waters of the state" includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

"Temperature" means water temperature expressed in degrees Celsius (°C).

"Treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or stormwater treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

"Trophic state" means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"Upwelling" means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling

of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

"USEPA" means the United States Environmental Protection Agency.

"Variance" is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

"Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 22-07-095, filed 3/22/22, effective 4/22/22)

WAC 173-201A-200 Fresh water designated uses and criteria. The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 -

June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) **Nonanadromous interior redband trout.** For the protection of waters where the only trout species is a nonanadromous form of self-reproducing interior redband trout (*O. mykiss*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redband shiner, chiselmouth, sucker, and northern pikeminnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)
Aquatic Life Temperature Criteria in Fresh
Water**

Category	Highest 7-DADMax
Char Spawning and Rearing*	12°C (53.6°F)
Core Summer Salmonid Habitat*	16°C (60.8°F)
Salmonid Spawning, Rearing, and Migration*	17.5°C (63.5°F)
Salmonid Rearing and Migration Only	17.5°C (63.5°F)
Nonanadromous Interior Redband Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)

*Note: Some streams have a more stringent temperature criterion that is applied seasonally to further protect salmonid spawning and egg incubation. See (c)(iv) of this subsection.

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then ~~((human actions))~~ local and regional sources of human-caused pollution considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F) above natural conditions.

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed 28/(T+7) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every 10 years on average.

(iv) Spawning and incubation protection. The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in ecology publication 06-10-038 (also available on ecology's website at www.ecology.wa.gov). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of 9°C (48.2°F) at the initiation of spawning and at fry emergence for char; and
- Maximum 7-DADMax temperatures of 13°C (55.4°F) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period.

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than 0.3°C (0.54°F) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

- (A) Be taken from well mixed portions of rivers and streams; and
- (B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this section or WAC 173-201A-600 through 173-201A-602:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-day maximum (1-DMax) temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L) or percent oxygen saturation. Table 200 (1)(d) lists the D.O. criteria for each of the aquatic life use categories. Compliance may be demonstrated through either the water column or intragravel criteria in Table 200 (1)(d).

Table 200 (1)(d)

Aquatic Life Dissolved Oxygen Criteria in Fresh Water

Category	Water Column (1-Day Minimum)
Char Spawning and Rearing*	10 mg/L or 90% saturation
Core Summer Salmonid Habitat*	10 mg/L or 95% saturation
Salmonid Spawning, Rearing, and Migration*	10 mg/L or 90% saturation
Salmonid Rearing and Migration Only	6.5 mg/L
Nonanadromous Interior Redband Trout*	10 mg/L or 90% saturation
Indigenous Warm Water Species	6.5 mg/L

* Intragravel D.O. criteria for these aquatic life use categories may be used for compliance purposes. When intragravel D.O. is used for compliance, the intragravel D.O. (1-day minimum) concentration must be 8.0 mg/L or greater, and the D.O. water column (1-day minimum) concentration must be 9.0 mg/L or greater. Intragravel D.O. must be measured as a spatial median within the same habitat area.

(i) When a water body's D.O. concentration is lower than the numeric criteria in Table 200 (1) (d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then (~~human actions~~) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. concentration of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every 10 years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1) (e) lists the maximum turbidity criteria for each of the aquatic life use categories.

**Table 200 (1) (e)
Aquatic Life Turbidity Criteria in Fresh Water**

Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

Category	NTUs
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration Salmonid Rearing and Migration Only	Same as above. Turbidity shall not exceed: <ul style="list-style-type: none"> • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
Nonanadromous Interior Redband Trout	Turbidity shall not exceed: <ul style="list-style-type: none"> • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Indigenous Warm Water Species	Turbidity shall not exceed: <ul style="list-style-type: none"> • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(i) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from the activity causing the turbidity exceedance.

(ii) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream of the activity causing the turbidity exceedance.

(iii) For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream of the activity causing the turbidity exceedance.

(iv) For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1)(f) lists the maximum TDG criteria for each of the aquatic life use categories.

Table 200 (1) (f)
Aquatic Life Total Dissolved Gas Criteria
in Fresh Water

Category	Percent Saturation
Char Spawning and Rearing	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration Only	Same as above.
Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, 10-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams that spill for anadromous juvenile fish as of the 2020 spill season. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

(A) TDG must not exceed:

- An average of 115 percent as measured in the forebays of the next downstream dams and must not exceed an average of 120 percent as measured in the tailraces of each dam (these averages are calculated as an average of the 12 highest hourly readings in a calendar day, relative to atmospheric pressure); and

- A maximum TDG saturation level of 125 percent calculated as an average of the two highest hourly TDG measures in a calendar day during spillage for fish passage.

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the following levels as measured at the tailrace fixed site monitoring location:

- A maximum TDG saturation level of 125 percent calculated as an average of the 12 highest hourly TDG measures in a calendar day; and

- A maximum TDG saturation level of 126 percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria at hydropower dams shall be applied in accordance with Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia rivers, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of 50 fish required weekly) or nonsalmonids (with a minimum sample size of 50 fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of 15 percent; or
- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than 25 percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet (f)(ii)(B) of this subsection. This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of (f)(ii)(B) of this subsection.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1)(g)
Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
Salmonid Rearing and Migration Only	Same as above.
Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(h) **Aquatic life fine sediment criteria.** The following narrative criteria apply to all existing and designated uses for fresh water:

(i) Water bodies shall not contain excess fine sediment (<2 mm) from human-caused sources that impair designated uses.

(ii) When reference values are used to demonstrate compliance with the fine sediment criteria, measured conditions shall be compared to those from reference sites or regional data that represent least

disturbed site conditions of a comparable water body or ecoregion. Reference locations should be comparable in hydrography, geology, ecology, and habitat to that of the water body evaluated.

(2) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2) (b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on *Escherichia coli* (*E. coli*) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

**Table 200 (2) (b)
Primary Contact Recreation Bacteria Crite-
ria in Fresh Water**

Bacterial Indicator	Criteria
<i>E. coli</i>	<i>E. coli</i> organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than 10 sample points exist) obtained within the averaging period exceeding 320 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than 10 sample points exist) obtained within an averaging period exceeding 200 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criteria. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) **Effluent bacteria samples:** When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be 30 days or less.

(B) **Ambient water quality samples:** When averaging bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in

calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

General criteria. General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

General criteria. General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 20-02-091, filed 12/30/19, effective 1/30/20)

WAC 173-201A-210 Marine water designated uses and criteria. The following uses are designated for protection in marine surface waters of the state of Washington. Use designations for specific water bodies are listed in WAC 173-201A-612.

(1) **Aquatic life uses.** Aquatic life uses are designated using the following general categories. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state.

(a) **The categories for aquatic life uses are:**

(i) **Extraordinary quality.** Water quality of this use class shall markedly and uniformly exceed the requirements for all uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(ii) **Excellent quality.** Water quality of this use class shall meet or exceed the requirements for all uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iii) **Good quality.** Water quality of this use class shall meet or exceed the requirements for most uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans

and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iv) **Fair quality.** Water quality of this use class shall meet or exceed the requirements for selected and essential uses including, but not limited to, salmonid and other fish migration.

(b) **General criteria.** General criteria that apply to aquatic life marine water uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

(i) Toxic, radioactive, and deleterious materials; and

(ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, temperature is measured as a 1-day maximum temperature (1-DMax). Table 210 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 210 (1) (c)
Aquatic Life Temperature Criteria in Marine
Water**

Category	Highest 1-DMax
<i>Extraordinary quality</i>	13°C (55.4°F)
<i>Excellent quality</i>	16°C (60.8°F)
<i>Good quality</i>	19°C (66.2°F)
<i>Fair quality</i>	22°C (71.6°F)

(i) When a water body's temperature is warmer than the criteria in Table 210 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then ~~((human actions))~~ local and regional sources of human-caused pollution considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F) above natural conditions.

(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed 12/(T-2) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ~~((ten))~~ 10 years on average.

(iv) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(v) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this subsection or WAC 173-201A-612:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or be-

low 22°C (71.6°F) and the 1-DMax temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(vi) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** Except where noted, D.O. concentrations are measured as a 1-day minimum in milligrams per liter. Table 210 (1) (d) lists the D.O. criteria for each of the aquatic life use categories.

**Table 210 (1) (d)
Aquatic Life Dissolved Oxygen Criteria in
Marine Water**

Category	Lowest 1-Day Minimum
<i>Extraordinary quality</i>	7.0 mg/L
<i>Excellent quality</i>	6.0 mg/L
<i>Good quality</i>	5.0 mg/L
<i>Fair quality</i>	4.0 mg/L

(i) When a water body's D.O. concentration is lower than the numeric criteria in Table 210 (1) (d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then (~~human actions~~) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. concentration of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

(ii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every (~~ten~~) 10 years on average.

(iii) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 210 (1) (e) lists the one-day maximum turbidity allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1) (e)
Aquatic Life Turbidity Criteria in Marine
Water**

Category	NTUs
<i>Extraordinary quality</i>	Turbidity must not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Excellent quality</i>	Same as above.
<i>Good quality</i>	Turbidity must not exceed: • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Fair quality</i>	Same as above.

(i) The turbidity criteria established under WAC 173-201A-210 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. For estuaries or marine waters, the point of compliance for a temporary area of mixing shall be at a radius of (~~one hundred fifty~~) 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 210 (1)(f) lists the pH levels allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(f)
 Aquatic Life pH Criteria in Marine Water**

Use Category	pH Units
<i>Extraordinary quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.2 units.
<i>Excellent quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
<i>Good quality</i>	Same as above.
<i>Fair quality</i>	pH must be within the range of 6.5 to 9.0 with a human-caused variation within the above range of less than 0.5 units.

(2) **Shellfish harvesting.**

(a) General criteria. General criteria that apply to shellfish harvesting uses for marine water are described in WAC 173-201A-260

(2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Shellfish harvesting bacteria criteria.** Fecal coliform organism levels are used to protect shellfish harvesting. Criteria are expressed as colony forming units (CFU) or most probable number (MPN). Fecal coliform must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, and not have more than 10 percent of all samples (or any single sample when less than ~~((ten))~~ 10 sample points exist) obtained for calculating the geometric mean value exceeding 43 CFU or MPN per 100 mL.

(i) Shellfish growing areas approved for unconditional harvest by the state department of health are fully supporting the shellfish harvest goals of this chapter, even when comparison with the criteria contained in this chapter suggest otherwise.

(ii) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a ~~((thirty))~~ 30-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed ~~((twelve))~~ 12 months, and should have sample collection dates well distributed throughout the reporting period.

(iii) When determining compliance with the bacteria criteria in or around small sensitive areas, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iv) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(v) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(3) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to water contact uses for marine water are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 210 (3)(b) lists the bacteria criteria to protect water contact recreation in marine waters. These criteria are based on enterococci and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform levels to determine compliance will expire December 31, 2020.

Table 210 (3)(b)

Primary Contact Recreation Bacteria Criteria in Marine Water

Bacterial Indicator	Criteria
Enterococci	Enterococci organism levels within an averaging period must not exceed a geometric mean value of 30 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ((ten)) 10 sample values exist) obtained within the averaging period exceeding 110 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ((ten)) 10 sample points exist) obtained within an averaging period exceeding 43 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criterion. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be ~~((thirty))~~ 30 days or less.

(B) Ambient water quality samples: When averaging ambient bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be ~~((ninety))~~ 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(4) **Miscellaneous uses.** The miscellaneous marine water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

General criteria. General criteria that apply in miscellaneous marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and

(b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-260 Natural conditions and other water quality criteria and applications. (1) **Natural and irreversible human conditions.**

(a) It is recognized that portions of many water bodies cannot meet the assigned aquatic life criteria due to the natural conditions of the water body. When a water body does not meet its assigned aquatic life criteria due to natural climatic or landscape attributes, the ~~((natural conditions constitute the water quality criteria))~~ following will be used to determine site-specific numeric aquatic life criteria representing conditions unique to a water body:

(i) Aquatic life criteria based on natural conditions for temperature or dissolved oxygen for fresh or marine waters, or pH for fresh waters, will be derived by following either the site-specific criteria approach pursuant to WAC 173-201A-430 or the performance-based approach pursuant to WAC 173-201A-470.

(ii) For all aquatic life parameters other than those listed in (a)(i) of this subsection, aquatic life criteria based on natural conditions will be derived by following the site-specific criteria approach pursuant to WAC 173-201A-430.

(b) When a water body does not meet its assigned criteria due to human structural changes that cannot be effectively remedied (as determined consistent with the federal regulations at 40 C.F.R. 131.10), then alternative estimates of the attainable water quality conditions, plus any further allowances for human effects specified in this chapter for when natural conditions exceed the criteria, may be used to establish an alternative criteria for the water body (see WAC 173-201A-430 and 173-201A-440).

(2) **Toxics and aesthetics criteria.** The following narrative criteria apply to all existing and designated uses for fresh and marine water:

(a) Toxic, radioactive, or deleterious material concentrations must be below those which have the potential, either singularly or cumulatively, to adversely affect characteristic water uses, cause acute or chronic conditions to the most sensitive biota dependent upon those waters, or adversely affect public health (see WAC 173-201A-240, toxic substances, and 173-201A-250, radioactive substances).

(b) Aesthetic values must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste (see WAC 173-201A-230 for guidance on establishing lake nutrient standards to protect aesthetics).

(3) **Procedures for applying water quality criteria.** In applying the appropriate water quality criteria for a water body, the department will use the following procedure:

(a) The department will establish water quality requirements for water bodies, in addition to those specifically listed in this chapter, on a case-specific basis where determined necessary to provide full support for designated and existing uses.

(b) Upstream actions must be conducted in manners that meet downstream water body criteria. Except where and to the extent described

otherwise in this chapter, the criteria associated with the most upstream uses designated for a water body are to be applied to headwaters to protect nonfish aquatic species and the designated downstream uses.

(c) Where multiple criteria for the same water quality parameter are assigned to a water body to protect different uses, the most stringent criterion for each parameter is to be applied.

(d) At the boundary between water bodies protected for different uses, the more stringent criteria apply.

(e) In brackish waters of estuaries, where different criteria for the same use occurs for fresh and marine waters, the decision to use the fresh water or the marine water criteria must be selected and applied on the basis of vertically averaged daily maximum salinity, referred to below as "salinity."

(i) The fresh water criteria must be applied at any point where (~~ninety-five~~) 95 percent of the salinity values are less than or equal to one part per thousand, except that the fresh water criteria for bacteria applies when the salinity is less than (~~ten~~) 10 parts per thousand; and

(ii) The marine water criteria must apply at all other locations where the salinity values are greater than one part per thousand, except that the marine criteria for bacteria applies when the salinity is (~~ten~~) 10 parts per thousand or greater.

(f) Numeric criteria established in this chapter are not intended for application to human created waters managed primarily for the removal or containment of pollution. This special provision also includes private farm ponds created from upland sites that did not incorporate natural water bodies.

(i) Waters covered under this provision must be managed so that:

(A) They do not create unreasonable risks to human health or uses of the water; and

(B) Discharges from these systems meet down gradient surface and ground water quality standards.

(ii) This provision does not apply to waterways designed and managed primarily to convey or transport water from one location to another, rather than to remove pollution en route.

(g) When applying the numeric criteria established in this chapter, the department will give consideration to the precision and accuracy of the sampling and analytical methods used, as well as the existing conditions at the time.

(h) The analytical testing methods for these numeric criteria must be in accordance with the "*Guidelines Establishing Test Procedures for the Analysis of Pollutants*" (40 C.F.R. Part 136) or superseding methods published. The department may also approve other methods following consultation with adjacent states and with the approval of the USEPA.

(i) The primary means for protecting water quality in wetlands is through implementing the antidegradation procedures described in Part III of this chapter.

(i) In addition to designated uses, wetlands may have existing beneficial uses that are to be protected that include ground water exchange, shoreline stabilization, and stormwater attenuation.

(ii) Water quality in wetlands is maintained and protected by maintaining the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses.

(iii) Wetlands must be delineated using the *Washington State Wetlands Identification and Delineation Manual*, in accordance with WAC 173-22-035.

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

WAC 173-201A-430 Site-specific criteria. (1) Where the (~~at-
tainable condition of~~) existing and designated uses for the water body would be fully protected using an alternative criterion, site-specific criteria may be adopted.

(a) The site-specific criterion must be consistent with the federal regulations on (~~designating and~~) protecting uses (currently 40 C.F.R. (~~131.10 and~~) 131.11); and

(b) The decision to approve a site-specific criterion must be subject to a public involvement and intergovernmental coordination process.

(2) The site-specific analyses for the development of a new water quality criterion must be conducted in a manner that is scientifically justifiable and consistent with (~~the assumptions and rationale in "Guidelines for Deriving National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses," EPA 1985~~) 40 C.F.R. 131.11; and conducted in accordance with the procedures established in the *"Water Quality Standards Handbook,"* EPA (~~1994~~) 2023, as revised.

(3) The decision to approve the site-specific criterion must be based on a demonstration that it will protect the existing and (~~at-
tainable~~) designated uses of the water body.

(4) Site-specific criteria are not in effect until they have been incorporated into this chapter and approved by the USEPA.

NEW SECTION

WAC 173-201A-470 Performance-based approach. The performance-based approach may be used by the department to establish numeric criteria based on natural conditions that are fully protective of existing and designated aquatic life uses.

(1) Aquatic life water quality criteria must be derived using the procedures referenced in ecology publication 25-10-001, *"A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington"*.

(2) Application of the performance-based approach for establishing aquatic life water quality criteria is limited to the following listed water quality constituents:

- (a) Aquatic life temperature criteria in fresh water;
- (b) Aquatic life dissolved oxygen criteria in fresh water;
- (c) Aquatic life pH criteria in fresh water;
- (d) Aquatic life temperature criteria in marine water;
- (e) Aquatic life dissolved oxygen criteria in marine water.

(3) Aquatic life water quality criteria developed using this approach are applicable to the water body upon derivation.

(4) If the requirements set forth in the performance-based approach cannot be met, then site-specific criteria can be established by following the alternatives listed at WAC 173-201A-260 (1)(a)(i).

WSR 24-23-042

PERMANENT RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed November 14, 2024, 2:26 p.m., effective December 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Removing references to osteopathic physician assistants. The Washington medical commission (commission) has adopted amendments to WAC 246-918-895 and 246-919-945 to align rule language with currently accepted language.

In 2020, the legislature passed SHB 2378 concerning physician assistants. This bill eliminated the profession of osteopathic physician assistant and placed all physician assistants under the authority of the commission.

As a result of this bill, chapter 246-854 WAC, which pertained to osteopathic physician assistants, was repealed. In both WAC 246-918-895 and 246-919-945, the commission referenced a section to the now-repealed chapter 246-854 WAC. Additionally, these sections referenced both allopathic and osteopathic physician assistants. The commission has adopted amendments that remove the references to chapter 246-854 WAC and to allopathic and osteopathic physician assistants.

Citation of Rules Affected by this Order: Amending WAC 246-918-895 and 246-919-945.

Statutory Authority for Adoption: RCW 18.71.017 and SHB 2378 (chapter 80, Laws of 2020).

Adopted under notice filed as WSR 24-15-054 on July 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 12, 2024.

Kyle S. Karinen
Executive Director
Washington Medical Commission

OTS-5454.4

AMENDATORY SECTION (Amending WSR 20-08-069, filed 3/26/20, effective 4/26/20)

WAC 246-918-895 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If ~~((an allopathic))~~ a physician assistant ~~((or osteopathic physician assistant))~~ must have a delegation agreement with a physician pain management specialist and meet ~~((s))~~ the educational requirements and practice requirements listed below:

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

~~(b) ((Credentialed in pain management by an entity approved by the commission for an allopathic physician assistant or the Washington state board of osteopathic medicine and surgery for an osteopathic physician assistant;~~

~~(e))~~ Successful completion of a minimum of at least ~~((eighteen))~~ 18 continuing education hours in pain management during the past two years; and

~~((d))~~ (c) At least ~~((thirty))~~ 30 percent of the physician assistant's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) If an allopathic physician, in accordance with WAC 246-919-945.

(3) If an osteopathic physician, in accordance with WAC 246-853-750.

(4) If a dentist, in accordance with WAC 246-817-965.

(5) If a podiatric physician, in accordance with WAC 246-922-750.

(6) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

OTS-5453.1

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-945 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If an allopathic physician or osteopathic physician:

(a) Is board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, neurology, rheumatology, or anesthesiology;

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board;

(c) Has a certification of added qualification in pain management by the AOA;

(d) Is credentialed in pain management by an entity approved by the commission for an allopathic physician or the Washington state board of osteopathic medicine and surgery for an osteopathic physician;

(e) Has a minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Has successful completion of a minimum of at least (~~eight-
een~~) 18 continuing education hours in pain management during the past two years for an allopathic physician or three years for an osteopathic physician; and

(ii) Has at least (~~thirty~~) 30 percent of the allopathic physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(2) If (~~an allopathic~~) a physician assistant, in accordance with WAC 246-918-895.

(3) (~~If an osteopathic physician assistant, in accordance with WAC 246-854-330.~~

~~(4)~~) If a dentist, in accordance with WAC 246-817-965.

(~~(5)~~) (4) If a podiatric physician, in accordance with WAC 246-922-750.

(~~(6)~~) (5) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

WSR 24-23-043

PERMANENT RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed November 14, 2024, 2:47 p.m., effective December 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Implementation of the physician assistant collaborative practice. The Washington medical commission (commission) has adopted amendments to chapter 246-918 WAC to implement ESHB 2041 (chapter 62, Laws of 2024), which aims to establish clear guidelines and requirements for the collaboration between physician assistants (PAs) and supervising physicians. The commission has also adopted amendments that clarify and update terms.

From March 2020 to October 2022, PAs were allowed to practice without a delegation agreement under the governor's Proclamation 20-32. During this period, PAs delivered safe and efficient care, improving access to essential services statewide. Given the ongoing need for more health care providers, especially in underserved and rural areas, the legislature passed ESHB 2041 to authorize PAs to engage in a collaborative practice with physicians. This collaborative practice seeks to enhance the scope of practice for PAs, streamline processes for their practice agreements, and ensure better integration within health care teams. This will promote team-based care and enhance health care access for the state's residents.

The commission has adopted amendments to various sections of chapter 246-918 WAC, related to PAs, to align with the goals of ESHB 2041.

Citation of Rules Affected by this Order: Amending WAC 246-918-005, 246-918-035, 246-918-055, 246-918-075, 246-918-080, 246-918-105, 246-918-125, 246-918-126, 246-918-130, 246-918-175, 246-918-260, 246-918-410, and 246-918-420.

Statutory Authority for Adoption: RCW 18.71A.020, 18.130.050; and ESHB 2041 (chapter 62, Laws of 2024).

Other Authority: Chapter 18.71A RCW.

Adopted under notice filed as WSR 24-15-055 on July 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 13, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 0.

Date Adopted: November 14, 2024.

Kyle S. Karinen
Executive Director
Washington Medical Commission

OTS-5458.3

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-005 Definitions. The definitions in this section and definitions in RCW 18.71A.010 apply throughout this chapter unless the context clearly requires otherwise:

(1) "Collaboration agreement" means a written agreement that describes the manner in which the physician assistant is supervised by or collaborates with at least one physician and that is signed by the physician assistant and one or more physicians or the physician assistant's employer.

(2) "Commission" means the Washington medical commission.

~~((2))~~ (3) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

~~((3))~~ (4) "Employer" means the scope appropriate clinician, such as a medical director, who is authorized to enter into the collaboration agreement with a physician assistant on behalf of the facility, group, clinic, or other organization that employs the physician assistant.

(5) "NCCPA" means National Commission on Certification of Physician Assistants.

~~((4) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.~~

~~((5))~~ (6) "Participating physician" means a physician that supervises or collaborates with a physician assistant pursuant to a collaboration agreement.

(7) "Physician" means an individual licensed under chapter 18.57, 18.71, or 18.71B RCW.

~~((6))~~ (8) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine (~~to a limited extent only under the supervision of a physician or osteopathic physician~~) according to a collaboration agreement with one or more participating physicians.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant be-

tween September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

~~((7))~~ (9) "Practice agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a supervising physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

~~((8))~~ (10) "Supervising physician" means any physician or osteopathic physician identified in a practice agreement as providing primary clinical and administrative oversight for a physician assistant.

~~((9) "Alternate physician" means any physician or osteopathic physician who provides clinical oversight of a physician assistant in place of or in addition to the supervising physician.)~~

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-035 Prescriptions. ~~((1))~~ A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice ~~((in an approved practice agreement filed with the commission))~~ provided:

~~((a))~~ (1) The physician assistant has an active DEA registration; and

~~((b))~~ (2) All prescriptions comply with state and federal prescription regulations.

~~((2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will be similarly limited in their prescribing privileges, unless otherwise authorized in writing by the commission.)~~

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-055 Collaboration and practice agreements. (1) A practice agreement must meet the requirements in RCW 18.71A.120.

(2) A physician assistant ~~((may have more than one supervising physician if the practice agreement is entered into with a group of physicians and the language of the practice agreement designates the supervising physicians.~~

~~((3) Pursuant to a practice agreement,))~~ practicing under a practice agreement that was entered into before July 1, 2025, may continue to practice under the practice agreement until the physician assistant enters into a collaboration agreement, as defined in RCW 18.71A.010. A physician assistant specified in this section shall enter into a collaboration agreement by either the renewal date of their license or July 1, 2025, whichever is later.

(3) A physician assistant may administer anesthesia, except the types of anesthesia described in subsection (4) of this section, without the personal presence of a ~~((supervising))~~ participating physician.

(4) Administration of general anesthesia or intrathecal anesthesia may be performed by a physician assistant with adequate education

and training under direct supervision of a supervising anesthesiologist. Adequate education and training for administration of general or intrathecal anesthesia is defined as:

- (a) Completion of an accredited anesthesiologist assistant program; or
- (b) Performance of general or intrathecal anesthesia clinical duties pursuant to a valid practice agreement prior to September 22, 2021.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-075 Background check—Temporary practice permit.

The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a ~~((practice))~~ collaboration agreement ~~((on file with the commission))~~ with a participating physician.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-080 Physician assistant—Requirements for licensure.

(1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

- (a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990; and

(d) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

~~(4) ((A physician assistant may not begin practicing without first filing a practice agreement with the commission.~~

~~(5))~~ A physician assistant licensed under chapter 18.57A RCW prior to July 1, 2021, renewing their license on or after July 1, 2021, must do so with the commission. Individuals licensed under chapter 18.57A RCW and renewing their license after July 1, 2021, will follow the renewal schedule set forth in WAC 246-918-171. The commission shall issue a physician assistant license to the individuals described in this subsection without requiring full application or reapplication, but may require additional information from the renewing physician assistant.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-105 Practice limitations due to participating physician disciplinary action. (1) To the extent a supervising, but not a collaborating, physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in their prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their supervising physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the supervising physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-125 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician assistant may use an LLRP device so long as it is with the consent of ~~((the supervising))~~ a participating physician ~~((, it is in compliance with the practice agreement on file with the commission,))~~ and it is in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) A physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment.

(e) The delegating physician assistant has written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a

plan for communication or feedback to the authorizing physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure, and may be performed on the patient's record or medical chart.

(f) The physician assistant is responsible for ensuring that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device.

(g) The physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-126 Nonsurgical medical cosmetic procedures. (1)

The purpose of this rule is to establish the duties and responsibilities of a physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) ~~((A physician assistant may perform a nonsurgical medical cosmetic procedure only after the commission approves a practice plan permitting the physician assistant to perform such procedures. A))~~ For a physician assistant to perform a nonsurgical medical cosmetic procedure, the physician assistant must ensure that ((the supervising)) their participating physician is in full compliance with WAC 246-919-606.

- (5) A physician assistant may not perform a nonsurgical cosmetic procedure unless their (~~supervising~~) participating physician is fully and appropriately trained to perform that same procedure.
- (6) Prior to performing a nonsurgical medical cosmetic procedure, a physician assistant must have appropriate training in, at a minimum:
- Techniques for each procedure;
 - Cutaneous medicine;
 - Indications and contraindications for each procedure;
 - Preprocedural and postprocedural care;
 - Recognition and acute management of potential complications that may result from the procedure; and
 - Infectious disease control involved with each treatment.
- (7) The physician assistant must keep a record of their training in the office and available for review upon request by a patient or a representative of the commission.
- (8) Prior to performing a nonsurgical medical cosmetic procedure, either the physician assistant or the delegating physician must:
- Take a history;
 - Perform an appropriate physical examination;
 - Make an appropriate diagnosis;
 - Recommend appropriate treatment;
 - Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;
 - Provide instructions for emergency and follow-up care; and
 - Prepare an appropriate medical record.
- (9) The physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:
- A statement of the activities, decision criteria, and plan the physician assistant must follow when performing procedures under this rule;
 - Selection criteria to screen patients for the appropriateness of treatment;
 - A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and
 - A statement of the activities, decision criteria, and plan the physician assistant must follow if performing a procedure delegated by a physician pursuant to WAC 246-919-606, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.
- (10) A physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.
- (11) A physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, so long as the physician assistant's supervising physician is on-site during the entire procedure.
- (12) A physician assistant must ensure that each treatment is documented in the patient's medical record.
- (13) A physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.
- (14) A physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

(15) A physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-919-606.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-130 Physician assistant identification. (1) A physician assistant must clearly identify (~~(himself or herself)~~) themselves as a physician assistant and must appropriately display on their person identification as a physician assistant.

(2) A physician assistant must not present (~~(himself or herself)~~) themselves in any manner which would tend to mislead the public as to their title.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, excluding WAC 246-12-120 (2)(c) and (d).

(2) (~~(A physician assistant with a retired active license must have a practice agreement on file with the commission in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities or serving under chapter 70.15 RCW.~~

~~(3))~~ A physician assistant with a retired active license may not receive compensation for health care services.

~~((4))~~ (3) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time non-permanent basis.

~~((5))~~ (4) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than (~~(ninety)~~) 90 days prior to the expiration date.

~~((6))~~ (5) A physician assistant with a retired active license shall report (~~(one hundred)~~) 100 hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—Use and supervision. The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by (~~(the supervising)~~) their partici-

participating physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring their compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and (~~the supervising~~) their participating physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks they are authorized to perform only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of (~~the supervising~~) their participating physician at the place where the services are rendered. It is the responsibility of (~~the supervising~~) their participating physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the PASA. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to their professional activities as a PASA, the PASA shall clearly denominate their profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to their title.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-410 Sexual misconduct. (1) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to (~~a number of~~) several factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when (~~he or she engages~~) they engage in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;

- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.
- (3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:
- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.
- (4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.
- (5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors including, but not limited to, the following:
- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the physician assistant;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.
- (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
- (7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
- (8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 06-03-028, filed 1/9/06, effective 2/9/06)

WAC 246-918-420 Abuse. (1) A physician assistant commits unprofessional conduct if the physician assistant abuses a patient. A physician assistant abuses a patient when (~~he or she~~) they:

(a) Make((s)) statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Remove((s)) a patient's clothing or gown without consent;

(c) Fail((s)) to treat an unconscious or deceased patient's body or property respectfully; or

(d) Engage((s)) in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

WSR 24-23-044

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed November 14, 2024, 3:17 p.m., effective December 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Changing the scope of practice for optometrists. The board of optometry (board) is adopting new WAC 246-851-515 and amendments to WAC 246-851-400, 246-851-410, and 246-851-570 through 246-851-600. The adopted rules are in response to the statutory changes created by SSB 5389 (chapter 400, Laws of 2023), codified in RCW 18.54.010. The bill expands optometrist scope of practice to include advanced procedures an optometrist may perform with an advanced procedures license endorsement. The expanded scope is further defined through a list of prohibited ophthalmic surgical procedures. The board is required to adopt rules for education, training, and exams to qualify for an advanced procedures license endorsement.

Citation of Rules Affected by this Order: New WAC 246-851-515; and amending WAC 246-851-400, 246-851-410, 246-851-570, 246-851-580, 246-851-590, and 246-851-600.

Statutory Authority for Adoption: RCW 18.53.010 and 18.54.070.

Adopted under notice filed as WSR 24-18-029 on August 26, 2024.

A final cost-benefit analysis is available by contacting Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-8562, TTY 711, email amber.freeberg@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 6, Repealed 0.

Date Adopted: November 14, 2024.

Melissa Dacumos, OD, Chair
Board of Optometry

OTS-5565.3

AMENDATORY SECTION (Amending WSR 91-22-061, filed 11/1/91, effective 12/2/91)

WAC 246-851-400 Certification required for use of pharmaceutical agents. (1) Licensed optometrists using pharmaceutical agents in the practice of optometry shall have a minimum of (~~sixty~~) 60 hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for therapeutic purposes an additional

minimum (~~seventy-five~~) 75 hours of didactic and clinical instruction, and certification from an institution of higher learning, accredited by those agencies recognized by the United States (~~Office~~) Department of Education or the Council on (~~Post-Secondary Accreditation~~) Higher Education to qualify for certification by the optometry board to use drugs for diagnostic and therapeutic purposes.

(2) Optometrists must obtain the required instructions in both diagnostic and therapeutic categories in order to be eligible to qualify for certification to use drugs for therapeutic purposes.

(3) The instruction in ocular therapeutics must cover the following subject area in order to qualify for certification training:

- (a) Ocular pharmacology.
 - (i) Corneal barrier, blood-aqueous, /-retinal barrier.
 - (ii) Routes of drug administration for ocular disease.
 - (iii) Prescription writing and labeling.
 - (iv) Ocular side-effects of systemic drugs.
- (b) Anti-infectives.
 - (i) General principles of anti-infective drugs.
 - (ii) Antibacterial drugs.
 - (iii) Treatment of ocular bacterial infections.
 - (iv) Antiviral drugs.
 - (v) Treatment of ocular viral infections.
 - (vi) Antifungal drugs.
 - (vii) Treatment of ocular fungal infections.
 - (viii) Antiparasitic drugs.
 - (ix) Treatment of parasitic eye disease.
- (c) Anti-inflammatory drugs.
 - (i) Nonsteroidal anti-inflammatory drugs (NSAIDS).
 - (ii) General principles of mast-cell stabilizers.
 - (iii) Antihistamines.
 - (iv) Ocular decongestants.
 - (v) Treatment of allergic disease.
 - (vi) Treatment of inflammatory disease.
 - (vii) Cycloplegic drugs.
 - (viii) Treatment of ocular trauma.
 - (ix) Ocular lubricants.
 - (x) Hypertonic agents.
 - (xi) Antiglaucoma drugs.

Each subject area shall be covered in sufficient depth so that the optometrist will be informed about the general principles in the use of each drug category, drug side effects and contra indications, and for each disease covered the subjective symptoms, objective signs, diagnosis and recommended treatment and programs.

AMENDATORY SECTION (Amending WSR 91-06-025, filed 2/26/91, effective 3/29/91)

WAC 246-851-410 Drug formulary. Pursuant to RCW 18.53.010(3) the optometry board adopts the following drug formulary of topically applied drugs administered for (~~diagnostic and~~) diagnosis, treatment, or mitigation purposes.

- (1) Drugs for diagnostic or therapeutic purposes.
 - (a) Mydriatics.
 - (b) Cycloplegics.
 - (c) Miotics.

- (d) Anesthetics.
- (2) Drugs for therapeutic purposes only.
- (a) Anti-infectives.
- (b) Antihistamines and decongestants.
- (c) Ocular lubricants.
- (d) Antiglaucoma and ocular hypotensives.
- (e) Anti-inflammatories.
- (f) Hyperosmotics.
- (g) ~~((Other topical drugs approved for ocular use by the FDA.))~~

Anti-parasitics.

(h) All other topical drugs and compounds used for the diagnosis, treatment or mitigation of conditions of the eye and adnexa approved by the FDA (both on-label and off-label).

NEW SECTION

WAC 246-851-515 License endorsement to perform advanced procedures. A licensed optometrist may perform advanced procedures as provided by RCW 18.53.010 only after being issued a license endorsement to perform advanced procedures by the secretary. The secretary shall issue an endorsement to perform advanced procedures to a licensed optometrist who provides evidence in a manner acceptable to the board, to include the following:

- (1) A completed application on forms provided by the secretary;
- (2) Provide evidence of:

(a) A course that contains supervised hands-on experience, with live patients, in the categories of procedures listed in RCW 18.53.010 (2) or is supplemented by residency, internship, or other supervised program that offers hands-on experience with patients. The course must:

- (i) Be offered by an institution of higher education accredited by those agencies recognized by the United States Department of Education or the Council on Higher Education; and
- (ii) Approved by the Washington state board of optometry.

(b) Successful completion of one of the following examinations for advanced procedures:

- (i) National examination for advanced procedures as defined by the National Board of Examiners in Optometry; or
- (ii) Examination provided by the course offered by an institution that meets (a)(i) of this subsection;

(3) Enter into an agreement with a qualified physician licensed under chapter 18.71 RCW or an osteopathic physician licensed under chapter 18.57 RCW for rapid response if complications occur during an advanced procedure:

(a) For the purpose of this section, a qualified physician means a physician who is actively licensed under chapter 18.71 or 18.57 RCW and who is trained in and capable of responding to complications which may arise from the optometric advanced procedures defined in RCW 18.53.010(2);

(b) The optometrist shall maintain the completed and signed documentation and have it available upon request by the board if audited;

(4) A licensed optometrist shall report every advanced procedure authorized under RCW 18.53.010(2) and include any complications or adverse events during their annual reporting period. The reporting period ends December 31, 2028;

(5) Optometrists are excluded from performing the procedures listed in RCW 18.53.010(3). The performance of these procedures would be considered professional misconduct and would be subject to disciplinary action by the board of optometry.

AMENDATORY SECTION (Amending WSR 10-21-067, filed 10/15/10, effective 11/15/10)

WAC 246-851-570 Certification required for use or prescription of drugs administered orally for diagnostic or therapeutic purposes.

(1) To qualify for certification to use or prescribe drugs administered orally for diagnostic or therapeutic purposes, a licensed optometrist must provide documentation that he or she:

(a) Is certified to use or prescribe topical drugs for diagnostic and therapeutic purposes under WAC 246-851-400 and has successfully completed a minimum of (~~sixteen~~) 16 hours of didactic and eight hours of supervised clinical instruction from an institution of higher learning, accredited by those agencies recognized by the United States (~~Office~~) Department of Education or the Council on (~~Postsecondary Accreditation~~) Higher Education; or

(b) Holds a current active optometry license in another state that has licensing standards substantially equivalent to those in Washington state. The licensee's level of licensure must also be substantially equivalent to the licensing standards in Washington state.

(2) The didactic instruction must include a minimum of (~~sixteen~~) 16 hours in the following subject area:

(a) Basic principles of systemic drug therapy;
 (b) Side effects, adverse reactions and drug interactions in systemic therapy;

(c) Review of oral pharmaceuticals:

(i) Prescription writing;

(ii) Legal regulations in oral prescription writing;

(iii) Systemic antibacterials in primary eye care;

(iv) Systemic antivirals in eye care;

(v) Systemic antifungal in eye care;

(vi) Systemic antihistamines and decongestants and their uses in eye care;

(vii) Oral dry eye agents;

(viii) (~~Anti-emetic~~) Antiemetic and their use in eye care;

(ix) Systemic diuretics and their management of elevated IOP;

(x) Systemic epinephrine;

(d) Review of systemic medication in ocular pain management:

(i) Legal regulations with scheduled medication;

(ii) Systemic nonsteroidal anti-inflammatory drugs (NSAIDS);

(iii) Systemic noncontrolled analgesics;

(iv) Systemic controlled substances;

(e) Review of oral medications used for sedation and anti-anxiety properties in eye care:

(i) Controlled anti-anxiety/sedative substances;

(ii) Legal ramifications of prescribing anti-anxiety drugs;

(f) Review of systemic medications used during pregnancy and in pediatric eye care:

(i) Legal ramifications in prescribing to this population;

(ii) Dosage equivalent with pregnancy and pediatrics;

(iii) Medications to avoid with pregnancy and pediatrics;

- (g) Applied systemic pharmacology:
 - (i) Eyelid and adnexal tissue;
 - (ii) Lacrimal system and peri-orbital sinuses;
 - (iii) Conjunctival and corneal disorders;
 - (iv) Iris and anterior chamber disorders;
 - (v) Posterior segment disorders;
 - (vi) Optic nerve disease;
 - (vii) Peripheral vascular disease and its relationship with ocular disease;
 - (viii) Atherosclerotic disease;
 - (ix) Other/course review.
- (3) The supervised clinical instruction must include at least eight hours in the following subject areas:
- (a) Vital signs;
 - (b) Auscultation;
 - (c) Ear, nose and throat;
 - (d) Screening neurological exam.
- (4) Written examination to cover required curriculum.

AMENDATORY SECTION (Amending WSR 19-04-071, filed 2/1/19, effective 3/4/19)

WAC 246-851-580 Drug list. Pursuant to RCW 18.53.010 ~~((+4))~~ (2) and (7), the optometry board adopts the following drug formulary of oral Schedule II hydrocodone combination products, Schedule III through V controlled substances, ~~((and))~~ legend drugs, and injectable drugs for diagnostic ~~((and))~~, therapeutic, or mitigation purposes in the practice of optometry. No licensed optometrist may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. This section includes the approved oral and injectable drug formulary. Optometrists must consult WAC 246-851-590 for specific guidelines on these drugs or drug categories.

(1) Approved nonscheduled oral drugs include:

- ~~(a) ((Antibiotic agents excluding those listed in WAC 246-851-590(1)).~~
- ~~(b) Antiviral agents.~~
- ~~(c) Antifungal agents listed under WAC 246-851-590(2).~~
- ~~(d) Antihistamine agents.~~
- ~~(e) Decongestant agents.~~
- ~~(f) Dry eye agents.~~
- ~~(g) Anti-emetic agents listed under WAC 246-851-590(3).~~
- ~~(h) Diuretic agents listed under WAC 246-851-590(4).~~
- ~~(i) Nonsteroidal anti-inflammatory agents excluding those listed in WAC 246-851-590(5).~~
- ~~(j)) Analgesics and adjuvant analgesics agents.~~
- (b) Antibiotic agents excluding those listed in WAC 246-851-590(1).
- (c) Antiemetic agents listed under WAC 246-851-590(3).
- (d) Antifungal agents listed under WAC 246-851-590(2).
- (e) Antihistamine agents.
- (f) Antiparasitic agents.
- (g) Antiviral agents.
- (h) Corticosteroid agents.
- (i) Decongestant agents.

(j) Diagnostic dye agents.

(k) Diuretic agents listed under WAC 246-851-590(4).

(l) Dry eye agents.

(m) Nonsteroidal anti-inflammatory agents excluding those listed in WAC 246-851-590(5).

(2) Approved oral controlled substances limited to Schedule II hydrocodone combination products and Schedules III, IV, and V.

(a) Schedule II hydrocodone combination products.

(b) Schedule III controlled substances.

(c) Schedule IV controlled substances.

(d) Schedule IV anti-anxiety/sedative ((agents)) substances.

(e) Schedule V controlled substances.

(3) Approved injectable substances(~~(-~~

Administration of)). Local injections with the exception of, vitreous, subtenon, retrobulbar, intraorbital, or botulinum toxin.

(a) Local anesthetic agents, with or without epinephrine, with or without buffer.

(b) Local antibiotic agents excluding those listed in WAC 246-851-590(1).

(c) Local antifungal agents listed under WAC 246-851-590(2).

(d) Local corticosteroid agents.

(e) Local and IV diagnostic dye agents.

(f) IM epinephrine ((by injection)) for the treatment of anaphylactic shock.

AMENDATORY SECTION (Amending WSR 19-04-071, filed 2/1/19, effective 3/4/19)

WAC 246-851-590 Guidelines for the use of oral and injectable Schedule II hydrocodone combination products and Schedule III through V controlled substances and legend drugs. Nothing in these guidelines should be construed to restrict the recommendation of over-the-counter medications, vitamins, or supplements, nor restrict the ordering of any radiologic or laboratory testing necessary to the diagnosis of any eye related disease that is within the scope of practice of optometry.

(1) All (~~oral~~) forms and dosages of antibiotic agents will be available for use excluding: Vancomycin.

(2) Antifungal agents used in eye care shall fall into the following categories:

(a) All (~~oral~~) forms (~~and dosages~~) of polyene antifungals.

(b) All (~~oral~~) forms and dosages of imidazole antifungals.

(c) All (~~oral~~) forms and dosages of triazole antifungals.

(3) (~~Anti-emetic~~) Antiemetic agents used in eye care shall be the following medications:

(a) All oral forms and dosages of prochlorperazine.

(b) All oral forms and dosages of metoclopramide.

(c) All oral forms and dosages of promethazine.

(4) Diuretic agents used in eye care shall fall into the following categories:

(a) All oral forms and dosages of carbonic anhydrase inhibitors.

(b) All oral forms and dosages of osmotic diuretics. (~~Osmotic diuretics shall be used only in the case of acute angle closure glaucoma administered in-office, outpatient, and/or ambulatory procedures only.~~)

(5) All oral forms and dosages of nonsteroidal anti-inflammatory agents will be available for use. Excluding: Ketorolac tromethamine.

(6) Benzodiazepines prescribed, as anti-anxiety agents, shall be used for in-office, outpatient, and/or ambulatory procedures. This family of medications will be utilized as one dosage unit per prescription.

(7) Schedule II controlled substance will only include hydrocodone combination products.

(8) Schedules III and IV controlled substances will have a maximum quantity count of ~~((thirty))~~ 30 dosage units per prescription.

(9) Specific dosage for use and appropriate duration of treatment of oral medications listed in WAC 246-851-580(1) will be consistent with Food and Drug Administration on- and off-label indications.

(10) Notation of purpose shall be included on all prescriptions.

(11) An optometrist may not:

(a) ~~((Use, prescribe, dispense, or administer oral corticosteroids; or~~

~~(b-))~~ Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

~~((c) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist.))~~ (b) If treatment exceeding the time limitation ~~((is))~~ indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(12) To prescribe oral corticosteroids for more than seven days, an optometrist must consult with a licensed physician.

(13) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized.

~~((13))~~ (14) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance with the exception of Schedule II hydrocodone combination products.

AMENDATORY SECTION (Amending WSR 10-21-067, filed 10/15/10, effective 11/15/10)

WAC 246-851-600 Certification required for administration of epinephrine by injection for treatment of anaphylactic shock. (1) To qualify for certification to administer epinephrine by injection for anaphylactic shock, licensed optometrists must provide documentation that he or she:

(a) Is certified to use or prescribe topical drugs for diagnostic and therapeutic purposes under WAC 246-851-400 and has successfully completed a minimum of four hours of didactic and supervised clinical instruction from an institution of higher learning, accredited by those agencies recognized by the United States ~~((Office))~~ Department of Education or the Council on ~~((Postsecondary Accreditation))~~ Higher Education to qualify for certification by the optometry board to administer epinephrine by injection; or

(b) Holds a current active license in another state that has licensing standards substantially equivalent to those in Washington state. The licensee's level of licensure must also be substantially equivalent to the licensing standards in Washington state.

(2) The didactic instruction must include the following subject area:

(a) Review of urgencies, emergencies and emergency-use agents;
(b) Ocular urgencies:
(i) Thermal burns-direct and photosensitivity-based ultraviolet burn;

- (ii) Electrical injury;
 - (iii) Cryo-injury and frostbite;
 - (iv) Insect stings and bites;
 - (v) Punctures, perforations, and lacerations;
- (c) General urgencies and emergencies:
(i) Anaphylaxis;
(ii) Hypoglycemic crisis;
(iii) Narcotic overdose.

(3) The supervised clinical instruction must include the following subject areas:

- (a) Instrumentation;
- (b) Informed consent;
- (c) Preparation (patient and equipment);
- (d) All routes of injections.

~~((4) With the exception of the administration of epinephrine by injection for treatment of anaphylactic shock, no injections or infusions may be administered by an optometrist.))~~

WSR 24-23-045

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed November 14, 2024, 3:23 p.m., effective December 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Licensed optometrist continuing education (CE) and reducing barriers to licensure. To implement and comply with section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, and to reduce barriers for entering into and remaining in the health care workforce, the board of optometry (board) is adopting an amendment to WAC 246-851-490 that removes the jurisprudence (JP) examination requirement from initial licensure.

The board is also adopting amendments to WAC 246-851-090 that adds the JP exam as a requirement for a licensed optometrist's first full CE reporting period, allowing it to count for a maximum of three hours within the existing CE hour requirements. The board is also adopting amendments to clarify the number of allowable CE hours in specific course settings by limiting the number of CE credit hours that may be obtained through asynchronous learning and adding a minimum number of CE credit hours that must be obtained through synchronous and in-person learning.

Citation of Rules Affected by this Order: Amending WAC 246-851-090 and 246-851-490.

Statutory Authority for Adoption: RCW 18.54.070 and 18.130.077.

Adopted under notice filed as WSR 24-18-030 on August 26, 2024.

A final cost-benefit analysis is available by contacting Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-8562, TTY 711, email amber.freeberg@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 14, 2024.

Melissa Dacumos, OD, Chair
Board of Optometry

OTS-5564.2

AMENDATORY SECTION (Amending WSR 23-22-068, filed 10/25/23, effective 11/25/23)

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 50 total hours of continuing education every two years in compliance with WAC 246-12-170 through 246-12-235. Of the 50 total credit hours:

(a) A licensed optometrist shall complete and successfully pass the board-approved jurisprudence examination during their first full continuing education reporting period after initial licensure. Three hours of continuing education will be granted toward the 50-hour requirement.

(b) A minimum of 10 credit hours must be completed through synchronous in-person learning;

~~((b))~~ (c) A maximum of 25 credit hours may be completed through asynchronous learning;

~~((e))~~ (d) The remaining credit hours may be completed through any combination of synchronous virtual ~~((learning and asynchronous))~~ or synchronous in-person learning; and

~~((d))~~ (e) 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.

(4) A licensed optometrist may alternatively meet the continuing education requirements of this section by providing proof that 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

(b) Is practicing solely outside of Washington state and meets the continuing education requirements of the state or territory in which 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; ~~((e))~~

- (b) Health equity in WAC 246-851-225; or
 (c) Jurisprudence examination in this section.

AMENDATORY SECTION (Amending WSR 06-22-104, filed 11/1/06, effective 12/2/06)

WAC 246-851-490 Examination and licensure. To qualify for licensure in this state a candidate must:

(1) Successfully complete Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) examinations; the Part III having been administered and successfully completed after January 1, 1993.

(2) Applicants who completed the NBEO Part II examination prior to January 1, 1993, must successfully complete the International Association of Examiners in Optometry (IAB) examination in treatment and management of ocular disease.

(3) ~~((Successfully complete a jurisprudence questionnaire.~~

~~(4))~~ Be a graduate of a state accredited high school or equivalent.

~~((5))~~ (4) Be a graduate of a school or college of optometry accredited by the Council on Optometric Education of the American Optometric Association and approved by the Washington state board of optometry.

~~((6))~~ (5) Be of good moral character.

~~((7))~~ (6) Effective January 1, 2007, all applicants who receive their initial (first) license in Washington state must meet all the certification requirements of RCW 18.53.010 (2) (a), (b), (c), and (d).

~~((8))~~ (7) Effective January 1, 2009, all optometrists licensed in Washington state must be certified under RCW 18.53.010 (2) (a) and (b).

~~((9))~~ (8) Effective January 1, 2011, all optometrists licensed in Washington state must be certified under RCW 18.53.010 (2) (a), (b), (c), and (d).

WSR 24-23-048
PERMANENT RULES
BOARD OF INDUSTRIAL
INSURANCE APPEALS

[Filed November 14, 2024, 4:22 p.m., effective December 15, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Purpose of the proposal and its anticipated effects, including any changes in existing rules:

(1) Amending WAC 263-12-01501(1) to clarify that written communications can only be filed at the board of industrial insurance appeals' (board) Olympia office. We no longer accept mail at the board field offices. Also amending WAC 263-12-01501(6) to ensure written communication filed at the board shall not include personal identifiers as described in GR 31(e) and, if present, shall be redacted.

(2) Amending WAC 263-12-115 to clarify the order of presentation in worker appeals from claim rejection orders where the worker argues that a presumption applies and there is a dispute about whether the presumption applies.

(3) Amending WAC 263-12-117 to clarify that the court reporter hired by the party taking the deposition is responsible for filing perpetuation deposition transcripts.

(4) Amending WAC 263-12-11801 to change the chapter reference to reflect the correct RCW.

(5) Amending WAC 263-12-145 to clarify that to toll the deadline to file a petition for review, a request for translation of a proposed decision and order must be received before the deadline to file a petition for review has expired.

(6) Amending WAC 263-12-170 to add that documents sealed by the board will be maintained by the board and forwarded to the court, consistent with the process outlined in GR 15 (c)(5). In such instances, the board will place the sealed records in a separate packet and alert the court that the sealed records require special handling.

Citation of Rules Affected by this Order: Amending WAC 263-12-01501 (1) and (6), 263-12-115 (2)(d), 263-12-117(4), 263-12-11801(2), 263-12-145, and 263-12-170.

Statutory Authority for Adoption: RCW 51.52.020.

Adopted under notice filed as WSR 23-19-036 [24-19-013] on October 4, 2023 [September 5, 2024].

Changes Other than Editing from Proposed to Adopted Version: Change made to WAC 263-12-170. In the original proposal, we proposed to require the parties to obtain a court order before we would release sealed documents. After receiving a comment on it, we changed the language from the proposal in the CR-102. The aim of this rule making is to ensure that we don't casually submit sealed records to the court when a party appeals a board decision to the court. The concern is that sealed documents submitted to the court might be publicly available without special handling by the court and we want to minimize the risk of that occurring. Sealed documents require special handling by both the board and the court unless otherwise directed by the court. We carefully considered the written comment we received from the office of the attorney general. We changed the language to the following: "Documents sealed by the board will be maintained by the board and forwarded to the court consistent with the process outlined in GR 15 (c)(5). In such instances, the board will place the sealed records in a separate packet and alert the court that the sealed records re-

quire special handling." We believe this change will achieve the aim of the change and will be less costly to the parties.

The second change we made was to correct a clerical error/oversight in the proposed language in the CR-102 for the change to WAC 263-12-115 (order of presentation for presumption appeals). We corrected the language to be clear that if the defense presents evidence to rebut a statutory presumption, the claimant or beneficiary may then present additional evidence, not just the claimant. That was an obvious oversight in the CR-102. We added "or beneficiary." This is for the situation where a claimant is deceased and the beneficiary is the appealing party.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 8, 2024.

Brian O. Watkins
Chief Legal Officer

OTS-5832.2

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

WAC 263-12-01501 Communications and filing with the board. (1) **Where to file communications with the board.** (~~Except as provided elsewhere in this section~~) All written communications shall be filed with the board at its headquarters in Olympia, Washington. (~~With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.~~)

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written commu-

nication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's website.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's website. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's website. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing

party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution settlement agreement.** An application for approval of claim resolution settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution settlement agreement as provided on the board's website. An electronic application for approval of claim resolution settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution settlement agreement has been received. An electronic copy of the signed agreement for claim resolution settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the chief legal officer of the board.

(6) **Form and service requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Written communication shall not include personal identifiers including Social Security numbers (last four digits if necessary), financial account numbers (last four digits if necessary), and driver's license numbers, and as described in GR 31. If present, the filing party shall redact such personal identifiers (completely removed, not masked). The responsibility for redacting personal identifiers rests solely with counsel and the parties. Copies of any written communications filed with the board shall be served on all other parties or their representatives of record, and the original shall demonstrate compliance with the requirement to serve all parties. Where service is accomplished electronically (for example, facsimile or email), the proof of service must include language certifying that an electronic agreement exists (for example, "per electronic service agreement"). All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

WAC 263-12-115 Procedures at hearings. (1) **Industrial appeals judge.** All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Order of presentation of evidence.**

(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act, or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud or willful misrepresentation the department or self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(d) If a claimant or beneficiary appeals a determination rejecting an industrial insurance claim and asserts that a statutory presumption applies, and the assertion is disputed, the appealing party will first present evidence in support of that assertion. The employer or the department may then present evidence in opposition of the assertion that a presumption applies. The judge shall then rule on whether a presumption applies. If a presumption applies, the department or employer may present evidence to rebut the statutory presumption. The claimant or beneficiary may then present additional evidence. Nothing in this subsection prohibits the industrial appeals judge from consolidating or bifurcating trial to decide issues or appeals, consistent with CR 42.

(3) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) **Rulings.** The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) **Interlocutory appeals to the board - Confidentiality of trade secrets.** A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) **Interlocutory review by a chief industrial appeals judge.**

(a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings. Within 10 working days of receipt of the written request, the chief industrial appeals judge, or designee,

nee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) **Recessed hearings.** Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) **Failure to present evidence when due.**

(a) If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or recess or set over the proceedings for further hearing for the receipt of such evidence.

(b) In cases concerning Washington Industrial Safety and Health Act citations, a failure to appear by the person and/or party who filed the appeal is deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and constitutes a waiver of all rights except the right to receive a copy of the decision.

(c) In cases concerning willful misrepresentation, the industrial appeals judge may proceed with the hearing, receive evidence, and issue a proposed decision and order without requirement of further notice to the appealing party who fails to appear.

(9) **Offers of proof in colloquy.** When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

(10) **Hearing format.** Hearings generally occur by contemporaneous transmission from different locations (for example, video or telephone). Participants may request to appear in person. If the parties disagree on the format for the hearing, the industrial appeals judge will determine the format for the hearing, and may consider the following nonexclusive factors:

- The need to weigh a witness's demeanor or credibility.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the hearing.
- Whether any of the testimony will need to be interpreted.
- Ability of the witness to travel.
- Feasibility of taking a perpetuation deposition.
- Availability of quality telecommunications equipment and service.

The industrial appeals judge presiding at the hearing will swear in the witness testifying by telephone or video as if the witness ap-

peared in person at the hearing. For rules relating to telephone or video deposition testimony, see WAC 263-12-117.

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

- (a) The complexity of the issues raised by the appeal;
- (b) The desirability of having the witness's testimony presented at a hearing;
- (c) The costs incurred by the parties in complying with the ruling; and
- (d) The fairness to the parties in complying with the ruling.

(2) **Deposition format:** When testimony is taken by perpetuation deposition, a party or witness, representative, or other participant may participate, and testimony may be presented, in person or by contemporaneous transmission from a different location (telephone or video) if all parties agree. If there is no agreement, the industrial appeals judge may consider the following nonexclusive factors when determining the format by which participation occurs:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be interpreted.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone or video, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives. If a party takes a deposition under this section, but elects not to file the deposition as evidence in the appeal, the party shall provide written notice to the assigned industrial appeals judge and all other parties prior to the deposition filing deadline.

(4) The ((party)) court reporter filing a deposition must submit the stenographically reported and transcribed deposition, certification, and exhibits in an electronic format in accordance with procedures established by the board. The following requirements apply to the submission of depositions:

- (a) Video depositions will not be considered as part of the record on appeal;
- (b) The electronic deposition transcript must be submitted in searchable pdf format that is accessible to persons with disabilities (including, but not limited to, being compatible with screen readers

such as JAWS, NVDA, Narrator for Windows, VoiceOver for Apple, and TalkBack for Android);

(c) Exhibits to the deposition must be filed electronically as a single attachment separate from the deposition transcript and certification;

(d) Any media exhibit (audio or video) must meet the requirements set forth in WAC 263-12-116; and

(e) If the deposition is not transcribed in a reproducible format that is accessible to persons with disabilities, or not properly submitted, it may be excluded from the record.

(5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived.

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition.

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge.

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order.

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-11801 Motions that are dispositive—Motion to dismiss; motion for summary judgment; voluntary dismissal. (1) Motion to dismiss.

(a) **General.** A party may move to dismiss another party's appeal on the asserted basis that the notice of appeal fails to state a claim on which the board may grant relief. The board will consider the standards applicable to a motion made under CR 12(b)(6) of the Washington superior court's civil rules. Examples of other grounds for a motion to dismiss include, but are not limited to, a lack of jurisdiction, failure to present evidence when due, and failure to present a prima facie case.

(b) **Time for filing motion to dismiss.** A motion to dismiss for lack of jurisdiction should be filed as early as possible to avoid unnecessary litigation. In all cases other than appeals under the Washington Industrial Safety and Health Act, a motion to dismiss for failure to present evidence when due may be made if the appealing party fails to appear at an evidentiary hearing held pursuant to due and proper notice. A motion to dismiss for failure to present a prima facie case may be made at any time prior to closure of the record.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ((ten)) 10 days after service of the motion, or

at such other time as may be set by the industrial appeals judge. The industrial appeals judge may allow oral argument.

(2) **Motion for summary judgment.**

(a) **General.** A party may move for summary judgment of one or more issues in the appeal if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits or declarations conforming to the requirements of ((RCW 9A.72.085)) chapter 5.50 RCW, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the industrial appeals judge will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Oral argument.** All summary judgment motions will be decided after oral argument, unless waived by the parties. The assigned industrial appeals judge will determine the length of oral argument allowed. Summary judgment motions must be heard more than ((fourteen)) 14 calendar days before the hearing on the merits unless leave is granted by the industrial appeals judge. The time and date for hearing shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

(c) **Dates for filing.** The deadlines to file and serve a motion for summary judgment and opposing and reply documents shall be as set forth in CR 56 unless the industrial appeals judge establishes different deadlines in the litigation order.

(3) **Motion for voluntary dismissal - General.** The party who filed the appeal may move to have the appeal voluntarily dismissed in accordance with CR 41(a) at any time.

AMENDATORY SECTION (Amending WSR 18-24-123, filed 12/5/18, effective 1/5/19)

WAC 263-12-145 Petition for review. (1) **Time for filing.** Within ((twenty)) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record, any aggrieved party may file with the board a written petition for review. When a petition for review is filed, the failure of any party not aggrieved by the proposed decision and order to file a petition for review shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **A petition for review must be filed separately.** A petition for review must be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" prominently on the first page of the submission.

(3) **Extensions of time.**

(a) The board may extend the time for filing a petition for review upon written request of a party filed within ((twenty)) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record. Such extension of time, if granted, will apply to all parties to the appeal. Further extensions of time beyond any initial extension may be allowed only if an application for further extension is filed within ((twenty)) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record or the board, on its own motion or at the request of a party, acts to further extend the

time for filing a petition for review before the prior extended time for filing a petition for review has expired.

(b) An unrepresented limited-English-proficient party may file a request for translation of a proposed decision and order. A request for translation of a proposed decision and order by an unrepresented limited-English-proficient party that the board received within the time frame for a petition for review will also be treated as a request for extension of time. When the board receives and mails the translated proposed decision and order, the board will also extend the time for filing a petition for review for all parties for an additional (~~thirty~~) 30 days.

(4) **Contents.** A petition for review shall set forth in detail the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The board shall, at the request of any party, provide a copy of the transcript of testimony and other proceedings at the hearing. The requesting party shall sign an acknowledgment that receipt of the transcript of proceedings shall constitute compliance by the board with any statute requiring service on the party of a certified copy of the testimony.

(5) **Action by board on petition for review.**

(a) After receipt of a petition for review, the board shall enter an order within (~~twenty~~) 20 days either:

(i) Denying the petition for review, in which case the proposed decision and order shall become the final order of the board(~~7~~); or

(ii) Granting the petition for review, in which case the board shall within (~~one hundred and eighty~~) 180 days from the date the petition for review was filed issue a final decision and order based upon its review of the record.

(b) After (~~twenty~~) 20 days of receipt. If a petition for review is not acted upon by the board, it shall be deemed to have been granted.

(c) Remands for further hearing.

After review of the record, the board may set aside the proposed decision and order and remand the appeal to the hearing process, with instructions to the industrial appeals judge to whom the appeal is assigned on remand, to dispose of the matter in any manner consistent with chapter 263-12 WAC.

(6) **Reply to petition for review.** Any party may, within (~~ten~~) 10 days of receipt of the board's order granting review, submit a reply to the petition for review, a written brief, or a statement of position regarding the matters to which objections were made, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters to which objections were made, within such time and on such terms as may be prescribed.

AMENDATORY SECTION (Amending WSR 21-15-042, filed 7/14/21, effective 8/14/21)

WAC 263-12-170 Appeals to superior court—Certification of record. Upon receipt of a copy of notice of appeal to superior court from a board order, served upon the board by the appealing party pursuant to RCW 51.52.110, 7.68.110, 51.48.131, 34.05.542 or 49.17.150, the chief legal officer or his or her designee shall certify the record made before the board to the court pursuant to the provisions of RCW 51.52.110, 7.68.110, 51.48.131, 34.05.566 or 49.17.150. Copies of such record (except nonreproducible exhibits) shall be furnished to all parties to the proceedings before the board. Documents sealed by the board will be maintained by the board and forwarded to the court consistent with the process outlined in GR 15(c) (5). In such instances, the board will place the sealed records in a separate packet and alert the court that the sealed records require special handling.

WSR 24-23-058
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 15, 2024, 2:57 p.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The developmental disabilities administration (DDA) amended sections in chapter 388-828 WAC (the supports intensity scale (SIS-A) portions of the DDA assessment) to align with updates the American Association of Intellectual and Developmental Disabilities (AAIDD) has made to its SIS-A assessment tool, Second Edition. This alignment with AAIDD's Second Edition does not impact the algorithm.

Citation of Rules Affected by this Order: Amending WAC 388-828-4060, 388-828-4200, 388-828-4240, 388-828-4260, 388-828-4280, 388-828-4320, 388-828-4380, 388-828-4400, 388-828-4440, 388-828-5460, 388-828-5800, 388-828-5900, 388-828-8060, 388-828-9255, 388-828-9260, 388-828-9560, 388-828-9580, 388-828-9660, 388-828-9670, and 388-828-9680.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.16.050.

Adopted under notice filed as WSR 24-19-062 on September 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 20, Repealed 0.

Date Adopted: November 15, 2024.

Katherine I. Vasquez
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 [24-24](#) issue of the Register.

WSR 24-23-061

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 17, 2024, 11:14 a.m., effective April 1, 2025]

Effective Date of Rule: April 1, 2025.

Purpose: Genetic counselors; amending WAC 246-825-080 to remove licensure barriers and update rules to align with recent legislation.

The department of health (department) is adopting amendments to WAC 246-825-080 to waive education, training, experience, and examination requirements for applicants that qualify for licensure by endorsement to implement RCW 18.130.077.

Under RCW 18.130.077, all disciplining authorities shall waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days. The statute also allows disciplining authorities to choose to waive education, training, experience, and exam requirements for applicants who have achieved the national credential for their profession.

To align with RCW 18.130.077, the adopted rules:

- Create a faster pathway to licensure for out-of-state genetic counselors by waiving the requirement that applicants provide proof of examination and education for applicants that have been credentialed in another state with substantially equivalent standards and meet the requirements in RCW 18.130.077 (1) and (3).

- Add a pathway to Washington licensure for applicants that hold the national certification with the American Board of Genetic Counseling (ABGC) or the American Board of Medical Genetics (ABMG) and meet the requirements in RCW 18.130.077(3).

- Provide clarifying language to create licensure requirements that are clear and easy to understand.

The adopted rule will streamline and shorten the credentialing process for genetic counselors, remove barriers to entering and remaining in the genetic counselor workforce, and align the section with RCW 18.130.077.

Citation of Rules Affected by this Order: Amending WAC 246-825-080.

Statutory Authority for Adoption: RCW 18.290.020 and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Adopted under notice filed as WSR 24-18-007 on August 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 17, 2024.

Kristin Peterson, JD

Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5472.4

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-825-080 Licensure by endorsement. ~~((1) An applicant for licensure as a genetic counselor who is currently licensed under the laws of another state shall file an application with the department and submit:~~

~~(a) Documentation verifying that the applicant meets the education requirements under WAC 246-825-060;~~

~~(b) Documentation that the applicant holds an unrestricted active license to practice as a genetic counselor in another state;~~

~~(c) Proof of passing the ABGC certification examination or the ABMG general genetics and genetic counseling specialty examinations or the ABMG clinical genetics specialty or subspecialty certification examinations;~~

~~(d) Any other written declarations or documentation, as required by the secretary; and~~

~~(e)) A genetic counselor license may be issued by endorsement if the applicant meets the requirements in either subsection (1) or (2) of this section. An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.~~

(1) An applicant may obtain licensure by endorsement if the applicant is currently licensed in a state or jurisdiction with substantially equivalent standards and has been licensed for at least the immediately preceding two years and meets all other requirements of RCW 18.130.077. The applicant shall submit to the department:

(a) An application on forms provided by the department;

(b) Proof of licensure history that demonstrates compliance with RCW 18.130.077; and

(c) The appropriate licensing fees required under WAC 246-825-990(2).

~~(2) ((The secretary may examine an endorsement application to determine whether the licensing standards of the other state are substantially equivalent to the licensing standards in Washington state.~~

~~(3) An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.)) An applicant may obtain licensure by endorsement if the applicant holds the national certification with the American Board of Genetic Counseling (ABGC) or the American Board of Medical Genetics (ABMG) and meets all other requirements of RCW 18.130.077(3). The applicant shall submit to the department:~~

(a) An application on forms provided by the department;

(b) Proof of national certification;

(c) Proof of compliance with RCW 18.130.077(3); and

(d) The appropriate licensing fees required under WAC 246-825-990(2).

(3) If an applicant does not meet the requirements described in subsection (1) or (2) of this section, the applicant shall apply for initial licensure as established under WAC 246-825-060.

WSR 24-23-062

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 17, 2024, 11:19 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: Respiratory care practitioner licensure, endorsement, and temporary permits; reducing barriers. The department of health (department) is adopting rule amendments to implement section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, to reduce barriers to entering and remaining in the respiratory care practitioner (RCP) workforce. Additionally, the department is adopting amendments to the temporary permit section in response to 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020, to reduce barriers for military spouses entering and remaining in the RCP workforce.

The department is adopting revisions to WAC 246-928-560 and adding new WAC 246-928-575 for applicants with a current national certification to align licensure and endorsement requirements with RCW 18.130.077. The department is adopting these amendments and a new section of rule to waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days, or for applicants who are certified by the National Board for Respiratory Care.

The department is also adopting amendments to the temporary practice permit rule, WAC 246-928-570, to align with RCW 18.340.020, which requires temporary permits to be issued for no less than 180 days for military spouses. The adopted amendments extend the length of time a temporary practice permit is issued for from 90 days to 180 days for all applicants, not just military spouses.

The purpose of the adopted amendments includes removing barriers to obtaining full licensure, entering and remaining in the RCP workforce, and streamline and shorten the credentialing process.

After the public rules hearing on October 16, 2024, the department made corrections to the rule language to align with RCW 18.130.075 temporary practice permits for health professions. The changes made to the rule language are a result of identifying inconsistency in the proposed rule language with RCW 18.130.075 and were made for consistency and clarity purposes. The changes are described below.

Citation of Rules Affected by this Order: New WAC 246-928-575; and amending WAC 246-928-560 and 246-928-570.

Statutory Authority for Adoption: RCW 18.89.050, 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, and 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020.

Adopted under notice filed as WSR 24-18-010 on August 22, 2024.

Changes Other than Editing from Proposed to Adopted Version: In WAC 246-928-570 Temporary practice permits for applicants credentialed out-of-state, the following language was removed from subsection (1)(d): "verification of completion of the required education and examination as specified in WAC 246-928-520 and WAC 246-928-540." This language was removed because it is inconsistent with RCW 18.130.075, which does not require applicants for a temporary permit [to] provide proof of their education and examination prior to being issued a temporary permit.

Also in WAC 246-928-570, the following language was removed from subsection (4): "A temporary permit holder is subject to the same education and examination requirements as required in WAC 246-928-520 and 246-928-540." This language was removed because of inconsistency with RCW 18.130.075 as some applicants applying for a temporary permit under endorsement rules may not be subject to those education and exam requirements.

A final cost-benefit analysis is available by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, TTY 711, email kathy.weed@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: November 17, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5532.5

AMENDATORY SECTION (Amending WSR 22-11-013, filed 5/9/22, effective 7/1/22)

WAC 246-928-560 Licensure for persons credentialed out-of-state.

An applicant who is currently or was previously credentialed in another state ((or jurisdiction)) may qualify for licensure in Washington state. ((To be considered for licensure:

(1) ~~The applicant shall submit to the department:~~

(a) ~~A completed application on forms provided by the department;~~

(b) ~~Proof of meeting the education requirements in WAC 246-928-520 or subsection (4) of this section; and~~

(c) ~~A fee as specified in WAC 246-928-990.~~

(2) ~~The applicant shall comply with the examination requirements in WAC 246-928-540 or subsection (4) of this section.~~

(3) ~~The applicant shall request written verification directly from all states in which the applicant is or was credentialed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment.~~

(4) ~~Applicants who have)~~

(1) For those credentialed in another state or states with substantially equivalent standards to Washington for at least two years immediately preceding their application, the applicant shall meet all requirements in RCW 18.130.077 and submit:

(a) A completed application on forms provided by the department;

(b) The required application fee; and

(c) Verification from another United States jurisdiction attesting that the applicant has a current license in good standing.

(2) For applicants licensed less than two years in a state with substantially equivalent standards at the time of application, licensed in a state that is not substantially equivalent to Washington, or expired in another state: The applicant must comply with the requirements for licensure as specified in chapter 18.89 RCW and WAC 246-928-420.

(3) An applicant who has completed at least a two-year program recognized by the Canadian Society of Respiratory Therapists (CSRT) in their current list, or any previous lists, and ((have)) has passed the CSRT registry examination; or ((have)) has been issued a registration by the CSRT are considered to have met the educational and examination requirements in this chapter. A Canadian applicant((s-are)) is required to submit verification directly from CSRT, as well as all of the information listed ((above for applicants licensed in another jurisdiction)) in WAC 246-928-420(1).

AMENDATORY SECTION (Amending WSR 22-11-013, filed 5/9/22, effective 7/1/22)

WAC 246-928-570 Temporary practice permits for applicants credentialed out-of-state. (1) An applicant who is currently ~~((or was previously))~~ credentialed in another state or jurisdiction substantially equivalent standards to Washington may qualify for a temporary practice permit while pending licensure in Washington state. Applicants must submit the following documentation to be considered for a temporary practice permit:

(a) A completed application on forms provided by the department with the request for a temporary practice permit indicated;

(b) An application fee and a temporary practice permit fee as specified in WAC 246-928-990; and

(c) Written verification directly from all states or jurisdictions in which the applicant is or was licensed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment ~~((; and~~

~~((d) Verification of completion of the required education and examination as specified in WAC 246-928-520)).~~

(2) The department shall issue a one-time-only temporary practice permit unless the department determines a basis for denial of the license or issuance of a conditional license.

(3) The temporary permit shall expire upon the issuance of a license by the department, initiation of an investigation by the department, or within ~~((90))~~ 180 days, whichever occurs first. The permit shall not be extended beyond the expiration date.

(4) Issuance of a temporary practice permit does not ensure that the department will grant a full license. ~~((Temporary permit holders~~

~~are subject to the same education and examination requirements as set forth in WAC 246-928-520 and 246-928-550.~~

~~(5) The following situations are not considered substantially equal for Washington state licensure:~~

~~(a) Certification of persons credentialed out-of-state through a state-constructed examination; or~~

~~(b) Legacy provisions where proof of education and examination was not required.))~~

NEW SECTION

WAC 246-928-575 Applicants currently holding national certification. An applicant who holds national certification as a registered respiratory therapist from the National Board of Respiratory Care, or its predecessor organization, may be granted Washington licensure upon proof of current national certification in good standing that meets all of the requirements in RCW 18.130.077(3). The applicant shall submit to the department:

- (1) An application on forms provided by the department;
- (2) Proof of national certification;
- (3) Proof of compliance with RCW 18.130.077(3); and
- (4) The appropriate licensing fees required under WAC 246-928-990.

WSR 24-23-065

PERMANENT RULES

COLUMBIA BASIN COLLEGE

[Filed November 18, 2024, 9:40 a.m., effective December 19, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment.

Citation of Rules Affected by this Order: Amending WAC 132S-110-020 and 132S-110-030.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 24-20-040 on September 24, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 18, 2024.

Corey Osborn
Vice President of Human Resources and Legal Affairs

OTS-5644.1

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-020 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "~~((sexual harassment))~~ sex discrimination."

For purposes of this procedure, ("~~sexual harassment~~" encompasses the following conduct:

~~(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.~~

~~(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.~~

~~(3) **Sexual assault.** Sexual assault includes the following conduct: (1) "sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than de minimis harm to an individual by treating them differently from an otherwise similarly situated individual based on:~~

- ~~(1) Sex stereotypes;~~
- ~~(2) Sex characteristics;~~
- ~~(3) Pregnancy or related conditions;~~
- ~~(4) Sexual orientation; and~~
- ~~(5) Gender identity.~~

~~For the purpose of this procedure, "sex-based harassment" is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:~~

~~(6) **Quid pro quo harassment.** An employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.~~

~~(7) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:~~

~~(a) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;~~

~~(b) The type, frequency, and duration of the conduct;~~

~~(c) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;~~

~~(d) The location of the conduct and the context in which the conduct occurred; and~~

~~(e) Other sex-based harassment in the recipient's education program or activity.~~

~~(8) **Sexual violence** includes the following conduct:~~

~~(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, 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.~~

~~(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or 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.~~

~~(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister either wholly or half related. Descendant includes stepchildren and adopted children under the age of ((eighteen)) 18.~~

~~(d) **Statutory rape.** ((Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the~~

~~age of sixteen.))~~ Nonforcible sexual intercourse with a person who is under the statutory age of consent.

~~((4))~~ (9) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~((5))~~ (10) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

~~((6))~~ (11) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-030 Title IX jurisdiction. (1) This procedure applies only if the alleged misconduct:

~~(a) ((Occurred in the United States;~~

~~(b) Occurred during a college educational program or activity;~~
and

~~(c) Meets the definition of Title IX sexual harassment as that term is defined in this procedure.))~~ Meets the definition of sex discrimination, sex-based harassment, or retaliation as defined in this disciplinary procedure, including causing more than de minimis harm to the complainant;

(b) Occurred in the United States or interfered with the complainant's ability to access or participate in the college's educational programs or activities in the United States; and

(c) Occurred during a college educational program or activity, or interferes with the complainant's ability to access or participate in the college's educational programs or activities.

(2) For purposes of this procedure, an "educational program or activity" is defined as all operations of the college, including locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this procedure must be dismissed if the Title IX coordinator or designee determines that one or all of the re-

quirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from addressing allegations or taking disciplinary action against conduct that violates provisions of the college's student conduct code, chapter 132S-100 WAC, federal or state law, or other college policies.

(4) If the Title IX coordinator or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or does not constitute a Title IX violation, the Title IX coordinator or designee will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

WSR 24-23-066

PERMANENT RULES

COLUMBIA BASIN COLLEGE

[Filed November 18, 2024, 9:43 a.m., effective December 19, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To bring Columbia Basin College's student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedure recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Amending chapter 132S-100 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 24-20-037 on September 24, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 34, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 18, 2024.

Corey Osborn
Vice President of Human Resources and Legal Affairs

OTS-5661.3

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-030 Definitions. Advisor - A person of the complainant's or respondent's choosing who can accompany the complainant or respondent to any conduct related meeting or proceeding. (~~(This person cannot be a college employee or witness involved in the case.)~~)

Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

Board of trustees - The board of trustees of Community College District No. 19, state of Washington.

Bullying - Physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

Business day - A weekday, excluding weekends and college holidays.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of CBC policy including this student code of conduct has occurred towards themselves, another person, a group of people, or college property. Complainant shall mean the same as claimant or other such term(s) meeting this definition as used in other college policies and procedures.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Conduct review officer - Also referred to as the "CRO." A college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

Consent - Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon activity, including sexual activity. A person cannot consent to sexual activity if they are not of legal age, unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

Cyberstalking, cyberbullying, and online harassment - The prohibited behavior of stalking, bullying, and/or harassment through the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

Dating violence - 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.

Disciplinary action - ((The sanctioning of any student pursuant to WAC 132S-100-440 for the violation of any designated rule or regulation of the college.)) The process by which the student conduct officer imposes discipline against a student for a violation of the student code of conduct. A written or verbal warning is not disciplinary action.

Disciplinary appeal - The process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by the conduct review officer through brief adjudicative proceedings.

Discrimination - Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class.

Domestic violence - Asserted violent misdemeanor and felony offenses or conduct committed by a current or former spouse, current or former cohabitant, a person similarly situated under domestic or fami-

ly violence law, or anyone else protected under domestic or family violence law.

Filing - The process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

Force - Use of physical violence and/or threats, intimidation or coercion to overcome resistance or gain access or produce consent. Sexual activity that is forced is by definition nonconsensual. However, nonconsensual sexual activity is not by definition forced.

Harassment - Language or conduct by any means that is unwelcome, severe, persistent, or pervasive, and is of such a nature that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably causing a reasonable person substantial emotional distress or undermines their ability to work, study, or participate in their regular life activities or participate in the activities of the college.

Hazing - Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group-affiliation activity.

Hostile environment - Any situation in which there is harassing conduct that could be based on protected class status and is sufficiently severe or pervasive, and is so objectively offensive that it has the effect of substantially limiting the person's ability to participate in or benefit from the college's educational and/or social programs.

Hostile environment sexual harassment - Occurs when sex- or gender-based conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of substantially limiting the ability of the person to participate in or benefit from the college's educational and/or social programs.

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays, and any full-day campus closures due to holidays or other circumstances are not regularly scheduled instructional days.

Nonconsensual sexual contact - 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.

Nonconsensual sexual intercourse - 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.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at CBC that are within the jurisdiction of student code of conduct, which means that the amount of evidence must be at ~~((fifty-one))~~ 51 percent or "more likely than not" before a student is found responsible for a violation.

Pregnancy or related conditions means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

~~President - ((The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any of their responsibilities))~~ The president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

Program or programs and activities - All operations of the college.

Protected class - Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, or genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

Quid pro quo sexual harassment - Occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Relevant - Related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

Remedies - Measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

~~Respondent - ((The student who is alleged to have violated CBC policy including this code of conduct or against whom disciplinary action is being taken or initiated. Respondent shall mean the same as responding party or other such term(s) meeting this definition as used in other college policies and procedures.))~~ A student who is alleged to have violated the student code of conduct.

Rules of the student conduct code - The rules contained herein as now exist or which may be hereafter amended.

Service or notification - The process by which a document is officially delivered to a party. ~~((Service or notification is deemed complete and computation of time for deadlines begins upon personal delivery of the document or upon the date the document is electronically mailed and/or deposited into the mail. Documents required to be~~

filed with the college such as requests for appeals, are deemed filed upon actual receipt by the office as designated herein during office hours.) Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date that the document is emailed and deposited in the mail, whichever is first.

Sexual exploitation - Occurs when one person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: Invasion of sexual privacy, engaging in voyeurism, nonconsensual video or audio taping of sexual activity; sexually based stalking and/or bullying.

Stalking - 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.

Student - ~~((Any person from the time of application, admitted to CBC, or registered for courses either full time or part time, or participating in any other educational offerings at CBC, excluding students enrolled in the High School Academy.))~~ All persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

Student appeals board - Also referred to as the "SAB" or "appeals board." The SAB is a three member panel which uses the brief adjudicative process to review appeals of disciplinary actions that do not include sanctions of expulsion, suspension for more than ~~((ten))~~ 10 days, withholding or revocation of a degree, or loss of recognition of a student organization.

Student conduct board - Also referred to as the "SCB" is a four person panel which presides over cases that could result in a sanction of expulsion, suspension for more than ~~((ten))~~ 10 days, revocation of a degree, and/or loss of recognition of a student organization using the full adjudicative process pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student conduct officer - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to delegate any and all of their responsibilities as may be reasonably necessary.

Student conduct meeting - The conduct meeting with the student conduct officer using the brief adjudicative process to determine responsibility for violations of the student code of conduct, which do not include sanctions of expulsion, suspension for more than ~~((ten))~~

10 days, revocation of a degree, and/or loss of recognition of a student organization pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student employee - An individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged violation to the student code of conduct including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

Student group - A student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

Student organization - Any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

Supportive measures - Means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadline and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

Title IX coordinator - The administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

WAC 132S-100-050 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

- (1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and student affairs, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the stands of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating the student code of conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-100 ((Student code)) Authority. The CBC board of trustees, acting pursuant to RCW 28B.50.140, ~~((do by written order,))~~ delegates to the president of the college, the authority to ~~((adopt such rules and perform all other acts relating to))~~ administer student ((discipline, including suspension or expulsion of students who are in violation of those rules)) disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-107 Statement of jurisdiction ((of the student code of conduct)). ~~((The CBC student code of conduct will apply to conduct by students and student organizations that occurs on college premises, within the residence halls, at college-sponsored events and activities, foreign or domestic travel associated with any of these events or activities, and to off-campus conduct which is in violation or alleged violation of local, state, or federal law, or this student code of conduct. Allegations or violations which occur off campus can be subject to college disciplinary action if the conduct has an effect on~~

~~the CBC campus. The student code of conduct applies to conduct from the time of application for admission until the award of a degree and/or certificate, even if the conduct may have occurred before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student is suspended or withdraws from the college while a disciplinary matter is pending. If a student withdraws after allegedly violating the student code of conduct, but prior to the college reaching a disciplinary decision in the matter, the college can move forward with the disciplinary process, place the process on hold until the student returns, or choose to place the investigation results in the student's file for consideration should they reapply for admittance, reenroll or register for any educational offerings at the college.))~~

(1) The student code of conduct shall apply to conduct by students or student groups that occurs:

(a) On college premises;

(b) At or in connection with college programs or activities; or

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sponsored social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student code of conduct will be applied to conduct by students or student groups that occurs off campus.

(6) In addition to initiating disciplinary proceedings for violation of the student code of conduct, the college may refer any violation of federal, state, or local laws to civil and criminal disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-117 Composition of the student conduct board.

~~((The college will have a SCB composed of one chairperson and three decision-making members who shall be vice presidents and deans or directors as designated by the college and trained to conduct the full adjudicative process. The SCB will serve as a standing committee until a final decision is made regarding the student conduct matter for~~

which it was convened. Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. The chairperson will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process but will not participate in the deliberations of the decision-making members. The three decision-making members constitute a quorum of the SCB and may act accordingly. The college may retain an advisor to the SCB, including an assistant attorney general.)

(1) The student conduct board shall consist of four members who shall be vice presidents, deans, or directors as designated by the college:

(a) One chairperson; and

(b) Three decision-making members.

(2) The student conduct board will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened.

(3) Any student conduct board member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings.

(4) The student conduct board members will be trained to conduct the full adjudicative process on an annual basis.

(5) The chairperson will preside at the disciplinary hearing and will provide administrative oversight through the hearing process, but will not participate in the deliberations of the decision-making members.

(6) The three decision-making members constitute a quorum of the student conduct board and may act accordingly.

(7) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct board and/or chairperson.

(8) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct board must review training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chairperson must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-202 Prohibited student conduct (~~Rules and regulations~~)). The attendance of a student at CBC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

(1) Conduct themselves in a responsible manner;

- (2) Comply with rules and regulations of the college and its departments;
- (3) Respect the rights, privileges, and property of other members of the academic community;
- (4) Maintain a high standard of integrity and honesty; and
- (5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

~~((Any student or student organization that, either as a principal or participator or by aiding or abetting, commits or attempts to commit to violate any of the proscribed conduct, rules and regulations, or college policy will be subject to disciplinary action.))~~ The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aid, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to the policies outlined in this chapter.

Amnesty. To support each student's contribution to a safe and effective campus community, the college will not discipline reporting parties or witnesses for code of conduct violations that occur in connection with reported alleged violation unless the college determines the violation was egregious. Egregious violations include conduct that risked someone's health or safety, or involved plagiarism, cheating, or academic dishonesty. Students may be reluctant to report proscribed conduct when alcohol, drugs, or other intoxicants were involved. To encourage reporting, this amnesty provision applies to alcohol- and drug-related student violations.

NEW SECTION

- WAC 132S-100-204 Abuse later in life.** (1) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or
- (2) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and
- (3) Does not include self-neglect.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-205 Abusive ((conduct)) of others. Assault, physical ((and/or)) abuse, verbal abuse, threats, intimidation, ((harassment, online harassment, coercion, bullying, cyberbullying, retaliation, stalking, cyberstalking, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment)) or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-213 ((Discrimination-)) Discriminatory harassment.

((Engaging in any unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.))

(1) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(a) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(b) Alter the terms of an employee's employment; or

(c) Create an intimidating, hostile, or offensive environment for other campus community members.

(2) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(3) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-220 Disruption or obstruction. ((Includes, but is not limited to, the following:

~~(1) Participating in an on- or off-campus demonstration, riot, or any activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community.~~

~~(2) Intentionally and/or recklessly inciting others to engage in any prohibited conduct as defined herein, when incitement may lead to such conduct.~~

~~(3) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college-sponsored or supervised functions.))~~ Disruption or obstruction of instruction, research, administration, disciplinary proceedings, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

NEW SECTION

WAC 132S-100-224 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-227 (~~Drugs, controlled substances, and marijuana~~.) Cannabis, drug, and tobacco violations. (~~(1) Legend drugs, narcotic drugs, controlled substances: Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, manufacturing, or seeking any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional or as otherwise expressly permitted by federal, state, or local law, is prohibited. Use, possession and distribution of drug paraphernalia for the drugs and substances identified in this section is prohibited.~~

~~(2) Marijuana: While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited.)~~

(1) Cannabis - The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal laws prohibits such use on college premises or in connection with college activities.

(2) Drugs - The use, possession, production, 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.

(3) 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 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" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

NEW SECTION

WAC 132S-100-232 Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an

intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(1) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(2) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(3) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

AMENDATORY SECTION (Amending WSR 22-20-013, filed 9/22/22, effective 10/23/22)

WAC 132S-100-235 Hazing. (1) Any act, described in Washington statute, RCW 28B.10.900 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 psychological or emotional harm, to any student or other person attending the college, 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. Consent is not a valid defense against hazing.

(2) A person who witnesses hazing or has reasonable cause to believe hazing has occurred or will occur and makes a report in good faith may not be sanctioned or punished for violation of hazing unless the person is directly engaged in the planning, directing, or act of hazing reported.

NEW SECTION

WAC 132S-100-237 Independent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-245 Alcohol. (~~((1) Consuming, possessing, furnishing, or selling of alcoholic beverages and/or being under the influence of any alcoholic beverage is prohibited on college premises or at college sponsored or supervised events except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or their designee to permit the service of alcoholic beverages.~~

~~(2) Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.))~~

(1) Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or their designee to permit the service of alcoholic beverages.

(2) Public intoxication on college premises or at college-sponsored events.

(3) Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-250 Misuse of ((equipment and technology)) electronic resources. Misuse of ((~~the college's computer, telecommunications, or electronic technology, facilities, network, software, or equipment which~~)) computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

~~(1) Unauthorized ((entry into a file to use, read, or change the contents, or for any other purpose.~~

~~(2) Unauthorized transfer of a file.~~

~~(3) Use of another individual's credentials or password or allowing someone else to use your own credentials and password.~~

~~(4) Violation of law including copyright laws.~~

~~(5) Interference with the normal operations of the college or the work of another student, faculty member, or college official.~~

~~(6) Sending obscene or abusive messages.~~

~~(7) Obtaining personal profit, advertisement, or illegal purposes.~~

~~(8) Use for purposes other than those necessary to fulfill an assignment or task as part of the student's program of instruction.~~

~~(9) Engaging in any actions and behaviors prohibited by college policy.)) use of such resources or opening a file, message, or other item;~~

(2) Unauthorized duplication, transfer, or distribution of a computer program, file, message or other item;

(3) Unauthorized use or distribution of someone else's password or other identification;

(4) Use of such time or resources to interfere with someone else's work;

(5) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(6) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(7) Use of such time or resources in violation of applicable copyright or other law;

(8) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(9) Failure to comply with the college's electronic use policy.

NEW SECTION

WAC 132S-100-252 Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

NEW SECTION

WAC 132S-100-254 Retaliation. Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-255 Safety ((misconduct)) violations. ((Intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency on college premises or at any college-sponsored activity, or falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities, or driving a vehicle recklessly or over the speed limit on campus property.)) Nonaccidental, reckless, or unsafe 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-260 ((Sexual misconduct.)) Sex discrimination.

((Engaging in nonconsensual sexual intercourse or nonconsensual sexual contact, requests for sexual favors or other conduct of a sexual nature where such behavior offends a reasonable, orderly, prudent person under the circumstances. This includes, but is not limited to:

(1) Sexual activity or contact for which clear and voluntary consent has not been given in advance.

(2) Sexual activity with someone who is incapable of giving valid consent including, but not limited to, someone who is under duress, is underage, sleeping or otherwise incapacitated due to alcohol, drugs, or any other reason.

(3) Sexual harassment, which includes unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment also includes offensive remarks about a person's gender, gender identity, and/or sexual orientation. Sexual harassment encompasses:

(a) Hostile environment sexual harassment; and

(b) Quid pro quo sexual harassment.

(4) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking.

(5) Nonphysical conduct such as sexual or gender-based cyberstalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity, and other forms of sexual exploitation.

(6) Any and all conduct which violates college policy pertaining to sexual misconduct, sexual harassment or discrimination based on sex, gender identity or sexual orientation.))

The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimus harm to an individual by treating them differently from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(1) Sex-based harassment - "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(a) Quid pro quo harassment - A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(b) Hostile environment - Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the college's education program or activity.

(c) Sexual violence - "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(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 (fondling) is any actual or attempted sexual touching, however slight, with any body part or 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) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(iv) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(v) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(vi) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(2) Consent - For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(a) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(b) 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.

(c) A person cannot consent if they are unable to understand what is happening or are 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.

(d) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(3) Title IX retaliation means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-273 ~~Unauthorized ((keys, entry, or use)) access.~~

Unauthorized (~~((keys, entry or use))~~) access includes, but is not limited to:

(1) Unauthorized possession, duplication, or other use of keys (including conventional keys, key cards, or passcodes) to any college premises;

(2) Unauthorized entry upon or use of college premises or property; or

(3) Providing keys to an unauthorized person or providing access to an unauthorized person.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-275 ~~Weapons.~~ (~~(Unauthorized possession of weapons (e.g., firearms, daggers, swords, knives, other cutting or stabbing instruments, or clubs) or substances (e.g., explosives) apparently capable of producing bodily harm and/or damage to real or personal property is prohibited on or in college-owned or operated facilities and premises and/or during college-sponsored events.~~

~~(1) Carrying of firearms on or in college-owned or operated facilities and/or during college-sponsored events is prohibited except~~

~~and unless the permit is registered with the campus security department for a specified period of time.~~

~~(2) The aforementioned regulations within this section shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers or campus security officers acting in the legitimate performance of their lawful duties.)~~

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 and during college programming and activities, subject to the following exceptions:

(1) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their official duties.

(2) Students with legally issued weapons permits may store their weapons in their 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.

(3) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(4) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-280 Academic dishonesty. ((Academic dishonesty minimizes the learning process and threatens the learning environment for all students. As members of the CBC learning community, students are not to engage in any form of academic dishonesty. Academic dishonesty includes, but is not limited to, cheating, plagiarism, and fabrication or falsification of information, research, or other findings for the purpose of fulfilling any assignment or task as part of the student's program of instruction. Any student who commits or aids and abets the accomplishment of an act of academic dishonesty will be subject to disciplinary action.))

Any act of academic dishonesty, including:

(1) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(2) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writing, work of another person, or artificial intelligence, 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.

(3) Fabrication - 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.

(4) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

NEW SECTION

WAC 132S-100-293 Cyber misconduct. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully, stalk, 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 distribution of a recording of sexual activity.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-400 Student conduct process. (1) As an agency of the state of Washington, the college's SCO, SCB, SAB, or president may be advised or represented by an assistant attorney general in any student code of conduct proceeding.

~~((1) Initiation of the student conduct process. A request to initiate the student conduct process for alleged violation(s) of the student code of conduct must be made to the SCO as soon as possible following the violation. Conduct proceedings may be initiated when the SCO receives any direct or indirect report of conduct that may violate this code, which includes, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party. The college may initiate the student conduct process regardless of whether or not the incident in question is the subject of criminal or civil proceedings. Any member of the college's administration, faculty, staff, or any student or nonstudent may make a request for disciplinary action through the student conduct process and it must be a good faith claim. Formal rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable persons would rely upon in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded. If the complaint indicates that the matter involves sexual misconduct, the SCO will forward the complaint to the Title IX office for review in accordance with the college's Title IX grievance policy and procedure or nondiscrimination and harassment policy and grievance procedure, as applicable. Any determinations of relevant evidence or facts made under the Title IX grievance policy and procedure or the nondiscrimination and harassment policy and grievance procedure shall be relied upon in the student conduct process. The SCO or designee will conduct an initial investigation of a complaint to determine whether it alleges conduct that may be prohibited by the student code of conduct. If it is determined through the initial investigation that the report has merit, the SCO will conduct an investigation to determine responsibility. Except in cases of sexual assault or sexual violence, the parties may elect to mediate the dispute, which shall be facilitated by the SCO. If the SCO's investigation indicates that the alleged~~

violation is so severe that a finding of responsibility is likely to merit expulsion, suspension of more than ten days, revocation of a degree, or loss of recognition of a student organization, the SCO will forward the findings of the investigation to the SCB for review, decision and disciplinary action using the full adjudicative process. If the SCO has a conflict of interest or is the subject of a complaint by the student, the vice president for student services shall, upon request and at their discretion, designate another person to fulfill any such disciplinary responsibilities relative to the request for the student conduct process.

~~(2) Notification requirements.~~

~~(a) If it is determined through the initial investigation that an alleged violation of the student code of conduct might have occurred and which is not eligible for referral to the Title IX officer or the SCB, the SCO will provide the following written notification:~~

~~(i) That a report has been submitted alleging conduct which violates the student code of conduct and that a conduct investigation has been initiated to determine responsibility;~~

~~(ii) The specific sections of the student code of conduct which are alleged to have been violated;~~

~~(iii) That the student may either accept responsibility for the alleged violations or request a conduct meeting with the SCO to present evidence to refute the report;~~

~~(iv) That the student may provide evidence such as names and contact information of witnesses to aid the conduct investigation;~~

~~(v) The possible sanction outcomes and that the actual sanctions will depend on the determination of responsibility pending the results of the investigation; and~~

~~(vi) That if the student fails to participate in any stage of the conduct proceedings or to request a conduct meeting within fifteen days from the date of the notice, the college may move forward with the conduct proceeding without their participation.~~

~~(b) If the student requests a conduct meeting within fifteen days of the notice, the student will be provided a written notice to appear for a conduct meeting. The notice to appear will be personally delivered, sent electronically to the student's CBC email address, or sent by mail to the most recent address in the student's record on file with the college, not later than fifteen instructional days after the request for a conduct meeting. The notice will not be ineffective if presented later due to the student's absence. Such notice will:~~

~~(i) Set forth the specific provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violations, and a description of evidence, if any, of the violation.~~

~~(ii) Notify the student of the SCO's investigation and possible sanctions, if any.~~

~~(iii) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.~~

~~(iv) Inform the student that failure to attend the conduct meeting will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and disciplinary actions.~~

~~(v) Inform the student that they may be accompanied at the meeting by an advisor at their expense. The advisor cannot be a college employee or witness. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor.~~

~~(vi) Inform the student that they may present evidence to support their assertions during the meeting.~~

~~(3) Student conduct meeting — Brief adjudicative process.~~

~~(a) During the student conduct meeting, the student will be informed of the following:~~

~~(i) The specific acts and the provision(s) of college policy that the student is alleged to have violated;~~

~~(ii) The disciplinary process;~~

~~(iii) The range of sanctions which might result from the disciplinary process and that the actual sanctions will depend on the findings of responsibility;~~

~~(iv) The student's right to appeal.~~

~~(b) The student will have the opportunity to review and respond to the allegation(s) and evidence and provide the SCO with relevant information, evidence and/or witnesses to the alleged violation(s), and/or explain the circumstances surrounding the alleged violation(s).~~

~~(c) The advisor may assist the student during the conduct meeting, however the student is responsible for presenting their own information and evidence. The advisor may only communicate with the student they are advising. Any disruptions or failure to follow the conduct process and/or directions of the SCO may result in the advisor being excused from the meeting.~~

~~(4) Decision by the SCO.~~

~~(a) After interviewing the student or students involved and/or other individuals as appropriate, and considering the evidence, the SCO may take any of the following actions:~~

~~(i) Determine that the student is not responsible for a violation of the student code of conduct and thereby terminate the student conduct process;~~

~~(ii) Determine that the student is responsible for a violation of the student code of conduct and impose disciplinary sanctions as provided herein;~~

~~(iii) Determine that further inquiry is necessary and schedule another meeting for reasonable cause; or~~

~~(iv) Refer the case to the SCB for the full adjudicative hearing process if the alleged violation is discovered to be of a severe nature and may result in sanctions that include expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.~~

~~(b) Notification of the decision by the SCO will be issued pursuant to WAC 132S-100-130 within thirty instructional days of the final student conduct meeting. Due to federal privacy law, the college may not disclose to the complainant any sanctions imposed on the responding student unless the complainant was the alleged victim of a violent crime as defined under the Federal Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the responding student consents to such disclosure. A copy of the decision notification will be filed with the office of the SCO.~~

~~(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal as provided herein.)~~

(2) Initiation of disciplinary action.

(a) Any member of the college community may file a complaint against a student or student group for possible violations of the student code of conduct.

(b) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student code of conduct.

(i) Sex discrimination, including sex-based harassment - The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student code of conduct. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(ii) Hazing by student groups - A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(c) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(d) If a student conduct officer determines that a complaint appears to state a violation of the student code of conduct, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(i) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(ii) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(e) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(f) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(g) All disciplinary actions will be initiated by the student conduct officer. If that student conduct officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(h) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the student code of conduct the respondent is alleged to have violated, the range of

possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(i) At the meeting, the student conduct officer will present the allegation to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(j) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student code of conduct provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(k) The student conduct officer may take any of the following disciplinary actions:

(i) Exonerate the respondent and terminate the proceedings;

(ii) Impose a disciplinary sanction(s), with or without conditions, as describe in WAC 132S-100-XXX; or

(iii) Refer the matter directly to the student conduct board for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chairperson of the student conduct board, with a copy served on the respondent.

(l) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by the preponderance of the evidence, there was a violation of the student code of conduct; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(i) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before the student conduct board.

(ii) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct board.

(iii) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(iv) The student conduct officer shall promptly notify the other party of the request.

(v) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(A) The college is unable to identify respondent after taking reasonable steps to do so;

(B) Respondent is not participating in the College's educational programs or activities;

(C) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(D) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(E) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(vi) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(vii) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(viii) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(ix) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that the complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-407 Appeal ((process)) from disciplinary action.

~~((1)(a) Disciplinary decisions may be appealed by filing a written request with the office of the VPSS within twenty-one days of the notice of the decision. Disciplinary decisions of the SCO may be appealed for review by the SAB using the brief adjudicative process. Disciplinary decisions of the SCB may be appealed for review by the college president using the brief adjudicative process. Disciplinary decisions by the SCO that include sexual misconduct may be applied for review by the SCB using the brief adjudicative process. Failure to file a written appeal within twenty-one days will result in the decision becoming final with no further right of appeal.~~

~~(b) The request for appeal must include a brief statement explaining the grounds for the appeal or why the party is seeking review. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals.~~

~~(2) Decisions may be appealed for one or more of the following:~~

~~(a) To determine whether there was a procedural error that substantially affected the outcome of the finding or sanctioning. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.~~

~~(b) To determine whether the sanction(s) imposed were appropriate and not excessively lenient or excessively severe for the violation of the student code of conduct for which the student was found responsible.~~

~~(c) To consider new information, sufficient to alter a decision, or other relevant facts not brought during fact finding, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation or fact-finding.~~

~~(3) Refusal to participate during the investigation or student conduct process does not constitute a right to appeal.~~

~~The VPSS or designee will forward appeals based on one or more of the required grounds for appeal to the SAB, SCB, or president as provided herein.~~

~~A party, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial appeal review as provided in these procedures.~~

~~Interim measures will remain in effect pending an appeal unless they have been removed pursuant to WAC 132S-100-445.~~

~~(4) Appeals of disciplinary action(s) will be taken in the following order:~~

~~(a) Complainants are afforded the same right to appeal as respondents in student conduct matters in which the complainant was the alleged target of violence or sexual misconduct. If both parties appeal the decision, the appeals will be reviewed in the order in which they are filed or reviewed together, if they state the same, similar, or related grounds or substance for appeal.~~

~~(b) The SAB or college president's decision to affirm, reverse or modify the decision and/or sanction will be issued pursuant to WAC 132S-100-130.~~

~~(c) The SAB's, and the college president's decisions are final.))~~

(1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132S-100-400, the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant (if any), and the student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct board, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student code of conduct shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) A student appeals board (SAB) shall conduct a brief adjudicative proceedings for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The conduct review officer shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals;
(c) Sex discrimination, including sex-based harassment cases; and
(d) Disciplinary cases referred to the conduct review officer by
the student conduct officer or student conduct board.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-413 Full adjudicative process. The ((SCB)) student conduct board will use the following full adjudicative process to determine responsibility for serious violations which include sanctions of suspension for more than ((ten)) 10 days, expulsion, withholding or revocation of a degree, or loss of recognition of a student organization.

~~((1) The parties will be sent written notification of the SCB adjudication proceedings within ninety days from the date of the filing of the appeal. The notification will contain the following:~~

~~(a) The time, date, and location of the hearing, which shall not be less than seven days from the date of the notice of the hearing;~~

~~(b) The specific acts alleged and the provision(s) of college policy which those acts violated;~~

~~(c) The SCB procedures;~~

~~(d) The name and contact information for the SCB and their advisor, if any, representing the college. The notice will include the official title, work mailing address, and telephone number of each of these individuals;~~

~~(e) Unless otherwise ordered by the SCB chairperson, the name and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their advisors;~~

~~(f) A statement that if a party fails to attend or participate in a hearing or other stage of this adjudicative proceeding, they may be held in default in accordance with chapter 34.05 RCW and/or the college may continue the student conduct process, including the hearing, despite the party's absence.~~

~~(2) The respondent and complainant have the right to be assisted by one advisor of their choice and at their own expense. The advisor must not be a witness or someone employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing may not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their representative/advisor.~~

~~The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or advisor invited by the parties to the hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chairperson. The advisor may not disrupt or interfere with any aspect of the proceeding.~~

~~The SCB chairperson shall have the right to impose reasonable conditions upon the participation of the advisor.~~

~~(3) The SCB and the parties will be provided reasonable access to the documentation and evidence which will be reviewed by the SCB, as well as the case file that will be retained by the SCO in accordance with applicable privacy laws.~~

~~(4) Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings.~~

~~A party may make a written request to the SCB chairperson for the recusal of an SCB member no less than five instructional days prior to the hearing. The request must be for good cause, which must be shown by the party making the request. The SCB chairperson will consider the request and notify the student of their decision regarding the recusal prior to the hearing. If the SCB chairperson grants the recusal, a replacement for the recused SCB member will be made without unreasonable delay.~~

~~(5) The parties involved in the hearing will be required to submit their witness list and any evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. The parties must submit a witness list which contains a written statement from each witness that includes a brief description of the relevant information the witness will provide during the hearing. Witnesses not listed will not participate in the hearing.~~

~~(6) Discovery in the form of depositions, interrogatories, and medical examinations of parties are not permitted in student conduct adjudications. Other forms of discovery which ensure the prompt and thorough completion of the adjudication process may be permitted at the discretion of the SCB chairperson.~~

~~(7) Hearings will be closed to the public except if consented to by all parties and at the discretion of the SCB chairperson. Witnesses may be allowed in the hearing room only during the time in which they provide their statements to the SCB. The complainant and respondent, depending on their preference and subject to orders of a court of law, such as protection orders, may be present for and observe the entire hearing.~~

~~At the discretion of the SCB chairperson, and where the rights of the parties will not be prejudiced, all or part of the hearing may be conducted by telephone, video conference, or other electronic means. Each party shall have the opportunity to hear and if technically and economically feasible, to see the entire hearing while it is taking place. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.~~

~~(8) The SCB chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent and complainant, who disrupts a hearing or who fails to follow the directions of the SCB chairperson may be excluded from the proceedings and may be subject to disciplinary action.~~

~~(9) Questions posed by any party to be answered by each other or by witnesses must be appropriate and respectful. The SCB chairperson may require any participant of the hearing to provide all questions in writing to the SCB chairperson. The SCB chairperson, if appropriate and at their sole discretion, will read the question to the individual to whom it is directed. Any question which the SCB chairperson has chosen not to read will be documented on record and kept within the case file. The SCB chairperson will decide matters related to the order of the proceedings.~~

~~(10) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed, except for the deliberations of the SCB. The record will be the property of the college.~~

~~(11) After weighing and considering the evidence, the SCB will decide by unanimous vote whether the respondent is responsible or not responsible for a violation of the student code of conduct. If there is a finding of responsibility for a violation, the SCB shall determine sanctions as provided herein.~~

~~(12) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.~~

~~(13) The notice of decision of the SCB will be issued pursuant to WAC 132S-100-130. A copy of the SCB's decision will also be filed with the office of the SCO.~~

~~(14) Disciplinary action taken by the SCB is final unless the student exercises the right of appeal to the college president as provided herein.)~~

(1) Prehearing.

(a) Proceedings of the student conduct board shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(b) The student conduct board chairperson shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chairperson may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

(i) A copy of the student code of conduct;

(ii) The basis for jurisdiction;

(iii) The alleged violation(s);

(iv) A summary of facts underlying the allegations;

(v) The range of possible sanctions that may be imposed; and

(vi) A statement that retaliation is prohibited.

(c) The chairperson is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(d) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chairperson, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the student conduct board. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(e) The chairperson may provide to the student conduct board members in advance of the hearing copies of:

(i) The student conduct officer's notification of imposition of discipline (or referral to the committee); and

(ii) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chairperson should remind the members that these "pleadings" are not evidence of any facts they may allege.

(f) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the student conduct board chairperson may provide copies of these admissible exhibits to the student conduct board members before the hearing.

(g) Communications between student conduct board members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without the notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(h) In cases heard by the student conduct board, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(i) The student conduct board will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(j) Attorneys for students must file a notice of appearance with the student conduct board chairperson at least four business days before the hearing. Failure to do so may, at the discretion of the student conduct board chairperson, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(k) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(i) Notice - The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(ii) Advisors - The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(iii) Extension of time - The chairperson may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in (1)(ii) of this subsection.

(iv) Evidence - In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and the complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(v) Confidentiality - The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or student conduct board chairperson pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(1) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(i) Notice - In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(A) The respondent is presumed not responsible for the alleged sex-based harassment;

(B) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(C) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(D) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(E) The student code of conduct prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(ii) Extension of time - The chairperson may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chairperson in any prehearing conference. The written request must be served simultaneously by email to all parties and the chairperson. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chairperson will serve a written decision upon all parties, to include the reasons for granting and denying any request. The chairperson's decision shall be final. In exceptional circumstances, for good cause shown, the chairperson may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(iii) Advisors - The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(iv) Evidence - In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(v) Confidentiality - The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chairperson issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(vi) Separate locations - The chairperson may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the student conduct board and parties to simultaneously see and hear the party or the witness while that person is speaking.

(vii) Withdrawal of complaint - If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

(2) Presentation of evidence.

(a) Upon the failure of any party to attend or participate in a hearing, the student conduct board may either:

(i) Proceed with the hearing and issuance of its decision; or

(ii) Serve a decision of default in accordance with RCW

34.05.440.

(b) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chairperson shall determine any extent to which the hear-

ing will be open. If any person disrupts the proceedings, the chairperson may exclude that person from the hearing room.

(c) The chairperson shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chairperson shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recordings shall also be permitted, in accordance with WAC 10-08-190.

(d) The chairperson shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the student conduct board.

(e) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(f) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(g) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chairperson will determine whether questions will be submitted to the chairperson, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The chairperson may revise this process if, in the chairperson's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(i) Prior to any questions being posed to a party or witness, the chairperson must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chairperson will retain for the record copies of any written questions provided by any party.

(ii) The chairperson must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(iii) The chairperson shall exclude and the student conduct board shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(A) Spousal/domestic partner privilege;

(B) Attorney-client communications and attorney work product privilege;

(C) Clergy privileges;

(D) Medical or mental health providers and counselor privileges;

(E) Sexual assault and domestic violence advocate privileges; and

(F) Other legal privileges set forth in RCW 5.60.060 or federal law.

(iv) The chairperson shall exclude and the student conduct board shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged

sex-based harassment or preclude determination that sex-based harassment occurred.

(v) The student conduct board may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The student conduct board must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(h) Except in cases involving allegations of sex-based harassment, the chairperson has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chairperson to be asked of the witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

(3) Initial decision.

(a) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the student conduct board wishes to receive them. The student conduct board also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(b) Within 20 calendar days following the conclusion of the hearing or the student conduct board's receipt of closing arguments, the student conduct board shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student code of conduct were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(c) The student conduct board's decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the committee by the student conduct officer, the student conduct board shall identify and impose disciplinary sanction(s) or conditions (if any), as authorized in the student code of conduct. If the matter is an appeal by a party, the student conduct board may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(d) The chairperson shall cause copies of its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The chairperson shall also promptly transmit a copy of the decision and the record of the student conduct board's proceedings to the president.

(e) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

(4) Review of initial decision.

(a) Any party, including a complainant in sex-based harassment cases, may appeal the student conduct board's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the student conduct board's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(b) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(i) Procedural irregularity that would change the outcome;
(ii) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and
(iii) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(c) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(d) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct board and will normally be limited to a review of those issues and arguments raised in the appeal.

(e) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(f) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(g) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-417 Brief adjudicative process. (~~((1) The brief adjudicative process is conducted in accordance with RCW 34.05.482 through 34.05.494.~~

~~(2) The SCO will use the brief adjudicative process to make decisions of findings of responsibility as provided in this code of conduct.~~

~~(3) The SCB will use the brief adjudicative process to review appeals of disciplinary decisions which include allegations of sexual misconduct but do not include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.~~

~~(4) The president will use the brief adjudicative process to review appeals of all disciplinary decisions made by the SCB.~~

~~(5) The SAB will use the brief adjudicative process to review timely appeals of disciplinary decisions which do not include sexual misconduct, sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.~~

~~(6) Within twenty days of filing the appeal, the SAB or president, as applicable, shall review the record of the preceding conduct decision and all relevant information provided by the parties, and based on a preponderance of the evidence by unanimous vote as applicable, shall make a determination to affirm, reverse, or modify the~~

~~findings and/or sanctions. The SCB, SAB and president shall have the discretion to seek clarification from witnesses as needed.~~

~~(7) Notification of the decision will be issued pursuant to WAC 132S-100-130.)~~

(1) Initial hearing.

(a) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(b) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(i) An opportunity to be informed of the agency's view of the matter; and

(ii) An opportunity to explain the party's view of the matter.

(c) The conduct review officer shall serve as initial decision upon the respondent and the student conduct officer within 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(d) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct board for a disciplinary hearing.

(2) Review of an initial decision.

(a) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(b) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(c) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct board for a formal adjudicative hearing.

(d) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(e) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct board for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-440 Corrective action, disciplinary sanctions, terms and conditions. ((Students found responsible for violations of the student code of conduct may be subject to the following sanctions:

(1) ~~Warning. A verbal statement or notice in writing to the respondent that they are violating or have violated college rules or regulations and that continued violations may be the cause for further disciplinary action.~~

(2) ~~Reprimand. Notice in writing that the respondent has violated one or more of the policies outlined in the student code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.~~

(3) ~~Loss of privileges. Denial of specified privileges for a designated period of time.~~

(4) ~~Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn may include, but are not limited to, intramural sports, information technology services, college facility use and rental, and involvement in organizational activities.~~

(5) ~~Restitution. A student may be required to make restitution for damage, loss, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty instructional days or any period set by the SCO, SCB, SAB, or president will result in an administrative hold being placed on the student's registration, which will prevent future enrollment until the restitution is complete.~~

(6) ~~Discretionary sanctions. Work assignments, essays, service to the college, or other related discretionary assignments.~~

(7) ~~Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of college rules or regulations or other failure to meet the college's expectations within the student code of conduct. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which their continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extra-curricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for a period which may extend to graduation or award of a degree or certificate or other termination of the student's enrollment in the college.~~

(8) ~~Restricted access to (trespass from) certain college facilities, property or activities.~~

(9) ~~Suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may apply. Students who are suspended may be denied access to all or any part of the campus or other facilities for the duration of the period of suspension.~~

(10) ~~Expulsion. Permanent separation of the student from the college. Students who are expelled may be permanently denied access to all or any part of the campus or other facilities.~~

(11) ~~Revocation of admission and/or degree or certificate. Admission to the college or a degree or certificate awarded from the college may be revoked for fraud, misrepresentation, or other violation~~

~~of college standards in obtaining admission or the degree or certificate, or for other serious violations committed by a student prior award of a degree or certificate.~~

~~(12) Withholding degree or certificate. The college may withhold awarding a degree or certificate until the completion of the process set forth in the student code of conduct, including the completion of all sanctions imposed, if any.~~

~~(13) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. Authorization for release of information will be required to allow the college access to the evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the student code of conduct.~~

~~(14) Delayed suspension. A probationary amount of time set by the SCO, SCB, SAB, or president in which the student must remain in good standing. If the student is found responsible for violating the student code of conduct while still under the delayed suspension guidelines, then the student will be suspended, as set forth in subsection (7) of this section.~~

~~(15) No contact order. An order that prohibits direct or indirect physical, verbal, written, and/or any other form of communication or contact with an individual or group. Direct and indirect contact includes, but is not limited to, phone calls, letters, going within sight of places of work or residence, email, social media, etc.~~

~~If the respondent is found responsible for any violation, the student's past disciplinary record may be considered in determining an appropriate sanction.)~~

(1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student code of conduct.

(a) Warning - A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) Written reprimand - Notice in writing that the student has violated one or more terms of the student code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) Disciplinary probation - Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) Disciplinary suspension - Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

(e) Dismissal - The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.

(2) Disciplinary terms and conditions that may be imposed or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Education - Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) Loss of privileges - Denial of specified privileges for a designated period of time.

(c) Not in good standing - A student deemed "not in good standing" with the college shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) No contact directive - An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) Professional evaluation - Referral for drug, alcohol, psychological, or medical evaluation by an appropriate certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(f) Restitution - Reimbursement for damage to or misappropriation of property, or for injury to person, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) Trespass or restriction - A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(h) Residence hall suspension or termination - Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction must be completed either prior to or upon the student's

reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanction and conditions may be considered in petitions for readmission to the college.

NEW SECTION

WAC 132S-100-442 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control, shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the student code of conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

NEW SECTION

WAC 132S-100-444 Summary suspension. (1) Summary suspension is a temporary exclusion specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the student code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice - Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two calendar days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and

reference to the provisions of the student code of conduct or the law(s) allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privileges to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-445 Interim measures. (1) Interim measures may be taken pending an investigation or adjudication if there is cause to believe that a student or student organization poses an imminent risk of harm to anyone in the college community, or to property, or if the misconduct is so severe, persistent, or pervasive as to substantially disrupt or materially interfere with the college's operations and/or activities or with an individual's education/work activities. Interim measures may include counseling, extensions of time or other course-

related adjustments, modifications of class schedules, campus escort services, restrictions on contact between the parties, increased security and monitoring of certain areas of campus, restrictions on access to college owned or operated property and/or events (notice of trespass), including classes, activities and privileges, or any similar measures while the conduct process is pending.

(2) The student must adhere to the conditions of the interim restriction. If an interim restriction includes campus wide restricted access, the SCO may provide written permission for the student to enter campus for specific purposes such as meeting with the SCO or designee, faculty, staff or witnesses to prepare for an appeal, or to participate in the student conduct process.

(3) Notice of interim measure. The student will be provided written notice of the interim measure(s), stating:

(a) The time, date, place, and nature of the circumstances which created the need for interim measures.

(b) A description of any relevant evidence.

(c) The interim measure.

(d) The possible sanctions that could result from violation of the interim measure including arrest for criminal trespass if the student has been trespassed from campus.

(e) The student's right to either accept the interim measure or submit a written appeal of the interim measure within three instructional days to the office of VPSS ((office)). An appeal is waived if not submitted within the prescribed time. If the student timely appeals, the interim measure shall remain in place during the appeal process. The VPSS will provide written notification to the student of the decision to either maintain or discontinue the interim measure within five instructional days of receipt of the appeal.

(f) If the student has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that they shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the SCO as arranged by an appointment, or to attend a disciplinary hearing. The interim measure shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim restriction.

WSR 24-23-075
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed November 18, 2024, 2:50 p.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: RCW 18.43.150 and 18.210.200 requires the board of registration for professional engineers and land surveyors to "set fees at a level adequate to pay the costs of administering this chapter." Fee increases are needed to mitigate the risk of fund balance depletion due to expenses exceeding revenues and to offset the rising costs associated with inflation and to cover the expanding expenses of our programs. By implementing this fee increase, we can maintain our commitment to delivering high-quality services and support, while also investing in future initiatives that will benefit our licensees.

Citation of Rules Affected by this Order: Repealing WAC 196-26A-035, 196-26A-100, and 196-30-020; and amending WAC 196-26A-025, 196-26A-045, and 196-26A-060.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050, and 18.210.060.

Other Authority: RCW 18.43.150, 18.210.200.

Adopted under notice filed as WSR 24-20-127 on October 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 3.

Date Adopted: November 18, 2024.

Ken Fuller
 Director

OTS-5774.3

Chapter 196-26A WAC
((REGISTERED PROFESSIONAL ENGINEERS AND LAND SURVEYOR)) FEES

AMENDATORY SECTION (Amending WSR 14-03-029, filed 1/8/14, effective 2/8/14)

WAC 196-26A-025 State application fees ((for examinations)).

((FUNDAMENTAL EXAMINATIONS:

Fundamentals of Engineering (FE):

Application fee (incl. wall certificate): \$30

Processing fee to retake the FE examination: \$20

Fundamentals of Land Surveying (FLS):

Application fee (incl. wall certificate): \$30

Processing fee to retake the FLS examination: \$20

Note: Additional charges to cover costs of NCEES fundamentals examinations, exam administration and grading will be charged by NCEES to approved applicants.

PROFESSIONAL ENGINEERING EXAMINATIONS:

NCEES Examinations: (All branches other than board prepared examinations)

Application fee (incl. wall certificate and initial license): \$65

Processing fee to retake the NCEES PE exam: \$30

Note: Additional charges to cover costs of NCEES PE examinations, exam administration and grading will be charged by NCEES to approved applicants.

Structural Engineering:

Note: To become licensed in structural engineering an applicant is required to pass sixteen hours of structural examinations when determined eligible under Washington law. The examinations for structural licensing consist of the NCEES 16-hour structural examination.

Application fee (incl. wall certificate and initial license): \$65

Processing fee to retake the NCEES 16-hour structural exam: \$30

Note: Additional charges to cover costs of NCEES 16-hour structural examination, exam administration and grading will be charged by NCEES to approved applicants.

PROFESSIONAL LAND SURVEYING:

Note: The examinations for licensure in professional land surveying include an NCEES PPLS examination, and a Washington specific examination. One application is required and when determined eligible a candidate will sit for the NCEES PPLS examination and the Washington specific examination on the same day.

Application fee (incl. wall certificate, state exams, and initial license): \$140

Processing and examination fee to retake the state PLS exam: \$100

Note: Additional charges to cover costs of NCEES LS examination, exam administration and grading will be charged by NCEES to approved applicants.

Processing fee to retake the NCEES PPLS examination: \$30))

FUNDAMENTALS CERTIFICATIONS:

Fundamentals of Engineering (FE):

Application fee (including wall certificate): \$30

Fundamentals of Land Surveying (FLS):

Application fee (including wall certificate): \$30

PROFESSIONAL ENGINEERING APPLICATIONS:

Exam and initial license application fee (including wall certificate and initial license): \$65

Comity licensure application fee (including wall certificate and initial license): \$110

Structural Engineering:

Exam application fee (including wall certificate and initial license): \$65

Comity application fee (including wall certificate): \$110

Temporary Permits:

Temporary permit application \$110

PROFESSIONAL LAND SURVEYING:

Additional charges to cover costs of NCEES PLS examination will be charged by NCEES to approved applicants.

Application fee for exam and comity (including wall certificate, initial state exam, and initial license): \$140

Processing and examination fee to retake the state PLS exam: \$100

ON-SITE WASTEWATER TREATMENT SYSTEM DESIGNERS:

Application fee (including wall certificate, initial state exam, and initial license): \$200

Processing and examination fee to retake the on-site designer exam: \$140

CERTIFICATE OF COMPETENCY (INSPECTOR):

Application fee (including wall certificate, initial state exam, and initial license): \$175

Processing and examination fee to retake the on-site designer exam: \$140

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-045 ((Professional engineer, professional land surveyor)) Renewal fees and penalties.

Professional engineer (((two years))): ((\$116))
\$128

Professional land surveyor (((two years))):	(\$116) \$128
<u>On-site wastewater system designer:</u>	\$128
<u>Certificate of competency:</u>	\$128
Late renewal penalty (((PE and LS only))):	(\$58) \$64

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-060 Certificate of authorization application and renewal fees.

Application fee (incl. wall certificate and initial license):	\$150
Renewal fee (one-year):	(\$110) \$121

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 196-26A-035 State fees for comity licensure and temporary permit applications.
- WAC 196-26A-100 Suspended fees.

OTS-5775.2

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 196-30-020 On-site wastewater treatment designer and inspector fees.

WSR 24-23-078

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 19, 2024, 8:40 a.m., effective December 20, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue (department) is implementing ESHB 2003 (2024) by adding the new leasehold excise tax exemption in RCW 82.29A.139 for affordable housing on public lands, and moving all existing affordable housing exemptions to the same portion of the rule. The department is also codifying the existing leasehold excise tax exemptions in RCW 82.29A.137 for certain leasehold interests related to the manufacture of superefficient airplanes, and in RCW 82.29A.138 for certain amateur radio repeaters.

Citation of Rules Affected by this Order: Amending WAC 458-29A-400 Leasehold excise tax—Exemptions.

Statutory Authority for Adoption: RCW 82.29A.140.

Other Authority: RCW 82.29A.139, 82.29A.138, and 82.29A.137.

Adopted under notice filed as WSR 24-19-034 on September 10, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2024.

Brenton Madison
Rules Coordinator

OTS-5850.1

AMENDATORY SECTION (Amending WSR 24-04-077, filed 2/5/24, effective 3/7/24)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) Introduction.

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.125, 82.29A.130, 82.29A.132, 82.29A.134, 82.29A.135, (~~and~~) 82.29A.136, 82.29A.137, 82.29A.138, and 82.29A.139. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) **Student housing at public and nonprofit schools and colleges.**

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) **Subsidized housing.**

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

(b) **Example.** Assume an apartment building and the property on which it is located is:

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) **Affordable housing on public lands.**

(a) All leasehold interests in public lands are exempt from leasehold excise tax when used for the placement of affordable housing under the following conditions:

(i) A lessee must commit to renting or selling 100 percent of the units as permanently affordable for low-income and moderate-income households; and

(ii) The term of the lease is at least 20 years.

(b) For purposes of this subsection, the following definitions apply:

(i) "Affordable housing" has the same meaning as provided in RCW 84.14.010 and means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low or moderate-income households.

(ii) "Low-income household" has the same meaning as provided in RCW 84.14.010 and means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and affordable development.

(iii) "Moderate-income household" has the same meaning as provided in RCW 84.14.010 and means a single person, family, or unrelated persons living together whose adjusted income is more than 80 percent but is at or below 115 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States Department of Housing and Urban Development.

(iv) "Public lands" has the same meaning as provided in RCW 79.02.010 and means lands of the state of Washington administered by the department of natural resources including, but not limited to, state lands, state forestlands, lands included in a state forestland pool, and aquatic lands.

(7) Public employee housing.

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of their employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of their employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

(b) Examples.

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call 24 hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(ii) An employee of the Washington department of fish and wild-life resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(8) Military housing.

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(9) Month-to-month leases in residential units to be demolished or removed.

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to stu-

dents. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(10) **Interests consisting of 3,000 or more residential and recreational lots.** All leasehold interests consisting of 3,000 or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least 3,000 satisfies the requirement of this exemption. RCW 82.29A.136.

(11) **Nonprofit fair associations.**

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

~~((7) **Public employee housing.**~~

~~(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.~~

~~(b) **Examples.**~~

~~(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call 24 hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.~~

~~(ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on~~

~~tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.~~

~~(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.~~

~~(8-))~~ **(12) Interests held by enrolled Indians.**

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

~~((9-))~~ **(13) Leases on Indian lands to non-Indians.**

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to 90 percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of 90 percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least 90 percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

~~((10-))~~ **(14) Annual taxable rent is less than \$250.**

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two

or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a 12-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

(b) **Examples.**

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run 30 to 40 days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for six weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

~~((11))~~ **(15) Leases for a continuous period of less than 30 days.** Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than 30 days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than 30 days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

~~((12) Month-to-month leases in residential units to be demolished or removed.~~

~~(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.~~

~~(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.~~

~~(13))~~ (16) **Public works contracts.**

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

~~((14))~~ (17) **Correctional industries in state adult correctional facilities.**

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

(b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

~~((15))~~ (18) **Camp facilities for persons with disabilities.**

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

~~((16))~~ **(19) Public or entertainment areas of certain baseball stadiums.**

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over 1,000,000 people, with a seating capacity of over 40,000, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

~~((17))~~ **(20) Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection ~~((16))~~ **(19)** of this rule.

~~((18))~~ **(21) Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

~~((19))~~ **(22) State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

~~((20))~~ **(23) Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

~~((21) Interests consisting of 3,000 or more residential and recreational lots.~~ All leasehold interests consisting of 3,000 or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least 3,000 satisfies the requirement of this exemption. RCW 82.29A.136.

~~(22))~~ (24) Historic sites owned by the United States government or municipal corporations. All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

~~((23))~~ (25) Amphitheaters.

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for 100 percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over 17,000 reserved and general admission seats and is in a county that had a population of over 350,000, but less than 425,000 when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominantly by the lessee.

~~((24) Military housing.~~

~~(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.~~

~~(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.~~

~~(25))~~ (26) Community colleges and technical colleges.

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

- (i) Food services for students, faculty, and staff;
- (ii) The operation of a bookstore on campus; or
- (iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

~~((26))~~ **(27) Anaerobic digesters.**

(a) Beginning July 1, 2018, all leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) Claims for the exemption described in (a) of this subsection must be filed with the department on the form *Leasehold excise tax exemption to operate an anaerobic digester* available at <https://dor.wa.gov>. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The department must verify and approve claims as it determines to be justified and in accordance with this subsection. No claims may be filed after December 31, 2024.

(c) For the purposes of this subsection, "anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment. See RCW 82.08.900.

~~((27))~~ **(28) Exemptions for public or entertainment areas of certain arenas.** Leasehold interests in the public or entertainment areas of the following two types of arenas are exempt from the leasehold excise tax:

(a) An arena with a seating capacity of more than 2,000; located on land owned by a city with a population over 200,000; and within a county with a population of less than 1,500,000. For the purposes of this paragraph, the term "public or entertainment areas" has the same meaning as set forth in subsection ~~((23))~~ **(25)** of this rule.

(b) Beginning October 1, 2023, an arena with a seating capacity of more than 4,000; located on land owned by, and within, a city with a population over 100,000; and private entities were responsible for 100 percent of the cost of constructing improvements to the arena which were not reimbursed by the public owner. For the purposes of this paragraph, "public or entertainment areas" has the same meaning as set forth in subsection ~~((23))~~ **(25)** of this rule, except that it also includes office areas used predominately by the lessee.

(i) A taxpayer claiming an exemption for this type of arena must file a complete tax performance report as provided in RCW 82.32.534.

(ii) This exemption does not apply to leasehold interests on or after October 1, 2033.

~~((28))~~ **(29) Certain facilities owned by the state parks and recreation commission.** Beginning January 1, 2023, leasehold interests

in facilities owned by the state parks and recreation commission that are listed on the national register of historic places or the Washington heritage register are exempt from leasehold excise tax. This exemption expires January 1, 2034.

~~((29))~~ **(30) Electric vehicle infrastructure.**

(a) Until July 1, 2025, leasehold interests in public lands for the purpose of installing, maintaining, and operating electric vehicle infrastructure are exempt from leasehold excise tax.

(b) For purposes of this subsection, the following definitions apply:

(i) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(ii) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(iii) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities. See RCW 82.29A.125.

(iv) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(v) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(vi) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for energy input into the production process.

(vii) "Renewable resource" means: Water, wind, solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

~~((30))~~ **(31) Manufacture of superefficient airplanes.**

(a) Until July 1, 2040, leasehold interests in port district facilities that are exempt from retail sales tax under RCW 82.08.980, or use tax under RCW 82.12.980, and used by a manufacturer engaged in the manufacturing of superefficient airplanes, are exempt from leasehold excise tax. A person claiming the business and occupation (B&O) credit under RCW 82.04.4463, for property taxes and leasehold excise taxes paid on property used for the manufacture of commercial airplanes is not eligible for this exemption. See RCW 82.29A.137.

(b) "Superefficient airplanes" has the same meaning as provided by RCW 82.32.550 and means twin aisle airplanes that carry between 200 and 350 passengers, with a range of more than 7,200 nautical miles, a

cruising speed of approximately mach 0.85, and that use 15 to 20 percent less fuel than other similar airplanes on the market.

(c) A taxpayer claiming this exemption must annually file a complete tax performance report as provided in RCW 82.32.534.

(32) Certain amateur radio repeaters.

(a) Leasehold interests in property used for the placement of amateur radio repeaters that are made available for use by, or are used in support of, a public agency in the event of an emergency or potential emergency to which the agency is, or may be, a qualified responder, are exempt from leasehold excise tax. See RCW 82.29A.138.

(b) "Amateur radio repeater" means an electronic device that receives a weak or low-level amateur radio signal and retransmits it at a higher level or higher power, so that the signal can cover longer distances without degradation, and is used by amateur radio operators possessing a valid license issued by the federal communications commission.

(33) Expiration date for new tax preferences.

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is 10 years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

**WSR 24-23-080
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed November 19, 2024, 9:34 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The purpose of this rule making is to implement requirements of SHB 2127, chapter 90, Laws of 2024, under chapter 296-16 WAC, Employer—Worker reemployment incentives; and chapter 296-16A WAC, Stay-at-work program. This rule making increases the maximum amounts an employer may be reimbursed by the stay-at-work program and the preferred worker program. These programs provide financial incentives to employers when they help injured workers return to approved work within their restrictions.

This rule making also implements HB 1927, chapter 144, Laws of 2024, regarding reducing the number of days of time-loss required to qualify for preferred worker certification from 14 to seven days.

The department of labor and industries (L&I) is also conducting a separate rule making to amend chapter 296-19A WAC, Vocational rehabilitation, to implement 2024's SHB 2127.

Adopted amendments include:

WAC	Change
296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020?	<ul style="list-style-type: none"> • For a worker with a date of injury on or after January 1, 2025, updated requirement for preferred worker certification from 14 days of time-loss compensation benefits to seven days of time-loss compensations benefits. • Removed the word consecutive, which was incorrect.
<ul style="list-style-type: none"> • 296-16-140 Which employers are eligible to benefit from the preferred worker program? • 296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions? • 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a preferred worker? 	<p>For a worker with a date of injury on or after January 1, 2025:</p> <ul style="list-style-type: none"> • Removed requirement for approval of job descriptions by the injured worker's health care provider. • Clarified that credentialed vocational rehabilitation professionals that approve job descriptions are employed by the department.
296-16-150 What benefits can an eligible employer receive from the preferred worker program?	<p>For a worker with a date of injury on or after January 1, 2025:</p> <ul style="list-style-type: none"> • Maximum wage reimbursement period per claim increased from 66 days to 120 days. • Maximum wage subsidy per claim increased from \$10,000 to \$25,000. • Maximum reimbursement for clothing per claim increased from \$400 to \$1,000. • Maximum reimbursement for tools and equipment per claim increased from \$2,500 to \$5,000. • Discretionary one time incentive payment for continuous employment without reduction in wages for at least 12 months increased from the lesser of 10 percent of the worker's wages or \$10,000 to \$25,000 with no consideration of the worker's wages. • Clarified that work must be approved, but not medically approved by the injured worker's provider.

<p>296-16A-030 What can I be reimbursed for?</p>	<p>For a worker with a date of injury on or after January 1, 2025:</p> <ul style="list-style-type: none"> • Maximum wage reimbursement period per claim increased from 66 days to 120 days. • Maximum wage subsidy per claim increased from \$10,000 to \$25,000. • Maximum reimbursement for training costs per claim increased from \$1,000 to \$2,000. • Maximum reimbursement for clothing per claim increased from \$400 to \$1,000. • Maximum reimbursement for tools and equipment per claim increased from \$2,500 to \$5,000.
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Citation of Rules Affected by this Order: Amending WAC 296-16-113, 296-16-140, 296-16-145, 296-16-150, 296-16-160, and 296-16A-030.

Statutory Authority for Adoption: RCW 51.04.020(1).

Adopted under notice filed as WSR 24-20-111 on October 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2024.

Joel Sacks
Director

OTS-5670.4

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020? (1) A worker with a developmental disability may be certified as a preferred worker, in the sole discretion of the supervisor of industrial insurance or the supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that results in payment of time-loss compensation benefits for:

(a) A period of at least ((fourteen consecutive)) seven days if the worker's date of injury is on or after January 1, 2025; or

(b) A period of at least 14 days if the worker's date of injury is prior to January 1, 2025.

(2) A worker with developmental disabilities does not need to apply for preferred worker certification. The department will evaluate the worker's eligibility for certification after receiving the employer's documentation described in WAC 296-16-160(3).

(3) If the health care provider has released the worker without restrictions and the worker is returning to the job of record, a job analysis or job description is not needed.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-140 Which employers are eligible to benefit from the preferred worker program? The following employers may be eligible to benefit from the preferred worker program if they employ a certified preferred worker, with a date of injury on or after January 1, 2025, in a job approved by ((the injured worker's health care provider and)) the department's credentialed vocational rehabilitation professional; or if they employ a certified preferred worker with a date of injury prior to January 1, 2025, in a job approved by the worker's health care provider and the department's credentialed vocational rehabilitation professional:

(1) A Washington state fund employer with an industrial insurance account in good standing with the department, as outlined in WAC 296-17-31004(4); or

(2) A self-insured employer who employs a worker who is certified as a preferred worker under a state fund claim.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions? (1) Preferred worker benefits for a worker with a date of injury on or after January 1, 2025, are only available when the offered job is approved by((+)

(a-)) a credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210((+and

(b) The injured worker's health care provider)).

((2) For the purposes of chapter 296-16 WAC, the injured worker's health care provider is defined as:

(a) The attending provider; or

(b) The current primary care provider; or

(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.

(3-)) The final determination ((in subsection (1) of this section)) must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.

(2) Preferred worker benefits for a worker with a date of injury prior to January 1, 2025, are only available when the offered job is approved by:

(a) A credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210; and

(b) The injured worker's health care provider.

(3) For the purposes of this chapter, the injured worker's health care provider is defined as:

(a) The attending provider; or

(b) The current primary care provider; or

(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.

(4) The final determination in subsection (2) of this section must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-150 What benefits can an eligible employer receive from the preferred worker program? (1) In the sole discretion of the supervisor of industrial insurance or the supervisor's designee, an eligible employer, insured through the state fund or self-insured, may receive benefits shown in the table below:

A certified preferred worker (certified on or after January 1, 2016,) who is hired by:		
Employer	State Fund employer (pays premiums to L&I)	Self-insured employer
(a) Wage, clothing, and equipment reimbursements specified in subsection (2) of this section.	X	X
(b) Continuous employment incentive specified in subsection (3) of this section.		
(c) Does not pay accident fund and medical aid fund premiums for hours worked by the preferred worker.	X	
(d) Will not have the cost of any new claim filed by that preferred worker charged to their experience rating.		

A <u>certified</u> preferred worker ((certified on or after January 1, 2016;)) who is hired by:		
Employer	State Fund employer (pays premiums to L&I)	Self-insured employer
(e) Receives reimbursement from the second injury fund for all benefits paid on any new claim filed by that worker during the certification period.		X

(2) For a preferred worker with a date of injury on or after January 1, 2025:

(a) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker (~~(who was certified on or after January 1, 2016)~~) with a date of injury on or after January 1, 2025, at work approved under WAC 296-16-145, performed during the worker's certification period:

~~((a))~~ (i) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to ~~((sixty-six))~~ 120 days in a ~~((twenty-four))~~ 24-month period ~~((and))~~ up to a maximum of ~~((ten thousand dollars))~~ \$25,000 per worker certification period.

~~((i))~~ (A) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

~~((ii))~~ (B) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the ~~((sixty-six))~~ 120.

~~((iii))~~ (C) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the ~~((sixty-six))~~ 120.

~~((iv) The sixty-six))~~ (D) The 120 days do not have to be consecutive.

~~((v))~~ (E) The employer may choose which ~~((sixty-six))~~ 120 days to seek reimbursement for.

~~((vi))~~ (F) The employer cannot be reimbursed for dates the employer employed the worker that are more than ~~((twenty-four))~~ 24 months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The ~~((twenty-four))~~ 24 month eligibility period ends January 31, 2018.

~~((vii))~~ (G) The employer must submit the request for reimbursement within one year of the date the work was performed.

~~((viii))~~ (H) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

~~((b))~~ (ii) Clothing the employer purchased for the worker, necessary to perform the ~~((medically))~~ approved work, up to ~~((four hundred dollars))~~ \$1,000 per worker certification period.

~~((i))~~ (A) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

~~((ii))~~ (B) When the work ends, the clothing belongs to the worker.

~~((iii))~~ (C) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

~~((e))~~ (iii) Tools and equipment the employer purchased to enable the worker to perform the ~~((medically))~~ approved work, up to ~~((two thousand five hundred dollars))~~ \$5,000 per worker certification period.

~~((i))~~ (A) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

~~((ii))~~ (B) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

~~((iii))~~ (C) When the work ends, the tools and equipment belong to the employer.

~~((iv))~~ (D) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

~~((3))~~ (b) An eligible employer who continuously employs a certified preferred worker at the ~~((medically))~~ approved job without reduction in base wages for at least ~~((twelve))~~ 12 consecutive months, beginning on or after January 1, ~~((2016))~~ 2025, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

~~((a))~~ (i) The ~~((twelve))~~ 12 months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

~~((b))~~ (ii) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the ~~((medically))~~ approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., ~~((thirty-two))~~ 32 hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., ~~((thirty-two))~~ 32 hours per week. The work pattern is the same as the ~~((medically))~~ approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

~~((e))~~ (iii) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the ~~((twelve))~~ 12-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

~~((d))~~ (iv) The one-time payment is ~~((equal to the lesser of ten percent of the worker's wages or ten thousand dollars. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments))~~ \$25,000.

~~((e))~~ (v) Only one continuous employment incentive is payable per worker certification period.

~~((f))~~ (vi) The employer must submit the request for the continuous employment incentive within one year of the date the ~~((twelve))~~ 12 months ended.

~~((4))~~ (c) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

~~((5))~~ (d) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

(3) For a preferred worker with a date of injury prior to January 1, 2025:

(a) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker with a date of injury prior to January 1, 2025, and who was certified on or after January 1, 2016, at work approved under WAC 296-16-145, performed during the worker's certification period:

(i) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to 66 days in a 24-month period and a maximum of \$10,000 per worker certification period.

(A) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(B) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the 66.

(C) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the 66.

(D) The 66 days do not have to be consecutive.

(E) The employer may choose which 66 days to seek reimbursement for.

(F) The employer cannot be reimbursed for dates the employer employed the worker that are more than 24 months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The 24-month eligibility period ends January 31, 2018.

(G) The employer must submit the request for reimbursement within one year of the date the work was performed.

(H) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(ii) Clothing the employer purchased for the worker, necessary to perform the medically approved work, up to \$400 per worker certification period.

(A) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

(B) When the work ends, the clothing belongs to the worker.

(C) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(iii) Tools and equipment the employer purchased to enable the worker to perform the medically approved work, up to \$2,500 per worker certification period.

(A) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

(B) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

(C) When the work ends, the tools and equipment belong to the employer.

(D) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(b) An eligible employer who continuously employs a certified preferred worker at the medically approved job without reduction in base wages for at least 12 consecutive months, beginning on or after January 1, 2016, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

(i) The 12 months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

(ii) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the medically approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., 32 hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., 32 hours per week. The work pattern is the same as the medically approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

(iii) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the 12-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

(iv) The one-time payment is equal to the lesser of 10 percent of the worker's wages or \$10,000. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(v) Only one continuous employment incentive is payable per worker certification period.

(vi) The employer must submit the request for the continuous employment incentive within one year of the date the 12 months ended.

(c) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

(d) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a preferred worker? (1) An employer must employ the certified preferred worker in a job that:

(a) Will continue to be available into the foreseeable future; and

(b) Is confirmed as consistent with the worker's permanent work restrictions as outlined in WAC 296-16-145; and

(c) Addresses a business need or provides economic value to the employer.

(2) The employer will not be eligible for preferred worker incentives if the offered job is any of the following:

(a) The job of injury with minor or no modifications;

(b) Work that is beyond the worker's medical restrictions;

(c) Work which requires training beyond the usual and customary training provided by the employer to similar employees;

(d) On-the-job training.

(3) Except for tools and equipment as described in WAC 296-16-150 (2)(c), and the continuous employment incentive as described in WAC 296-16-150(3), in no case will the employer receive any preferred worker benefits for dates worked prior to the department's receipt of all required documentation. The employer must submit to the department:

(a) For a preferred worker with a date of injury on or after January 1, 2025, a copy of the completed job analysis or department's job description form (, approved by the worker's health care provider; and) or for a preferred worker with a date of injury prior to January 1, 2025, a copy of the completed job analysis or department's job description form approved by the worker's health care provider; and

(b) The job offer, signed by the worker; and

(c) The preferred worker request form, available on the department's website, completed and signed by the employer.

(d) Once all appropriately completed documents described in (a) through (c) of this subsection have been received by the department, the employer can be reimbursed for the cost of any tools and equipment as described in WAC 296-16-150 (2)(c) if purchased within (~~sixty~~) 60 days of the first date of the preferred worker's employment.

(4) After the offered job is approved by the department's credentialed vocational rehabilitation professional, preferred worker benefits can be granted. The benefit start date will be no earlier than the first workday after the department receives the employer's completed documentation.

(5) If the job is offered after the preferred worker's claim is closed, the worker's restrictions at time of claim closure will apply.

OTS-5671.1

AMENDATORY SECTION (Amending WSR 12-09-056, filed 4/17/12, effective 5/21/12)

WAC 296-16A-030 What can I be reimbursed for? If the attending provider restricts your worker from performing his or her usual work, you may ask the attending provider to release your worker to perform light duty or transitional work for you. If the attending provider does so, you may employ your worker consistent with the attending provider's release. You can then receive reimbursement for some of the costs associated with that employment:

(1) **For a worker claim with a date of injury on or after January 1, 2025:**

(a) **Wages:** (~~Fifty~~) 50 percent of basic gross wages you paid your worker, for up to (~~sixty-six~~) 120 days actually worked in a (~~twenty-four~~) 24-month period, up to a maximum of (~~ten thousand dollars~~) \$25,000 total wage reimbursement per claim.

(~~(a)~~) (i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(~~(b)~~) (ii) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the (~~sixty-six~~) 120.

(~~(c)~~) (iii) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the (~~sixty-six~~) 120.

(~~(d)~~) (iv) The (~~sixty-six~~) 120 days do not have to be consecutive.

(~~(e)~~) (v) If the light duty or transitional work lasts more than (~~sixty-six~~) 120 days, you may choose which (~~sixty-six~~) 120 days to seek reimbursement for.

(~~(f)~~) (vi) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(~~(g)~~) (vii) We cannot reimburse you for dates you employed your worker that are more than (~~twenty-four~~) 24 months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your (~~twenty-four~~) 24-month eligibility period ends January 31, 2014.

(~~(h)~~) (viii) You must submit your request for reimbursement within one year of the date the work was performed.

(~~(2)~~) (b) **Training costs** you incurred to enable your worker to perform the light duty or transitional work, up to (~~one thousand dollars~~) \$2,000 per claim:

(~~(a)~~) (i) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

(~~(b)~~) (ii) We will not reimburse you for the value of "in-house" training provided by your organization.

(~~(c)~~) (iii) You must submit your request for reimbursement within one year of the date of purchase.

(~~(3)~~) (c) **Clothing** you provided your worker, necessary to perform the light duty or transitional work, up to (~~four hundred dollars~~) \$1,000 per claim:

~~((a))~~ (i) If you normally provide such clothing to your workers, we cannot reimburse you.

~~((b))~~ (ii) When the work ends, the clothing belongs to your worker.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

~~((4))~~ (d) Tools and equipment you purchased to enable your worker to perform the light duty or transitional work, up to ~~((two thousand five hundred dollars))~~ \$5,000 per claim:

~~((a))~~ (i) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

~~((b))~~ (ii) When the work ends, the tools and equipment belong to the employer.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

(2) For a worker claim with a date of injury prior to January 1, 2025:

(a) Wages: 50 percent of basic gross wages you paid your worker, for up to 66 days actually worked in a 24-month period, up to a maximum of \$10,000 total wage reimbursement per claim.

(i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(ii) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the 66.

(iii) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the 66.

(iv) The 66 days do not have to be consecutive.

(v) If the light duty or transitional work lasts more than 66 days, you may choose which 66 days to seek reimbursement for.

(vi) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(vii) We cannot reimburse you for dates you employed your worker that are more than 24 months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your 24-month eligibility period ends January 31, 2014.

(viii) You must submit your request for reimbursement within one year of the date the work was performed.

(b) Training costs you incurred to enable your worker to perform the light duty or transitional work, up to \$1,000 per claim:

(i) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

(ii) We will not reimburse you for the value of "in-house" training provided by your organization.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

(c) Clothing you provided your worker, necessary to perform the light duty or transitional work, up to \$400 per claim:

(i) If you normally provide such clothing to your workers, we cannot reimburse you.

(ii) When the work ends, the clothing belongs to your worker.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

(d) **Tools and equipment** you purchased to enable your worker to perform the light duty or transitional work, up to \$2,500 per claim:

(i) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

(ii) When the work ends, the tools and equipment belong to the employer.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

**WSR 24-23-081
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed November 19, 2024, 9:34 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: Classification development's goal is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number; and reviewed classification and reporting rules for improvement and clarification.

The purpose of this rule making is not to make substantive changes to how employers are classified and amendments will not increase employer rates.

As part of this rule making, the department of labor and industries (L&I) also reviewed these chapters for need, clarity, and consistency to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). We are amending some classifications to increase ease of reporting, and ensure consistent and equitable treatment to businesses.

Adopted amendments include:

WAC 296-17A-	WAC Description	What's Changed	Reason for Change
3407	Gas, oil, and asphalt dealers	Reduce the number of subclassifications and reformat rules.	L&I is combining subclassifications as part of our plan to reduce the overall number of subclassifications in the Classification plan to ease administrative burden for customers and staff. Some reasons for collapsing: <ul style="list-style-type: none"> • Low number of employers/ hours reporting in subclassification (low credibility from actuarial view). • Subclassification does not represent separate risks from overall risk classification. • Low loss data. • No longer need to track these subclassifications separately. If the current format of these rules is a barrier to clarity, they are also being reformatted to make them easier to understand, apply, and follow.
4804	Farms: Poultry		
6506	Photography studios		
6705	Ski facilities		

WAC 296-17A-	WAC Description	What's Changed	Reason for Change
0108	Ditches and canals, N.O.C.	Reformat to comply with current standardized format.	Reformatting classifications to reflect standardized format established in 2019 for easier readability. In addition, some of our classifications were formatted so that they were only identified by title rather than having narrative. This has caused some confusion for L&I staff and they have requested we update the classifications so that every subclassification provides all the information, rather than title only.
0521	Painting building interiors; wallpaper hanging/removal		
0603	Machinery: Installation, service and/or repair, N.O.C.; Millwright work, N.O.C.	Reformat the rule so that subclassifications are expanded with the appropriate information rather than title only.	
1106	Rental stores, N.O.C.; Truck canopy sales		
1109	Automobile and truck towing services, N.O.C.		
1304	Telecommunication service providers - Administrative, office, and sales personnel		
1407	Bus companies		
1802	Aluminum smelting		
2004	Iron or steel merchants; wire rope and cable dealers		
2007	Grain, bean and pea elevators and warehouses		
2008	Field bonded warehouses		
2101	Grain, feed and flour mills and dealers		
2104	Fruit and vegetable packing - fresh		
2201	Laundry, dry cleaning and dyeing establishments		
2204	Laundry or dry cleaning - Coin-operated, self-service operations		
2401	Paper, pulp, or wood fiber: Manufacturing		
2904	Veneer: Commercial production		
2905	Wood furniture and casket: Manufacturing, assembling, or repairing; Furniture refinishing		
2906	Pattern or model - Metal, plastic or wood: Manufacturing		
2909	Woodenware - Household and sporting goods N.O.C.: Manufacturing or assembly		
3102	Stone wool insulation: Manufacturing		
3103	Cement or lime: Manufacturing		
3105	Concrete blocks, bricks, poles, piles, tiles and beams manufacturing		
3403	Aircraft: Manufacturing		
3408	Natural gas companies		
3409	Self-service gas stations		
3410	Convenience grocery stores or minimarkets with self-service gasoline operations		
3412	Automobile and truck: Body and fender repair shops		
3501	Brick or clay products, N.O.C.: Manufacturing		

WAC 296-17A-	WAC Description	What's Changed	Reason for Change
3512	Plastic goods: Manufacturing - Cutting, milling or bending		
3513	Rubber goods, N.O.C.: Manufacturing		
3603	Furniture stripping and refinishing; metal plating or polishing, rustproofing, N.O.C.		
3604	Galvanizing or tinning - Not electrolytic, N.O.C.		
3605	Truck: Manufacturing or assembly		
3808	Upholstery work, N.O.C.		
3903	Sugar refining; molasses and syrup, N.O.C.: Manufacturing		
4103	Newspaper publishing		
4108	Letter service shops and mailing or addressing companies		
4401	Cold storage lockers		
4402	Ice: Manufacturing or harvesting		
4404	Cold storage warehouse		
4911	Construction estimators		
5002	Booming and rafting logs		
5109	Heavy machinery and equipment including locomotive engines: Manufacture or repair; Press roller recoating/resurfacing		
5204	Railroad car: Manufacturing or repair		
6201	Mortuaries, funeral homes, crematoriums		
6203	YMCA/YWCA institutions		
6402	Stores: Grocery, N.O.C. - Retail		
6608	Motion picture production		
6902	Logging road: Construction or maintenance		
6903	Aerial spraying, seeding, crop dusting, or firefighting		
6121	Acute care hospitals - Without a fully implemented safe patient handling program	Put the note back on the classification subsection title "to be assigned only by the hospital underwriter."	This note was removed in error in 2023.
6501	Barbers, salons, tattoo shops	Reformat and clarify that booth renter exclusion doesn't apply to tattoo and piercing shops. The booth renter exclusion is limited to booth renters performing cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW.	There's been historical staff and customer confusion over the booth renter exclusion and to whom it applies ever since the department of licensing removed booth renters from their statutes in the late 1990s.

Citation of Rules Affected by this Order: Amending WAC 296-17A-0108, 296-17A-0521, 296-17A-0603, 296-17A-1106, 296-17A-1109, 296-17A-1304, 296-17A-1407, 296-17A-1802, 296-17A-2004, 296-17A-2007, 296-17A-2008, 296-17A-2101, 296-17A-2104, 296-17A-2201, 296-17A-2204, 296-17A-2401, 296-17A-2904, 296-17A-2905, 296-17A-2906, 296-17A-2909, 296-17A-3102, 296-17A-3103, 296-17A-3105, 296-17A-3403, 296-17A-3407, 296-17A-3408, 296-17A-3409, 296-17A-3410, 296-17A-3412, 296-17A-3501, 296-17A-3512, 296-17A-3513, 296-17A-3603, 296-17A-3604, 296-17A-3605, 296-17A-3808, 296-17A-3903, 296-17A-4103, 296-17A-4108, 296-17A-4401, 296-17A-4402, 296-17A-4404, 296-17A-4804, 296-17A-4911, 296-17A-5002, 296-17A-5109, 296-17A-5204, 296-17A-6121, 296-17A-6201, 296-17A-6203, 296-17A-6402, 296-17A-6501, 296-17A-6506, 296-17A-6608, 296-17A-6705, 296-17A-6902, and 296-17A-6903.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Adopted under notice filed as WSR 24-17-127 on August 20, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 57, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 57, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2024.

Joel Sacks
Director

OTS-5578.1

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-0108 Classification 0108.

0108-00 Ditches and canals, N.O.C.

~~((Applies to contractors engaged in the construction of ditches and canals not covered by another classification (N.O.C.). A ditch or canal consists of a long trench dug in the ground that will remain uncovered to serve as an artificial waterway or artificially improved river such as for irrigation, drainage, or a boundary line. Work contemplated by this classification includes digging of main irrigation canals or drainage ditches and all laterals extending from the canal or ditch, installation of pipe, making connections as needed, and filling or backfilling as needed. Equipment used by contractors subject to this classification includes a variety of machinery and equipment such as power shovels, backhoes, bulldozers, dump trucks, and mechanical or hand tool trench diggers.~~

~~This classification excludes asphalt surfacing/resurfacing which is to be reported separately in classification 0210 or 0212, and concrete construction which is to be reported separately in the applicable concrete construction classification(s).~~

~~0108-01 Sewer construction; septic tank installation~~

~~**Applies to:** Contractors engaged in the construction or repair of new or existing sewer lines and systems. This includes, but is not limited to, sewers, cesspools, drainpools, storm drains, and septic tanks including the drainfield construction.~~

~~**Construction services include,** but are not limited to:~~

- ~~• Installation and maintenance of all types of storm, sanitary or sewage lines and systems;~~
- ~~• Excavation and trench digging;~~
- ~~• Leveling trenches with fill material such as sand or gravel, including filling or backfilling;~~
- ~~• Installation of force main type sewage work;~~
- ~~• Installation of storm sewer lines including the outfall construction of drain concrete boxes, catch basins, manholes, and handling and laying of pipe (regardless of the size of pipe or depth below the ground);~~
- ~~• Making connections.~~

~~**Typical machinery includes,** but is not limited to:~~

- ~~• Power shovels;~~
- ~~• Backhoes;~~
- ~~• Bulldozers;~~
- ~~• Dump trucks;~~
- ~~• Trenchless or directional boring equipment;~~
- ~~• Manual digging.~~

~~**Excluded activities in this classification:**~~

- ~~• Side sewer hookups (street to house) when performed by a plumbing contractor as part of a plumbing contract (report in 0306);~~
- ~~• Sewer pipe cleaning including services engaged in line cleaning and unplugging of waste lines (report in 0306).~~

~~0108-02 Tanks, N.O.C. - Underground: Installation, repair, or removal~~

~~Applies to contractors engaged in the installation, repair or removal of underground tanks not covered by another classification (N.O.C.) such as those used to store gas or oil. Activities include excavating or digging of holes, placement or removal of tank, and filling or backfilling. This classification makes no distinction as to the size of tank being placed or removed. Usually, the actual lifting into or out of the ground occurs with the use of a power shovel, front end loader or backhoe. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as power shovels, front end loaders, backhoes, bulldozers, and dump trucks.))~~

Applies to:

Contractors engaged in the construction of ditches and canals not covered by another classification (N.O.C.).

A ditch or canal consists of a long trench dug in the ground that will remain uncovered to serve as an artificial waterway or artificially improved river such as for irrigation, drainage, or a boundary line.

Work activities include, but are not limited to:

- Digging of main irrigation canals or drainage ditches;
- Digging all laterals extending from the canal or ditch;
- Installation of pipe and making connections as needed;
- Filling or backfilling as needed.

Equipment used include, but are not limited to:

- Backhoes;
- Bulldozers;
- Dump trucks;
- Mechanical or hand tool trench diggers;
- Power shovels.

Exclusions:

- Asphalt surfacing/resurfacing is classified in 0210 or 0212;
and
- Concrete construction is classified in the applicable concrete construction classification(s).

0108-01 Sewer construction; septic tank installation**Applies to:**

Contractors engaged in the construction or repair of new or existing sewer lines and systems.

Types of systems installed include, but are not limited to:

- Cesspools;
- Drainpools;
- Septic tanks including the drainfield construction;
- Sewers;
- Storm drains.

Work activities include, but are not limited to:

- Installation and maintenance of all types of storm, sanitary or sewage lines and systems;
- Excavation and trench digging;
- Leveling trenches with fill material such as sand or gravel, including filling or backfilling;
- Installation of force main type sewage work;
- Installation of storm sewer lines including the outfall construction of drain concrete boxes, catch basins, manholes, and handling and laying of pipe (regardless of the size of pipe or depth below the ground);
- Making connections.

Equipment used include, but are not limited to:

- Backhoes;
- Bulldozers;
- Dump trucks;
- Manual digging equipment;
- Power shovels;
- Trenchless or directional boring equipment.

Exclusions:

- Side sewer hookups (street to house) when performed by a plumbing contractor as part of a plumbing contract is classified in 0306;
- Sewer pipe cleaning including services engaged in line cleaning and unplugging of waste lines is classified in 0306.

0108-02 Tanks, N.O.C. - Underground: Installation, repair, or removal

Applies to:

Contractors engaged in the installation, repair or removal of underground tanks not covered by another classification (N.O.C.) such as those used to store gas or oil.

This classification makes no distinction as to the size of tank being placed or removed

Work activities include, but are not limited to:

- Excavating or digging of holes;
- Placement or removal of tank;
- Filling or backfilling.

Equipment used include, but are not limited to:

- Backhoes;
- Bulldozers;
- Dump trucks;
- Front end loaders;
- Power shovels.

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

WAC 296-17A-0521 Classification 0521.**0521-00 Painting building interiors; wallpaper hanging/removal**

~~((Applies to contractors engaged in painting building interiors regardless of the height inside the building. This classification includes building interiors such as, but not limited to:~~

- ~~• Single and multiple story residential houses and commercial buildings;~~
- ~~• Warehouses;~~
- ~~• Factories;~~
- ~~• Coliseums;~~
- ~~• Theaters;~~
- ~~• Stores; and~~
- ~~• Churches.~~

~~The following structures are examples which would **not meet** the definition of a building or qualify as interior painting:~~

- ~~• Bridges;~~
- ~~• Refineries;~~
- ~~• Grain silos;~~
- ~~• Water towers;~~
- ~~• Service station canopies; or~~
- ~~• Tanks.~~

~~Paint is applied by brush, roller or spray to a variety of surfaces such as wood, wallboard, plaster, stucco, metal, concrete, or other types of surfaces found within the interior of a building.~~

~~This classification includes:~~

- ~~• All preparation work such as the set up of scaffolding, sanding, removal of old paint or asbestos, taping or masking, and clean up work;~~
- ~~• The hanging or removal of wallpaper. The process of hanging wallpaper includes cleaning or scraping walls to ensure the wallpaper will adhere to the surface. Depending on the type of wallpaper, adhesive is applied to the wall surface, the wallpaper, or both. Patterns are matched and the strip is applied to the surface and brushed smooth~~

to remove the air pockets. This process is repeated until the entire job is complete;

- Refinishing or resurfacing of tubs, sinks, appliances and countertops.

This classification excludes:

- Exterior painting of buildings or structures which is to be reported separately in classification 0504. Classifications 0521 and 0504 may be assigned to the same employer provided accurate records are maintained which distinguish interior building painting contracts from exterior building or structure painting contracts;

- Contractors engaged in waterproofing buildings or structures N.O.C., pressure washing services or sandblasting of buildings or structures, lead paint abatement, and the exterior painting of buildings or structures, including interior/exterior tanks which are all to be reported separately in classification 0504;

- Painting of murals or other artwork on the interior of buildings which is to be reported separately in classification 4109; and

- Painting of murals or other artwork on the exterior of buildings which is to be reported separately in classification 0403.

Special note: See asbestos certification and training requirements at www.lni.wa.gov.)

Applies to:

Businesses painting building interiors regardless of the height inside the building.

Building interiors include, but are not limited to:

- Churches;
- Coliseums;
- Factories;
- Single and multiple story residential houses and commercial buildings;
- Stores;
- Theaters;
- Warehouses.

Examples of structures that would not meet the definition of a building or qualify as interior painting:

- Bridges;
- Grain silos;
- Refineries;
- Service station canopies;
- Tanks;
- Water towers.

Work activities and processes include, but are not limited to:

- Applying paint by brush, roller or spray to a variety of surfaces such as wood, wallboard, plaster, stucco, metal, concrete, or other types of surfaces found within the interior of a building;

- All preparation work such as setting up scaffolding, sanding, removing old paint or asbestos, masking with tape or other materials, and cleanup work;

- Hanging or removing wallpaper, including cleaning or scraping walls to ensure the wallpaper will adhere to the surface; applying adhesive to the wall surface, the wallpaper, or both; matching patterns and applying wallpaper to the surface; brushing smooth to remove air pockets; and repeating until the entire job is complete;

- Refinishing or resurfacing of tubs, sinks, appliances, and countertops.

Exclusions:

• Worker hours engaged in exterior painting of buildings or structures are reported separately in classification 0504. Classifications 0521 and 0504 may be assigned to the same employer provided accurate records are maintained which distinguish interior building painting contracts from exterior building or structure painting contracts;

• Worker hours engaged in waterproofing buildings or structures N.O.C., pressure washing services or sandblasting of buildings or structures, lead paint abatement, and the exterior painting of buildings or structures, including interior/exterior tanks which are all reported separately in classification 0504;

• Painting murals or other artwork on the interior of buildings is classified in 4109;

• Worker hours engaged in painting murals or other artwork on the exterior of buildings are reported separately in classification 0403.

Special notes:

• See asbestos certification and training requirements at www.lni.wa.gov.

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 0521 is a construction industry classification (see WAC 296-17-31013).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0603 Classification 0603.**0603-00 Machinery: Installation, service and/or repair, N.O.C.; Millwright work, N.O.C.**

(Applies to contractors engaged in the installation, service and/or repair of heavy machinery or equipment at a customer's location which is not covered by another classification (N.O.C.). Millwright work and the service or repair of engines and gas machines is also included. A millwright is a technician who specializes in installing and repairing industrial machinery. Typical customers include, but are not limited to, wood, metal and plastic manufacturing plants, fuel refineries, and mills. Types of machinery installed and repaired includes, but is not limited to, escalators, conveyor systems, printing presses, lathes, mill saws, dairy equipment and wind machines. (Store operations of dairy equipment/supply dealers or wind machine dealers are to be reported separately in classification 6407.) Work contemplated by this classification includes, but is not limited to, the pouring of a concrete pad on which the machinery will be installed, cutting and welding of brackets and mountings, assembling component parts, any incidental electrical connections needed to complete the installation, and calibrating the controls and testing the machinery's operation when done by employees of an employer having operations subject to this classification. Placement of heavy machinery must often be done with cranes or by rigging hoists. This classification also includes the dismantling and removal of machinery and equipment covered by this classification.

~~0603-05 Dynamos, electrical generators and turbines: Installation, service and/or repair~~

~~Applies to contractors engaged in the installation, service and/or repair of dynamos, electrical generators and turbines at a customer's location. A dynamo is a generator of direct electrical current; a turbine is a mechanism that converts moving fluid into mechanical power. Customers include, but are not limited to, electrical utilities, manufacturing plants, mills, and telecommunications companies. Work contemplated by this classification includes, but is not limited to, preparation of a concrete pad on which the machinery will be installed, cutting and welding of brackets and mountings, assembly of component parts if necessary, any incidental electrical connections needed to complete the installation, and calibrating and testing the machinery's operation when done by employees of an employer having operations subject to this classification. Placement of heavy machinery must often be done with cranes or by rigging hoists. Also included is the dismantling and removal of dynamos, generators and turbines.~~

~~This classification excludes the installation of underground overhead power lines and poles by an electric utility company which is to be reported separately in classification 1301; the installation of overhead power lines by a nonelectric utility contractor which is to be reported separately in classification 0509; and the installation of underground power lines by a nonelectric utility contractor which is to be reported separately in classification 0107.~~

~~0603-07 Industrial plant maintenance by contractor~~

~~Applies to contractors engaged in maintaining, repairing and installing machinery on a long-term contract basis for customers at the customers' location. Customers include, but are not limited to, manufacturing or chemical plants, petroleum refineries, food processing plants and mills. Work contemplated by this classification includes all routine maintenance and repair of a customer's equipment such as, but not limited to, cleaning, oiling and regularly scheduled maintenance and replacement of machinery or machinery parts, equipment and other mechanical installations that are part of the customer's building when done by employees of an employer having operations subject to this classification.~~

~~0603-08 Metal playground equipment, portable bleachers or stages, above ground swimming pools: Installation, dismantling, and/or repair~~

~~Applies to contractors engaged in the installation, dismantling, and/or repair of metal playground equipment, portable bleachers or stages, and above ground swimming pools. Playground equipment includes, but is not limited to, swings, monkey bars, merry-go-rounds, and slides. Work contemplated by this classification includes all operations necessary for the erection of metal playground equipment including, but not limited to, boring holes in the ground (usually with an auger) into which the various pieces of equipment will be set in concrete, any incidental cutting, welding, drilling and bolting of the tubular steel components which are usually from one to four inches in diameter, and fastening on the chains, swings, handlebars, sliding surface, platforms, bench seats, or other components. This classification also includes the application of any finish material or paint when done by employees of an employer having operations subject to this classification.~~

~~This classification excludes the installation of wood playground equipment which is to be reported separately in classification 0516.~~

0603-09 Commercial equipment: Installation, dismantling, service, and/or repair

~~Applies to contractors engaged in the installation, dismantling, service, and/or repair of commercial equipment such as, but not limited to, commercial dishwashing units, bakery and restaurant ovens, stoves, grills, sanitizers, steam tables, car washing equipment, commercial laundry equipment, electric entry doors, dry cleaning equipment, gas pumps, or parimutuel totalizer equipment at horse racing facilities. Work contemplated by this classification includes, but is not limited to, placing and leveling the equipment, any assembly of component parts if necessary, connecting or bolting to the wall or floor, making any necessary incidental plumbing or electrical connections, and calibrating and testing the equipment when done by employees of an employer having operations subject to this classification. Some pieces of equipment in this classification may be large enough that they must be moved and positioned with hoists or cranes. Also included is the dismantling and removal of commercial equipment.))~~

Applies to:

- Installation, service and/or repair of heavy machinery or equipment at a customer's location, not covered by another classification (N.O.C.).
- Millwright work and the service or repair of engines and gas machines. A millwright is a technician who specializes in installing and repairing industrial machinery.

Typical customers include, but are not limited to:

- Wood, metal, and plastic manufacturing plants;
- Fuel refineries;
- Mills.

Types of machinery installed and repaired include, but are not limited to:

- Conveyor systems;
- Dairy equipment;
- Escalators;
- Lathes;
- Mill saws;
- Printing presses;
- Wind machines.

Work processes and activities include, but are not limited to:

- Pouring concrete pads to hold the machinery;
- Cutting and welding brackets and mountings;
- Assembling component parts;
- Incidental electrical connections needed to complete the installation;
- Placement of heavy machinery with cranes or by rigging hoists;
- Calibrating the controls and testing the machinery's operation when done by employees of an employer having operations subject to this classification;
- Dismantling and removal of machinery and equipment covered by this classification.

Exclusions:

- Worker hours engaged in store operations of dairy equipment/supply dealers or wind machine dealers are reported separately in classification 6407.

0603-05 Dynamos, electrical generators and turbines: Installation, service and/or repair**Applies to:**

Installation, service and/or repair of dynamos, electrical generators, and turbines at a customer's location. A dynamo is a generator of direct electrical current; a turbine is a mechanism that converts moving fluid into mechanical power.

Typical customers include, but are not limited to:

- Electrical utilities;
- Manufacturing plants;
- Mills;
- Telecommunications companies.

Work processes and activities include, but are not limited to:

- Pouring concrete pads to hold the machinery;
- Cutting and welding brackets and mountings;
- Assembling component parts;
- Incidental electrical connections needed to complete the installation;
- Placement of heavy machinery with cranes or by rigging hoists;
- Calibrating the controls and testing the machinery's operation when done by employees of an employer having operations subject to this classification;
- Dismantling and removal of dynamos, generators, and turbines.

Exclusions:

- Installation of underground or overhead power lines and poles by an electric utility company is classified in 1301;
- Installation of overhead power lines by a nonelectric utility contractor is classified in 0509;
- Installation of underground power lines by a nonelectric utility contractor is classified in 0107.

0603-07 Industrial plant maintenance by contractor**Applies to:**

Businesses engaged in maintaining, repairing, and installing machinery on a long-term contract basis for customers at the customers' location.

Typical customers include, but are not limited to:

- Manufacturing plants;
- Chemical plants;
- Petroleum refineries;
- Food processing plants;
- Mills.

Work processes and activities include all routine maintenance and repair of a customer's equipment, such as, but not limited to:

- Cleaning;
- Oiling;
- Regularly scheduled maintenance;
- Replacement of machinery or machinery parts;
- Installing equipment and other mechanical installations that are part of the customer's building when done by employees of an employer having operations subject to this classification.

0603-08 Metal playground equipment, portable bleachers or stages, above ground swimming pools: Installation, dismantling, and/or repair

Applies to:

Installation, dismantling, and/or repair of metal playground equipment, portable bleachers or stages, and above ground swimming pools.

Playground equipment includes, but is not limited to:

- Merry-go-rounds;
- Monkey bars;
- Slides;
- Swings.

Work processes and activities include all operations necessary for the erection of metal playground equipment including, but not limited to:

• Boring holes in the ground, usually with an auger, for various pieces of equipment to be set in and held in place with concrete;
• Cutting, welding, drilling, and bolting of tubular steel components which are usually from one to four inches in diameter;
• Fastening on chains, swings, handlebars, sliding surface, platforms, bench seats, or other components;
• Applying any finish material or paint when done by employees of an employer having operations subject to this classification.

Exclusions:

Installation of wood playground equipment is classified in 0516.

0603-09 Commercial equipment: Installation, dismantling, service, and/or repair**Applies to:**

Installation, dismantling, service, and/or repair of commercial equipment.

Commercial equipment includes, but is not limited to:

• Commercial dishwashing units;
• Bakery or restaurant ovens, stoves, grills, sanitizers, or steam tables;
• Car washing equipment;
• Commercial laundry equipment;
• Electric entry doors;
• Dry cleaning equipment;
• Gas pumps;
• Parimutuel totalizer equipment at horse racing facilities.

Work processes and activities include, but are not limited to:

• Placing and leveling the equipment;
• Assembly of component parts;
• Connecting or bolting to the wall or floor;
• Making any necessary incidental plumbing or electrical connections;
• Calibrating and testing the equipment when done by employees of an employer having operations subject to this classification;
• Dismantling and removal of commercial equipment;
• Some pieces of equipment in this classification may be large enough that they must be moved and positioned with hoists or cranes.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-1106 Classification 1106.

1106-00 Rental stores, N.O.C.; Truck canopy sales

(Applies to establishments engaged in the rental of items, not covered by another classification (N.O.C.), such as hand tools, air compressors, automotive tools, baby equipment, convalescent equipment, exercise equipment, floor care equipment, pressure washers, party and banquet equipment, light construction tools or equipment such as saws, drills, and sanders, and lawn and garden equipment, as opposed to machinery or larger commercial or industrial equipment. The tools and equipment are generally rented to homeowners for use on their property. Rental stores within this classification rent a variety of tools and equipment unlike specialty rental stores that specialize in one type of product. This classification includes clerical office personnel, sales personnel, as well as the maintenance and repair of rented goods when performed by employees of the rental store. This classification also applies to establishments engaged in the sale and installation of truck canopies and related accessories, but who do not sell other types of vehicles or trailers.

This classification excludes establishments engaged in the rental of commercial or industrial equipment and/or machinery such as, but not limited to, bulldozers, tractors, and backhoes which are to be reported separately in classification 6409; establishments engaged in the rental of farm machinery equipment which are to be reported separately in classification 6408; establishments engaged in the rental of vehicles which are to be reported separately in the applicable classification; establishments engaged in the rental of sporting goods which are to be reported separately in classification 6406; establishments engaged in the rental of clothing or costumes which are to be reported separately in classification 6305; and establishments engaged in the rental of furniture which are to be reported separately in classification 6306.)

Applies to:

- Businesses engaged in the rental of items, not covered by another classification N.O.C.;
- Businesses selling and installing truck canopies and related accessories, but who do not sell other types of vehicles or trailers.

Products rented include, but are not limited to:

- Air compressors;
- Automotive tools;
- Baby equipment;
- Convalescent equipment;
- Exercise equipment;
- Floor care equipment;
- Hand tools;
- Lawn and garden equipment;
- Light construction tools or equipment (saws, drills, sanders);
- Party and banquet equipment;
- Pressure washers.

Note: The tools and equipment are generally rented to homeowners for use on their property. Rental stores within this classification rent a variety of tools and equipment unlike specialty rental stores that specialize in one type of product.

Work occupations and activities include, but are not limited to:

- Clerical office personnel;

- Sales personnel;
- Maintenance and repair of rented goods when performed by employees of the rental store.

Exclusions:

- Rental of commercial or industrial equipment and/or machinery such as, but not limited to, bulldozers, tractors, and backhoes is classified in 6409;
- Rental of farm machinery equipment is classified in 6408;
- Rental of vehicles is classified in the applicable classification;
- Rental of sporting goods is classified in 6406;
- Rental of clothing or costumes is classified in 6305; and
- Rental of furniture is classified in 6306.

AMENDATORY SECTION (Amending WSR 09-16-107, filed 8/4/09, effective 1/1/10)

WAC 296-17A-1109 Classification 1109.**1109-00 Automobile or truck towing services, N.O.C.**

~~((Applies to establishments engaged in providing towing services for hire to others which are not covered by another classification (N.O.C.). For purposes of this classification "towing services for hire" means, but is not limited to, the towing of disabled vehicles to a shop (that is unrelated to the towing service) for repair, the recovery of repossessed vehicles for others by tow truck, roadside assistance during snow, ice or flooding to recover or free stuck vehicles, and the towing in of disabled vehicles to a secured yard for insurance or law enforcement agencies. It is common for towing companies to also operate a vehicle repair garage or service center in conjunction with the towing service. Auto service centers and repair garages, auto body shops and wrecking yard operations are to be reported separately in the applicable service or repair classification provided that the conditions of the general reporting rules covering the division of worker hours have been met. Tow truck dispatchers who have no other duties may be reported separately in classification 4904 provided that the conditions of the standard exception general reporting rules have been met.))~~

Applies to:

Businesses providing towing services for hire to others which are not covered by another classification (N.O.C.).

For purposes of this classification "towing services for hire" means, but is not limited to:

- Towing disabled vehicles to a shop that is unrelated to the towing service for repair;
- Recovering repossessed vehicles for others by tow truck;
- Roadside assistance during snow, ice or flooding to recover or free stuck vehicles;
- Towing disabled vehicles to a secured yard for insurance or law enforcement agencies.

Exclusions:

Auto service centers and repair garages, auto body shops and wrecking yard operations are reported separately in the applicable service or repair classification provided that the conditions of the

general reporting rules covering the division of worker hours have been met.

• Tow truck dispatchers who have no other duties may be reported separately in classification 4904 provided that the conditions of the standard exception general reporting rules have been met.

Special note: Towing is common to many classifications. Employers offering towing services should be contacted to verify whether the towing service they provide is only in connection with their auto repair, auto body or wrecking yard (*towing service not for hire*), or provided as a general service unrelated to their repair garage (*towing services for hire*). Only towing services for hire are to be assigned to classification 1109. If a business provides both towing services for hire and not for hire, worker hours for drivers and their assistants may be divided between this classification and the applicable repair garage classification provided that the conditions of the general reporting rule covering the division of worker hours has been met. Otherwise, all driver and assistant hours are to be assigned to the highest rated classification applicable to the business.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

WAC 296-17A-1304 Classification 1304.

1304-00 Telecommunication service providers - Administrative, office, and sales personnel

~~((Applies to the administrative and clerical office personnel of establishments engaged in providing telecommunication services which enable two or more parties to converse or transmit coded data. For purposes of this classification, administrative personnel includes clerical office, sales, data processing, exchange operators, customer service, marketing, and retail telephone store (when operated by the telephone company) sales personnel.~~

~~This classification excludes all other telephone company employees who are to be reported separately in classification 1303.~~

1304-01 Telegraph companies - Clerical office and sales personnel

~~Applies to administrative and clerical office personnel of establishments engaged in providing telecommunication services which enable printed messages (telegrams) or moneygrams to be transmitted from one agent to another for receipt by a designated party. For purposes of this classification, administrative personnel includes clerical office, sales, data processing, customer service, marketing, cashiers and operators of telegraph, teletype or other transmitting and receiving equipment.~~

~~This classification excludes all other telegraph company employees who are to be reported separately in classification 1303.))~~

Applies to:

Administrative and clerical office personnel of businesses engaged in providing telecommunication services which enable two or more parties to converse or transmit coded data.

Administrative occupations include, but are not limited to:

- Clerical office;
- Customer service;
- Data processing;

- Exchange operators;
- Marketing;
- Retail telephone store (when operated by the telephone company) sales personnel;
- Sales personnel.

Exclusions:

- All other telephone company employees are classified in 1303.

1304-01 Telegraph companies - Clerical office and sales personnel**Applies to:**

Administrative and clerical office personnel of businesses engaged in providing telecommunication services which enable printed messages (telegrams) or moneygrams to be transmitted from one agent to another for receipt by a designated party.

Administrative occupations include, but are not limited to:

- Cashiers;
- Clerical office;
- Customer service;
- Data processing;
- Marketing;
- Operators of telegraph, teletype or other transmitting and receiving equipment;
- Sales personnel.

Exclusions:

- All other telegraph company employees are classified in 1303.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-1407 Classification 1407.**1407-00 Bus companies**

~~((Applies to establishments engaged in providing transportation services such as, but not limited to, charter and tour bus, contract school bus, shuttle van, and nonmunicipal, scheduled bus systems. Work contemplated by this classification includes operation of the vehicle and related loading/unloading duties, cleaning, maintenance and ordinary repair of all facilities, equipment, and vehicles, all bus terminal employment except for office personnel. Ticket sellers and dispatchers may be reported separately in classification 4904 provided that they do not handle baggage and that all of the conditions of the standard exception general reporting rules have been met.~~

~~This classification excludes: Municipal transit and bus service provided by a county or taxing district which is to be reported separately in classification 1501; municipal transit and bus service provided by a city or town which is to be reported separately in classification 0803; taxicab companies which are to be reported separately in classification 1401; cabulance and paratransit companies which are to be reported separately in classification 1404; and drivers employed by a limousine company who are to be reported separately in classification 6301.~~

~~**Special note:** Establishments subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter.))~~

Applies to:

Businesses providing transportation services including, but not limited to:

- Charter and tour bus;
- Contract school bus;
- Nonmunicipal, scheduled bus systems;
- Shuttle van.

Work activities include, but are not limited to:

- All bus terminal employment except for certain qualifying office personnel;
- Cleaning, maintenance, and ordinary repair of all facilities, equipment, and vehicles;
- Loading/unloading duties;
- Operation of the vehicle.

Note: Ticket sellers and dispatchers may be reported separately in classification 4904 provided that they do not handle baggage and that all of the conditions of the standard exception general reporting rules have been met.

Exclusions:

- Municipal transit and bus services provided by a county or taxing district are classified in 1501;
- Municipal transit and bus services provided by a city or town are classified in 0803;
- Taxicab companies and transportation network companies are classified in 1401;
- Cabulance and paratransit companies are classified in 1404;
- Drivers employed by a limousine company are classified in 6301.

Special note: Businesses subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1802 Classification 1802.**1802-00 Aluminum smelting**

~~((Applies to establishments engaged in the primary smelting of aluminum from alumina using an electrolytic reduction process. This classification includes the alloying and casting of sheet ingots, T-ingots, rolling ingots, notched ingots, sows, pigs, extrusion logs, extrusion billets and other primary production shapes when performed by a primary producer subject to this classification. Aluminum is produced from alumina. Alumina is extracted from bauxite which is an ore found in the earth's crust. Bauxite contains approximately 50% aluminum oxide (alumina) together with iron oxide, silica, and titanium oxide. The aluminum smelting process is two-fold; first, pure aluminum oxide is produced, then the aluminum is decomposed from the oxygen by an electrolytic treatment. The process is complex, labor intensive and power intensive. The use of an electric current causes pure aluminum to go to the cathode (part of the smelting structure) and accumulates as a layer floating on the molten salt in a large vat. This aluminum has a purity of 99.99% and is removed from time to time and cast into suitable shapes from molds.~~

~~This classification excludes secondary processors who do not reduce aluminum from alumina, but whose principle business is casting, rolling, extruding, foiling or recycling aluminum alloys from molten aluminum, primary production shapes or used scrap and dross which are to be reported separately in the applicable classification; ore reduction which is to be reported separately in classification 1701; and open pit or underground mining operations which are to be reported separately in the classification applicable to the mining being performed.)~~

Applies to:

Businesses engaged in the primary smelting of aluminum from alumina using an electrolytic reduction process.

Work activities include, but are not limited to:

- Extracting alumina from bauxite which is an ore found in the earth's crust; bauxite contains approximately 50 percent aluminum oxide (alumina) together with iron oxide, silica, and titanium oxide;
- Producing pure aluminum oxide;
- Decomposing aluminum from the oxygen by an electrolytic treatment; this process is complex, labor-intensive and power intensive;
- Using an electric current to cause pure aluminum to go to the cathode (part of the smelting structure), which accumulates as a layer floating on the molten salt in a large vat;
- Removing the pure aluminum (99.99 percent);
- Alloying and casting into suitable shapes from molds.

Products manufactured include, but are not limited to:

- Extrusion billets.
- Extrusion logs.
- Notched ingots.
- Pigs.
- Rolling ingots.
- Sheet ingots.
- Sows.
- T-ingots.
- Other primary production shapes when performed by a primary producer subject to this classification.

Exclusions:

- Secondary processors who do not reduce aluminum from alumina, but whose principle business is casting, rolling, extruding, foiling or recycling aluminum alloys from molten aluminum, primary production shapes or used scrap and dross are classified in the applicable classification.
- Ore reduction is classified in 1701.
- Open pit or underground mining operations are classified in the classification applicable to the mining being performed

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

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

WAC 296-17A-2004 Classification 2004.

2004-21 Iron or steel merchants; wire rope and cable dealers

~~((Applies to establishments engaged as iron or steel merchants or as dealers of wire rope, cable, or metal conduit. This classification includes the merchandising of nonferrous metals such as, but not limited to, copper, brass, or aluminum. This classification is distinguished from scrap metal dealers in classification 0604 who deal primarily in used metal as opposed to merchants in classification 2004 who sell new goods. Iron or steel merchants receive metal in the form of beams, sheets, plates, bars, rods, pipe, rounds, channels, angles, tubes, or coils from the mills which they unload with overhead cranes, and store them in their shop or yard. Using power equipment such as shears, hacksaws, drills, benders, and cutting torches, they are cut, sheared, and formed to customer specifications. Wire rope and cable dealers use coilers to wind the wire rope or cable from large spools onto smaller spools, and use saws or other cutting tools to cut it to length and large hydraulic presses to attach sockets, pulleys and other hardware to wire rope to form rigging used by the fishing, logging, and construction industry.~~

~~This classification excludes scrap metal and junk dealers which are to be reported separately in classification 0604, and rebar fabricators which are to be reported separately in classification 5209.)~~

Applies to:

Businesses operating as iron or steel merchants or as dealers of wire rope, cable, or metal conduit. Also included is the merchandising of nonferrous metals such as, but not limited to, copper, brass, or aluminum.

This classification is distinguished from scrap metal dealers in classification 0604 who deal primarily in used metal as opposed to merchants in classification 2004 who sell new goods.

Raw metals may be received from mills in various forms including, but not limited to:

- Angles;
- Bars;
- Beams;
- Cables;
- Channels;
- Coils;
- Pipes;
- Plates;
- Rods;
- Rounds;
- Sheets;
- Tubes;
- Wire ropes.

Work activities include, but are not limited to:

- Receiving and unloading metal with overhead cranes.
- Storing metals in the shop or yard.
- Using power equipment to form metal to customer's specification.
- Winding wire rope or cable from large spools onto smaller spools.
- Cutting and shearing metals to length.
- Using hydraulic presses for attaching sockets, pulleys, and other hardware to wire rope to form rigging used by the fishing, logging, and construction industry.

Equipment used include, but are not limited to:

- Benders;
- Coilers;
- Cutting torches;
- Drills;
- Hacksaws;
- Hydraulic presses;
- Saws;
- Shears;
- Torches.

Exclusions:

- Scrap metal and junk dealers are classified in 0604.
- Rebar fabricators are classified in 5209.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2007 Classification 2007.

2007-02 Grain elevator or warehouse

~~((Applies to establishments engaged in providing grain elevator or warehouse facilities. These facilities may range from hundred thousand bushel country elevators to multimillion bushel terminal elevators, the latter of which are located near railroad lines or seaports. Grain may be stored in elevators for years, depending on market conditions. Grain elevators operate year round or seasonally and may offer a variety of services ranging from storage only to grain milling (see exclusions below). Typical operations in this classification include weighing, grading, cleaning and drying of the grain, and conveyance to the storage lofts. Most grain elevators also provide a brokerage service for their customers.~~

~~This classification excludes grain milling which is to be reported separately in classification 2101 and bean or pea elevators which are to be reported separately in classification 2007-03.~~

~~2007-03 Bean or pea elevator or warehouse~~

~~Applies to establishments engaged in providing bean or pea elevator or warehouse facilities. Bean or pea elevators run all year round or seasonally and may offer a variety of services ranging from storage only to brokerage services. Typical operations in this classification include weighing, grading, cleaning and drying of the bean or pea, and conveyance to the storage lofts.~~

~~This classification excludes seed merchants who are to be reported separately in classification 2101; grain elevators which are to be reported separately in classification 2007-02; and vegetable cannery or processing operations and pea vining by cannery employees which are to be reported separately in classification 3902.)~~

Applies to:

Businesses providing grain elevator or warehouse facilities. These facilities may range from hundred thousand bushel country elevators to multimillion bushel terminal elevators located near railroad lines or seaports.

Work activities include, but are not limited to:

- Providing a brokerage service for their customers;
- Weighing;

- Grading;
- Cleaning;
- Drying;
- Conveying to the storage lofts;
- Storing. Grain may be stored in elevators for years, depending on market conditions.

Exclusions:

- Bean or pea elevators are classified in 2007-03.
- Worker hours milling grain must be reported separately in classification in 2101.

2007-03 Bean or pea elevator or warehouse**Applies to:**

Businesses providing bean or pea elevator or warehouse facilities.

Work activities include, but are not limited to:

- Providing a brokerage service for their customers;
- Weighing;
- Grading;
- Cleaning;
- Drying;
- Conveying to the storage lofts;
- Storing. Beans and peas may be stored in elevators for years, depending on market conditions.

Exclusions:

- Grain elevators are classified in 2007-02.
- Seed merchants are classified in 2101.
- Vegetable cannery or processing operations and pea vining by cannery employees are classified in 3902.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-2008 Classification 2008.**2008-01 Warehouses - Field bonded**

~~((Applies to establishments engaged in providing bonded warehouse services at the customer's location. Field bonding involves appropriating a warehouse (or portion of one), that is owned by the customer, for the purpose of segregating and securing a portion of that customer's merchandise to be used as collateral for a bank loan. The field bonding company will catalog the merchandise that is involved in the transaction, issue a receipt (the receipt is presented as collateral for the loan), and ensure its security and value for the length of the contract. The field bonding company is not responsible for the maintenance of the facility and doesn't become involved in handling, moving or shipping the goods. Work contemplated by this classification is limited to employees who catalog the goods being held, security guards, and clerical help employed at the secured location.~~

~~This classification excludes drivers who are to be reported separately in classification 1102.))~~

Applies to:

Businesses providing bonded warehouse services at the customer's location. The field bonding company is not responsible for the maintenance of the facility and does not become involved in handling, moving, or shipping the goods.

Field bonding includes:

- Appropriating a warehouse (or portion of one), that is owned by the customer, for the purpose of segregating and securing a portion of that customer's merchandise to be used as collateral for a bank loan.
- Cataloging the merchandise that is involved in the transaction.
- Issuing a receipt (the receipt is presented as collateral for the loan).
- Ensuring the security and value of the merchandise for the length of the contract.

Work activities contemplated by this classification are limited to:

- Employees who catalog the goods being held.
- Security guards.
- Clerical help employed at the secured location.

Exclusions:

Drivers are classified in 1102.

Special note: Traditional warehousing establishments (such as those described in classification 2102) may be "bonded" in that they can assure their customers that goods regulated by the Bureau of Alcohol, Tobacco and Firearms, or goods awaiting inspection by U.S. Customs, will remain secured. This type of bonding is similar in that it is an assurance of value and safekeeping, but differs from classification 2008 in that the goods are delivered to, and held at, the warehouse company's own facility.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2101 Classification 2101.

2101-00 Grain milling; flour mills; feed mills; feed manufacturing

~~((Applies to establishments engaged in milling grain into flour or meal or in the manufacture of dry (powdered, granule or pellet) feed. Operations contemplated by this classification include the receipt of grain (wheat, barley, oats, corn) in bulk or bag which is purchased from others, grinding or milling the grain to either a coarse or a fine powder, adding binder (molasses), adding and mixing ingredients (depending on product being made), and packaging. This classification includes delivery of products in packaged or bulk form to customers.~~

~~This classification excludes establishments engaged in the further processing of flour or meal to manufacture food products which are to be reported separately in the applicable food manufacturing classification, and establishments engaged in the manufacture of canned or frozen animal food which are to be reported separately in classification 3902.~~

2101-01 Hay, grain or feed dealers

~~Applies to establishments engaged in the sale of grain, feed, and hay to others. Operations contemplated by this classification are limited to the purchase of hay, grain, or feed in bulk from others and~~

~~the subsequent resale of these items in bulk to others. Establishments subject to this classification may have a small store operation, a substantial storage facility, or they may haul product from location to location all of which are included within the scope of this classification when done by employees of employers subject to this classification.~~

~~This classification excludes the sale of hay by farm operations which is to be reported separately in classification 4808, and establishments engaged in the manufacture of animal feed which are to be reported separately in classification 2101-00.~~

2101-02 Seed processing

~~Applies to establishments engaged in the processing of agricultural seeds for wholesale or retail sales. These establishments receive produce such as wheat, barley, alfalfa, lentils, vegetables, fruit or flowers from farmers the seed company has contracted with, or in the case of larger seed companies, they may have their own fields for raising the seed crop. Work contemplated by this classification includes, but is not limited to, cleaning, grading, crushing, separating, and packaging of the product (either by hand or by machine). Machinery includes, but is not limited to, screening machines, air gravity separators, clippers, tumbling drums for polishing, and bagging machines. This classification also includes trial plots or lab research facilities used to develop new seed hybrids and improve existing varieties, consultation services provided to the farmers during planting and harvesting seasons, and custom milling work conducted at the farmer's premises. Also included in this classification are establishments engaged exclusively in providing grain or seed drying services.~~

~~This classification excludes growing of seeds, other than on a trial plot, which is to be reported separately in the appropriate agricultural classification; merchants engaged in hand packaging seeds that have been processed by others who are to be reported separately in classification 6309-06; grain milling which is to be reported separately in classification 2101-00; hay/grain/feed dealers which are to be reported separately in classification 2101-01; and grain or bean/pea elevators which are to be reported separately in classification 2007.~~

2101-05 Hop pellet manufacturing

~~Applies to establishments engaged in the manufacture of hop pellets. Hop pellets are one of several ingredients used by breweries in the manufacture of beer and ale. Operations contemplated by this classification include, but are not limited to, cold storage room operations where bales of hops are kept, bale breaking and grinding of hops into powder, blending of powders and additives, testing of hops, pelletizing, packaging, and shipping. Establishments subject to this classification may own the hops or do custom blending for others.~~

~~This classification excludes establishments engaged in the manufacture of hop extract which are to be reported separately in classification 3701.~~

~~**Special note:** Hop pellets are often referred to as a flavoring so care should be taken, when another classification is being considered, to determine the process used.))~~

Applies to:

- ~~• Businesses milling grain into flour or meal.~~

• Businesses manufacturing dry feed (powdered, granule, or pellet).

Work activities include, but are not limited to:

- Receiving grain purchased from others; such as wheat, barley, oats, corn;
- Grinding or milling the grain to a coarse or fine powder;
- Adding ingredients;
- Packaging;
- Delivery of packaged or bulk products.

Exclusions:

- Manufacturing of food products is classified in the applicable food manufacturing classification.
- Manufacturing of canned or frozen animal food is classified in 3902.

2101-01 Hay, grain, or feed dealers

Applies to:

Businesses selling hay, grain, and feed to others.

Work activities are limited to:

- Purchasing hay, grain, or feed in bulk;
- Reselling hay, grain, or feed in bulk;
- Operating a small store;
- Operating a storage facility;
- Hauling the product from location to location.

Exclusions:

- Manufacturing animal feed is classified in 2101-00.
- Farm operations selling hay are classified in 4808.

2101-02 Seed processing

Applies to:

Businesses processing agricultural seeds for wholesale or retail sales.

Work activities include, but are not limited to:

- Receiving produce (wheat, barley, alfalfa, lentils, vegetables, fruit, flowers);
- Cleaning;
- Grading;
- Crushing;
- Separating;
- Packaging (either by hand or machine);
- Providing grain or seed drying services;
- Operating trial plots or lab research facilities used to develop new seed hybrids and improve existing varieties;
- Consulting services provided to the farmers during planting and harvesting seasons;
- Custom milling work conducted at the farmer's premises.

Machinery includes, but is not limited to:

- Screening machines;
- Air gravity separators;
- Clippers;
- Tumbling drums for polishing;
- Bagging machines.

Exclusions:

- Growing of seeds, other than on a trial plot, is classified in the appropriate agricultural classification.
- Hand-packaging and selling seeds that have been processed by others is classified in 6309-06.
- Grain milling is classified in 2101-00.
- Hay, grain, or feed dealers are classified in 2101-01.
- Grain, bean, or pea elevators are classified in 2007.

2101-05 Hop pellet manufacturing

Applies to:

Businesses manufacturing hop pellets. Hop pellets are one of several ingredients used by breweries in the manufacture of beer and ale.

Work activities include, but are not limited to:

- Operating a cold storage room where bales of hops are kept;
- Bale breaking;
- Grinding hops into powder;
- Blending of powders and additives;
- Testing of hops;
- Pelletizing;
- Packaging;
- Shipping.

Establishments subject to this classification may own the hops or do custom blending for others.

Special note: Hop pellets are often referred to as a flavoring, so care should be taken when another classification is being considered to determine the process used.

Exclusion:

- Manufacturing hop extract is classified in 3701.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2104 Classification 2104.

2104-01 Vegetable packing - Fresh

~~((Applies to establishments engaged in the packing of fresh vegetables. These operations are usually located in produce growing areas and are generally seasonal. The vegetables are generally brought to the packing plant by the farmer or co-op drivers, but some packing plants may employ their own drivers to pick up the product from the local farms or co-op. Typical activities of the packing operation include, but are not limited to, sorting, grading, cleaning, trimming, packing and shipping of the vegetables. Various packing containers such as plastic bags, boxes, barrels, crates, and baskets may be used. The packing may be done by hand for fragile vegetables or by machine for the more sturdy produce. This classification includes cold storage operations if it is used solely for the storage of their own produce. Drivers employed by these establishments who pick up the vegetables from the suppliers or deliver the packaged product to the market are included in this classification. A farm operation that grows and packs their own fresh vegetables or packs other farms' fresh vegetables in addition to their own is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh vegetables, the appropriate agricultural classification is~~

applicable to both the growing and sorting/storage operations. This classification also includes establishments engaged in processing potatoes into seed potatoes. Processing plants receive whole potatoes from their suppliers. At the plant the potatoes are moved along on a conveyor belt, cleaned as appropriate, cut into small pieces (usually quarters), and treated with a fumigant powder or other sterilizer. The smaller pieces, referred to as "seed potatoes," are delivered to farmers who plant them for future crops.

This classification excludes fresh fruit packing which is to be reported separately in classification 2104-02; cannery or freezing operations and/or any processing of the vegetables which are to be reported separately in classification 3902; and cold storage operations not exclusively part of a packing operation which are to be reported separately in either classification 4401 or 4404.

2104-02 Fruit packing — Fresh

Applies to establishments engaged in the packing of fresh fruit. These operations are usually located in produce growing areas and generally are seasonal. The fruit may be brought to the packing plant by the farmer or co-op drivers, but some packing plants may employ their own drivers to pick up the product from the local farms or co-op. Typical activities of the packing operation include, but are not limited to, sorting, grading, cleaning, trimming, packing and shipping the fruit. Various packing containers such as plastic bags, boxes, barrels, crates and baskets may be used. The packing may be done by hand for fragile fruit or by machine for the more sturdy produce. This classification includes any cold storage operations if it is used solely for the storage of their own produce. Drivers employed by these establishments who pick up the fruit from the farmer or deliver the packaged product to the market are included in this classification. A farm operation that grows and packs their own fresh fruit, or packs other farms' fresh fruit in addition to their own, is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh fruit the appropriate agricultural classification is applicable to both the growing and sorting/storage operations.

This classification excludes fresh vegetable packing which is reported separately in classification 2104-01; cannery or freezing operations and/or any processing of the fruit which are to be reported separately in classification 3902; and cold storage operations not exclusively part of a packing operation which is reported separately in either classification 4401 or 4404.)

Applies to:

- Businesses packing fresh vegetables. These operations are usually located in produce growing areas and are generally seasonal.
- Businesses processing seed potatoes.

Work activities include, but are not limited to:

- Picking up the product from local farms or co-op;
- Sorting;
- Grading;
- Cleaning;
- Trimming;
- Packing - By hand for fragile vegetables or by machine for the more sturdy produce;
- Shipping of the vegetables;
- Delivering of packaged product to market;

- Cold storage operations if used solely for the storage of their own produce;
- Processing of seed potatoes - Usually whole potatoes are cleaned, cut into small pieces, and treated with a fumigant powder or other sterilizer.

Note: A farm operation that grows and packs their own fresh vegetables or packs other farms' fresh vegetables in addition to their own is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh vegetables, the appropriate agricultural classification is applicable to both the growing and sorting/storage operations.

Exclusions:

- Fresh fruit packing is classified in 2104-02;
- Cannery or freezing operations and/or any processing of the vegetables is classified in 3902;
- Cold storage operations not exclusively part of a packing operation are classified in 4401 or 4404.

2104-02 Fruit packing - Fresh

Applies to:

Businesses packing fresh fruit. These operations are usually located in produce growing areas and generally are seasonal.

Work activities include, but are not limited to:

- Picking up the product from local farms or co-op;
- Sorting;
- Grading;
- Cleaning;
- Trimming;
- Packing - By hand for fragile fruits or by machine for the more sturdy produce;
- Shipping of the fruit;
- Delivering of packaged product to market;
- Cold storage operations if used solely for the storage of their own produce.

Note: A farm operation that grows and packs their own fresh fruit, or packs other farms' fresh fruit in addition to their own, is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh fruit the appropriate agricultural classification is applicable to both the growing and sorting/storage operations.

Exclusions:

- Fresh vegetable packing is classified in 2104-01;
- Cannery or freezing operations and/or any processing of the fruit is classified in 3902;
- Cold storage operations not exclusively part of a packing operation are classified in 4401 or 4404.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2201 Classification 2201.

2201-01 Laundry, dry cleaning and dyeing establishments

((Applies to establishments engaged in laundry, dry cleaning, or dyeing services. This classification is limited to establishments providing services primarily to retail walk-in customers who leave the items to be laundered, dry cleaned, or dyed at the laundry facility. This classification covers all operations including, but not limited to, dry cleaning, dyeing, the washing, drying, and pressing of clothing or household furnishings such as, but not limited to, curtains,

bedding, linens, and sleeping bags, repairing or altering the items left for cleaning, pick up and delivery services, and drop off stations. These establishments generally employ counter staff to wait on customers as well as employees who engage in laundering and/or dry cleaning operations (although some employees may perform both activities). This classification also includes waterproofing or mothproofing garments, or providing cold storage for fur goods for retail customers. Materials and machinery include, but are not limited to, detergents, bleaches, cleaning solvents, deodorizers, dyes, clothes hangers, plastic bags, automatic or steam operated washing machines, dryers, dry cleaning chambers, dyeing vats, pressing and ironing boards, sewing machines, and delivery vans.

This classification excludes self-service, coin-operated laundry or dry cleaning establishments which are to be reported separately in classification 2204; commercial or industrial laundries not covered by another classification, including linen, uniform and diaper services which are to be reported separately in classification 2203; and carpet, rug and upholstery cleaning establishments which are to be reported separately in classification 2202.

Special note: It is common for establishments subject to this classification to have satellite locations where customers drop off and pick up cleaning, but where no actual laundering occurs. Drop off centers are included in this classification.)

Applies to:

Businesses engaged in laundry, dry cleaning, or dyeing services.

This classification is limited to businesses providing services primarily to retail walk-in customers who leave the items to be laundered, dry cleaned, or dyed at the laundry facility.

Items cleaned/repaired/altered include, but are not limited to:

- Bedding;
- Clothing;
- Curtains;
- Linens;
- Sleeping bags.

Work activities include, but are not limited to:

- Checking customer orders in and out;
- Dry cleaning;
- Dyeing;
- Washing, drying, and pressing;
- Repairing or altering;
- Waterproofing or mothproofing garments;
- Pick up and delivery;
- Providing cold storage for fur goods for retail customers.

Special note: It is common for establishments subject to this classification to have satellite locations where customers drop off and pick up cleaning, but where no actual laundering occurs. Drop off centers are included in this classification.

Materials and machinery used include, but are not limited to:

- Automatic or steam operated washing machines;
- Bleaches;
- Cleaning solvents;
- Clothes hangers;
- Delivery vans;
- Deodorizers;
- Detergents;

- Dry cleaning chambers;
- Dryers;
- Dyeing vats;
- Dyes;
- Plastic bags;
- Pressing and ironing boards;
- Sewing machines.

Exclusions:

- Self-service, coin-operated laundry or dry cleaning establishments are classified in 2204;
- Commercial or industrial laundries not covered by another classification, including linen, uniform, and diaper services are classified in 2203;
- Carpet, rug, and upholstery cleaning businesses are classified in 2202.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2204 Classification 2204.

2204-00 Laundry or dry cleaning - Coin-operated, self-service operations

~~((Applies to establishments engaged in the operation of coin (or card) operated self-service laundry and dry cleaning equipment for customers' use on the premises. Most facilities have an attendant(s) on duty at all times; others may have only periodic surveillance by the owner or employees. Attendants generally ensure there are no problems with the equipment or with vandalism; they may perform minor repair or adjustments on the machines, assist patrons by carrying laundry or explaining the operation of the machines. There is usually a small waiting area which may include benches and chairs, change-making machines, vending machines with food and laundry supplies. Materials include, but are not limited to, detergents, bleaches, fabric softeners, dry cleaning solvents, spot removing fluids, plastic bags, and hangers. Machinery includes, but is not limited to, residential or commercial sized washers and dryers, dry cleaning machines, pressing machines, irons, coin changing machines, tables for folding clothing, chairs, hanger racks, water heating and storage system, solvent reclaiming units, and solvent storage tanks.~~

~~This classification excludes laundry and dry cleaning establishments providing services primarily to retail walk-in customers which are to be reported separately in classification 2201, and commercial or industrial laundries not covered by another classification, including linen, uniform and diaper service which are to be reported separately in classification 2203.~~

~~**Special note:** This classification includes self-service/coin-operated cleaning facilities that offer dry cleaning services where the customers leave their clothing with the attendant and it is sent elsewhere for professional dry cleaning. This classification does not apply to any self-service/coin-operated cleaning facilities where the attendant performs any washing, drying, dry cleaning, hanging, or folding services on the premises which are to be reported separately in classification 2201.)~~

Applies to:

Businesses engaged in the operation of self-service laundry and dry cleaning equipment for customer's use on the premises. Some facilities have an attendant(s) on duty at all times; others may have only periodic surveillance by the owner or employees.

There is usually a small waiting area which may include benches and chairs, change-making machines, vending machines with food and laundry supplies.

Work activities include, but are not limited to:

- Assist patrons by carrying laundry;
- Explaining the operations of the machines;
- Performing minor repair or adjustments on the machines.

Materials used include, but are not limited to:

- Bleaches;
- Detergents;
- Dry cleaning solvents;
- Fabric softeners;
- Hangers;
- Plastic bags;
- Spot removing fluids.

Machinery used include, but are not limited to:

- Coin changing machines;
- Dry cleaning machines;
- Irons;
- Pressing machines;
- Racks;
- Residential or commercial sized washers and dryers;
- Solvent reclaiming units;
- Solvent storage tanks;
- Tables for folding clothes;
- Water heating and storage systems.

Exclusions:

• Laundry and dry cleaning establishments providing services primarily to retail walk-in customers are classified in 2201.

Special note: Classification 2204 includes self-service/coin-operated cleaning facilities that offer dry cleaning services where the customers leave their clothing with the attendant and it is sent elsewhere for professional dry cleaning. Classification 2204 does not apply to any self-service/coin-operated cleaning facilities where the attendant performs any washing, drying, dry cleaning, hanging, or folding services on the premises which are classified in 2201.

• Commercial or industrial laundries not covered by another classification, including linen, uniform, and diaper service are classified in 2203.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2401 Classification 2401.

2401-00 Paper, pulp, or wood fiber: Manufacturing

(Applies to establishments engaged in making paper from raw materials such as, but not limited to, wood chips, cotton fiber, water, kraft paper, recycled paper, bleach and dye purchased from outside sources. This classification includes the mashing of wood chips into fiber. Paper manufacturers may make finished products from the paper they manufacture which is included in this classification when done by employees of employers subject to this classification. Equipment includes, but is not limited to, large vats and tanks, spraying systems, choppers, paper-making machines, conveyor systems, forklifts, scales, winders, rewinders, and cutting machinery. Modern automated paper mills are monitored from computerized control rooms; many of the employees are electricians and control technicians. Wood chips are heated, washed, drained, impregnated with chemicals to separate natural binder fibers from the cellulose fibers, then chopped into tiny particles and further cleansed. Bleach and water are added again and the fibrous mixture is held in tanks to relax and fluff it to a natural state before going to a filtering process where the water is removed, allowing it to coagulate. More ingredients are added to increase strength, then the mixture is sprayed onto the paper-making machinery where it winds through the various sections at high speed. During the first stage the pulp is mostly water; as it spins on the wire mesh, the water is suctioned out and the paper winds around felt-covered rollers. The machine moves the paper through an enclosed, heated room (oven) and dried. The dried paper is rolled from the oven, smoothed on rollers, then rewound into smaller rolls and cut into desired lengths and widths.

This classification excludes establishments engaged in the manufacture of wood chips which are to be reported separately in classification 2903 and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) which are to be reported separately in classification 3708.

2401-03 Corrugated and fiber board container: Manufacturing

Applies to establishments engaged in the manufacture of boxes and cartons made of corrugated cardboard. Manufacturers subject to this classification may either corrugate cardboard for use in their own products or purchase corrugated cardboard from others. Applying coatings or laminating their own products is included in this classification when done by employees of employers subject to this classification. Raw materials include, but are not limited to, corrugated cardboard, glue, staples, tape, ink, and coating resins. Machinery includes, but is not limited to, sheeters, slitters, slotters, winders or rewinders, printing presses, box-making machinery, die cutters or other cutting machines, laminators, corrugators, balers and shredders, and forklifts. Cardboard is cut to size and shape, printed, scored or creased, corners cut or slotted, sides folded and bottom pieces taped together. Box manufacturers may cut Styrofoam into packing pieces if their customers want them as a packaging unit. This incidental activity is included within the scope of this classification when done by employees of an employer subject to this classification.

This classification excludes establishments engaged in corrugating, laminating, oiling or coating paper which are to be reported separately in classification 2401-04 and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) which are to be reported separately in classification 3708.

2401-04 Paper coating, corrugating, laminating, oiling, or embossing

Applies to establishments engaged in manufacturing corrugated cardboard, or in coating, laminating, oiling, embossing paper or cardboard (chipboard) for others. To make corrugated cardboard, three (or more) rolls of kraft paper are simultaneously fed into a corrugating machine. Steam is sprayed onto the middle sheet as it winds around grooved rollers, forming grooves. Glue is applied to the tips of the grooves and the middle sheet is run between the other two sheets to form corrugated cardboard. The rest of the process involves heating, drying and curing, scoring and cutting the cardboard. Coating involves mixing coating materials, pouring the mixture into troughs of coating machines; the paper passes over rollers through the coating mixtures. Oiling or waxing processes are similar, but the oils or waxes are heated prior to being applied to the paper. After saturation, paper is dried, then finished by calendering (smoothed by being pressed through large rollers), slitting to desired widths, and rewinding or sheeting to size. Laminated paper is produced by feeding a paste or glue between layers of paper, pressing them together, drying and finishing by winding into rolls, or cutting, slitting or die cutting to size and shape. Paper is embossed by winding it on embossing rollers that perforate designs in it. Raw materials include, but are not limited to, kraft paper, chipboard, glues, waxes, resins and other coating liquids. Machinery for all these processes moves paper through glue baths, finishing applications, squeeze rollers, corrugating or embossing rollers, drying ovens, cutting devices, laminators, and/or stacking equipment. Other machinery includes, but is not limited to, forklifts, balers and shredders.

This classification excludes establishments engaged in the manufacture of paper, pulp or wood fiber which are to be reported separately in classification 2401-00; establishments engaged in the manufacture of corrugated and fiber board containers which are to be reported separately in classification 2401-03; and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) which are to be reported separately in classification 3708.

Special note: This classification differs from classification 2401-03 in that making corrugated cardboard or laminating, oiling, or coating cardboard products made by others is the main activity in classification 2401-04 while such supporting operations in classification 2401-03 are incidental to the manufacture of the product.

2401-08 Paper goods, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of heavy-grade, paper-based products, which are not covered by another classification (N.O.C.). Products range widely and include, but are not limited to, panels, paper-mache items, milk cartons, display boards, commercial air filters, and spiral tubes. Spiral tubes range in size from small cores for paper towels to large tubes used by the construction industry to form concrete. Materials include, but are not limited to, paper, chipboard, glue, inks and dyes, chemicals; materials such as lightweight wire, or small parts made of plastic, Styrofoam, or textiles could be used as auxiliary pieces of the finished product. Machinery includes, but is not limited to, sheeters, slitters, slotters, winders, rewinders, printing presses, cutting, drilling or punching machines, ovens, heated presses, vats and beaters, grinders, laminators, embossers, gluers, vacuum machines, heat-sealing machines, wire-bending equipment, packaging equipment, conveyors, shredders, and balers. Depending on the product being made, processes are similar to

~~one or more of those described in the other paper products manufacturing classifications.~~

~~This classification excludes establishments engaged in the manufacture of paper, pulp or wood fiber which are to be reported separately in classification 2401-00.)~~

Applies to:

Businesses making paper from raw materials.

Paper manufacturers may make finished products from the paper they manufacture which is included in this classification when done by employees of employers subject to this classification.

Raw materials used include, but are not limited to:

- Bleach and dye;
- Cotton fiber;
- Kraft paper;
- Recycled paper;
- Water;
- Wood chips.

Equipment includes, but is not limited to:

- Choppers;
- Conveyor systems;
- Cutting machinery;
- Forklifts;
- Papermaking machines;
- Scales;
- Spraying systems;
- Vats and tanks;
- Winders and rewinders.

Work activities and processes include, but are not limited to:

- Monitoring automated paper mills from computerized control rooms. Many of the employees are electricians and control technicians;
- Mashing wood chips into fiber;
- Heating, washing, draining and impregnating wood chips with chemicals to separate natural binder fibers from the cellulose fibers, then chopping into tiny particles and further cleaning;
- Adding bleach and water and holding the fibrous mixture in tanks to relax and fluff to a natural state;
- Filtering to remove the water and allow the fibrous mixture to coagulate;
- Adding ingredients to increase strength;
- Spraying the mixture onto the papermaking machinery where it winds through the various sections at high speed;
- During the first stage of papermaking the pulp is mostly water;
- Spinning on wire mesh, the water is suctioned out;
- Winding the paper around felt-covered rollers, where the machine moves the paper through an enclosed, heated room (oven), drying the paper;
- Rolling the dried paper from the oven, smoothing on rollers, rewinding into smaller rolls and cutting into desired lengths and widths.

Exclusions:

- Manufacturing wood chips is classified in 2903;
- Manufacturing abrasive cloth or paper (emery cloth/sandpaper) is classified in 3708.

2401-03 Corrugated and fiberboard container: Manufacturing

Applies to:

Businesses manufacturing boxes and cartons made of corrugated cardboard.

Materials used include, but are not limited to:

- Coating resins;
- Corrugated cardboard;
- Glue;
- Ink;
- Staples;
- Tape.

Machinery used includes, but is not limited to:

- Balers;
- Box-making machinery;
- Corrugators;
- Die cutters or other cutting machines;
- Forklifts;
- Laminators;
- Printing presses;
- Sheeters;
- Shredders;
- Slitters;
- Slotters;
- Winders or rewinders.

Work activities and processes include, but are not limited to:

• Currogating cardboard for use in the manufacturer's own products or purchasing corrugated cardboard from others;

• Applying coatings or laminating the manufacturer's own products when done by employees of employers subject to this classification;

• Cutting materials to size and shape;

• Printing on materials;

• Scoring or creasing materials;

• Cutting or slotting box corners;

• Folding sides of boxes;

• Taping bottom pieces of boxes together;

• Cutting polystyrene foam (Styrofoam) into packing pieces if their customers want them as a packaging unit. This incidental activity is included within the scope of this classification when done by employees of an employer subject to this classification.

Exclusions:

• Businesses engaged mainly in corrugating, laminating, oiling or coating paper are classified in 2401-04;

• Manufacturing abrasive cloth or paper (emery cloth/sandpaper) is classified in 3708.

2401-04 Paper coating, corrugating, laminating, oiling, or embossing**Applies to:**

• Businesses manufacturing corrugated cardboard or paper.

• Businesses coating, laminating, oiling, or embossing paper, chipboard, or cardboard for others.

Work activities and processes include, but are not limited to:

• Corrugated cardboard making - Feeding three (or more) rolls of kraft paper simultaneously into a corrugating machine. Spraying steam onto the middle sheet as it winds around grooved rollers, forming grooves. Applying glue to the tips of the grooves and running the mid-

dle sheet between the other two sheets to form corrugated cardboard. The rest of the process involves heating, drying, curing, scoring and cutting the cardboard.

- Coating cardboard or paper - Mixing coating materials, pouring the mixture into troughs of coating machines. The paper then passes over rollers through the coating mixtures.

- Oiling or waxing cardboard or paper - These processes are similar to coating, but the oils or waxes are heated prior to being applied to the paper. After saturation, the paper is dried, then finished by calendering (smoothed by being pressed through large rollers), slitting to desired widths, and rewinding or sheeting to size.

- Laminating paper - Feeding a paste or glue between layers of paper, pressing them together, drying and finishing by winding into rolls, or cutting, slitting or die cutting to size and shape.

- Embossing paper - Winding paper on embossing rollers that perforate designs in it. Raw materials include, but are not limited to, kraft paper, chipboard, glues, waxes, resins and other coating liquids.

Machinery used includes, but is not limited to:

- Machinery that moves paper through glue baths, finishing applications, squeeze rollers, corrugating or embossing rollers, drying ovens, cutting devices, laminators, and/or stacking equipment;

- Forklifts;

- Balers;

- Shredders.

Exclusions:

- Manufacturing paper, pulp or wood fiber is classified in 2401-00;

- Manufacturing corrugated and fiber board containers is classified in 2401-03;

- Manufacturing abrasive cloth or paper (emery cloth/sandpaper) is classified in 3708.

Special note: This classification differs from classification 2401-03 in that making corrugated cardboard or laminating, oiling, or coating cardboard products made by others is the main activity in classification 2401-04 while such supporting operations in classification 2401-03 are incidental to the manufacture of the product.

2401-08 Paper goods, N.O.C.: Manufacturing

Applies to:

Manufacturing of heavy-grade, paper-based products, which are not covered by another classification (N.O.C.).

Products manufactured range widely and include, but are not limited to:

- Commercial air filters;

- Display boards;

- Milk cartons;

- Panels;

- Paper-mache items;

- Spiral tubes - Spiral tubes range in size from small cores for paper towels to large tubes used by the construction industry to form concrete.

Materials used include, but are not limited to:

- Chemicals;

- Chipboard;
- Glue;
- Inks and dyes;
- Paper;
- Materials such as lightweight wire, or small parts made of plastic, polystyrene foam (Styrofoam), or textiles could be used as auxiliary pieces of the finished product.

Machinery includes, but is not limited to:

- Balers;
- Conveyors;
- Cutting, drilling, or punching machines;
- Embossers;
- Gluers;
- Grinders;
- Heated presses;
- Heat-sealing machines;
- Laminators;
- Ovens;
- Packaging equipment;
- Printing presses;
- Sheeters;
- Shredders;
- Slitters;
- Slotters;
- Vacuum machines;
- Vats and beaters;
- Winders and rewinders;
- Wire-bending equipment.

Work activities and processes include:

Depending on the product being made, processes are similar to one or more of those described in the other paper products manufacturing classifications.

Exclusions:

• Manufacturing paper, pulp, or wood fiber is classified in 2401-00.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2904 Classification 2904.

2904-00 Veneer: Commercial production

~~((Applies to establishments engaged in all types of commercial production of rough veneer. Veneer is a thin layer of material, usually made of wood or plastic, which is used to cover the surface of another material. In most instances, finished veneer will have a superior appearance or quality than the surface it covers. Rough veneer made of wood generally involves sawing logs, bolts (lengthwise strips), or blocks, softening them in vats of hot water or steam rooms to remove the bark and make the fiber pliable for cutting or turning. The pieces are further shaped by turning, slicing or sawing, cutting the single-ply veneer sheets to various sizes of length and thickness, then drying them in kilns. Rough veneer manufactured in this classification is generally sold to manufacturers of veneer products made by laminating~~

rough veneer to plywood or particleboard. Machinery includes, but is not limited to, band saws, table saws, stationary knife machines, rotary lathes, conveyor systems, kilns, forklifts.

This classification excludes sawmill operations which are to be reported separately in classification 1002; the manufacture of plywood which is to be reported separately in classification 2904-01; the manufacture of veneer products which is to be reported separately in classification 2903; and the manufacture of other products made from wood or plastic which are to be reported separately in the classification applicable to the work being performed. The production of veneer by employees of employers engaged in the manufacture of other products is to be included in the classification covering the manufacture of those products.

2904-01 Plywood: Manufacturing

Applies to establishments engaged in the manufacture of plywood. Plywood is a structural material made of layers of wood (veneer) glued tightly together, usually with the grains of adjoining layers at right angles to each other. (In this application the word "ply" means one of the sheets of veneer.) The production of veneer is included in the scope of this classification when done by employees of employers engaged in the manufacture of plywood. To form plywood, it may be necessary to join less-than-full-size sheets of veneer into full-size sheets. In the joining process, veneer jointers, taping machines, tapeless splicers, or other methods of joining veneer, such as stringing and stitching are used. Next, a glue spreader coats the cross banding and core veneers (front and back) with liquid glue. Once glued, the veneer is conveyed to a hot press that bonds the veneers into plywood. The panels are removed from the presses, placed in a storage pile (referred to as a "hot stack") to cool and cure, then trimmed, sanded, and stacked for conditioning. Plywood may be impregnated with chemicals to develop wood-plastic combinations that are harder and denser than ordinary plywood. After they are inspected and graded according to thickness and quality, plywood panels are moved by forklift to the warehouse portion of the plant where they are stacked in tiers which are separated by a piece of lumber to prevent sagging or distortion. Pieces are bundled with metal straps, either manually or with automatic strapping equipment.

This classification excludes sawmill operations which are to be reported separately in classification 1002; establishments that manufacture rough veneer as a product which are to be reported separately in classification 2904-00; and the manufacture of other products made from wood or plastic which are to be reported separately in the classification applicable to the work being performed.)

Applies to:

Businesses manufacturing rough veneer.

Veneer is a thin layer of material, usually made of wood or plastic, which is used to cover the surface of another material. In most instances, finished veneer will have a superior appearance or quality than the surface it covers. Rough veneer manufactured in this classification is generally sold to manufacturers of veneer products made by laminating rough veneer to plywood or particleboard.

Producing rough veneer made of wood includes, but is not limited to:

- Sawing logs, bolts (lengthwise strips), or blocks;

- Softening logs, bolts, or blocks in vats of hot water or steam rooms to remove the bark and make the fiber pliable for cutting or turning;
- Shaping the pieces further by turning, slicing, or sawing;
- Cutting the single-ply veneer sheets to various sizes of length and thickness;
- Drying the veneer sheets in kilns.

Machinery used includes, but is not limited to:

- Band saws;
- Conveyor systems;
- Forklifts;
- Kilns;
- Rotary lathes;
- Stationary knife machines;
- Table saws.

Exclusions:

- The production of veneer by employees of employers engaged in the manufacture of other products is included in the classification covering the manufacture of those products;
- Sawmill operations are classified in 1002;
- Manufacturing plywood is classified in 2904-01;
- Manufacturing veneer products is classified in 2903;
- Manufacturing other products made from wood or plastic, which are classified in the classification applicable to the work being performed.

2904-01 Plywood: Manufacturing

Applies to:

Businesses manufacturing plywood.

Plywood is a structural material made of layers of wood (veneer) glued tightly together, usually with the grains of adjoining layers at right angles to each other. (In this application the word "ply" means one of the sheets of veneer.) The production of veneer is included in the scope of this classification when done by employees of employers engaged in the manufacture of plywood.

Producing plywood may include, but is not limited to:

- Joining less-than-full-size sheets of veneer into full-size sheets using veneer jointers, taping machines, tapeless splicers, or other methods such as stringing and stitching;
- Coating the cross banding and core veneers (front and back) with liquid glue using a glue spreader;
- Conveying the veneer to a hot press that bonds the veneers into plywood;
- Removing the panels from the presses;
- Placing the panels in a storage pile (referred to as a "hot stack") to cool and cure;
- Trimming, sanding, and stacking panels for conditioning;
- Plywood may be impregnated with chemicals to develop wood-plastic combinations that are harder and denser than ordinary plywood;
- Inspection and grading panels according to thickness and quality;
- Moving by forklift to the warehouse portion of the plant where they are stacked in tiers separated by a piece of lumber to prevent sagging or distortion;

• Bundling with metal straps, either manually or with automatic strapping equipment.

Exclusions:

- Sawmill operations are classified in 1002;
- Manufacturing rough veneer as a product is classified in 2904-00;
- Manufacturing other products made from wood or plastic, which are classified in the classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2905 Classification 2905.

2905-00 Wood furniture and casket: Manufacturing, assembling, or repairing; Furniture refinishing

~~((Applies to establishments primarily engaged in manufacturing, assembling or repairing furniture or caskets made of wood. Products may be custom-made or stock, for residential or commercial use. This classification includes establishments that repair and refinish wood furniture that is new, used, antique, or furniture with factory defects or damages from shipping. Furniture includes, but is not limited to, sofas, love seats, chairs, tables, beds, dressers, chests, stools, hutches, pool tables, credenzas, desks, bookcases, pews, altars, pulpits, baptisteries, and benches. Materials include, but are not limited to, dimensional lumber, furniture stock, plywood, veneer, particleboard, plastic laminates, polyfoam, upholstery materials (fabric, stuffing, cardboard, metal springs), hardware, glue, paint, stain, oils or lacquer. Machinery includes, but is not limited to, various types of saws (table, panel, rip, cut-off, radial arm, trim, circular, band, jig and miter), molders, shapers, routers, jointers, mortises, tenons, lathes, planers, various types of sanders, drill presses, hand drills, boring machines, pneumatic nail, screw and staple guns, spray guns, air compressors, glue spreaders, dust collectors, drying ovens, sewing machines, steam irons, fork lifts, and pallet jacks. Operations range from processing rough or surfaced lumber, plywood or fiberboard, to the assembly of frame parts into finished products. For classification purposes, repair includes fabricating replacement parts, reinforcing structural weak points, disassembling, regluing and reassembling, recaning chairs, and similar activities, and refinishing includes stripping, sanding, filling, priming, and finishing with stain, oil, paint, or lacquer. Manufacturers in this classification may upholster their furniture, sell it unfinished, or finish it with various lacquers by spraying, dipping, or applying by hand. To make caskets, wood is cut to size, planed, and sanded. Sections are joined to form the shell, finished with lacquer, oil, or stain, and hardware added. Interior upholstery is usually stapled in place; exterior upholstery is usually glued on. This classification also contemplates the assembly of caskets from purchased components. Manufacturers of wood caskets often purchase ready-made fiberglass or metal casket shells, refinish them if necessary, mount the hardware, and upholster them. This is considered incidental to the main operation and is included in this classification. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an~~

employer having operations subject to this classification. Physically separated upholstery departments of establishments engaged in furniture or casket manufacturing, assembly, or finishing may be reported separately in classification 3808 provided that the conditions of the general reporting rules covering the division of employee hours have been met.

This classification excludes all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; establishments engaged in stripping and refinishing furniture, but do not otherwise repair it, which are to be reported separately in classification 3603; establishments engaged in the manufacture of wood cabinets, countertops or fixtures which are to be reported separately in classification 2907; and establishments engaged in the manufacture of furniture or caskets from metal or plastic which are to be reported separately in the classification applicable to the work being performed.

Special note: Establishments primarily engaged in the manufacture of furniture or caskets may make other wood products such as cabinets, countertops and fixtures as an incidental activity. The incidental manufacture of these products can be included within the scope of this classification. Furniture is generally moveable and unsecured. Fixtures are usually secured, stationary, or permanently built-in objects. Even though some fixtures may not be secured to a wall or floor, they are not intended to be relocated, unlike furniture which is frequently and more easily arranged.)

Applies to:

- Businesses primarily engaged in manufacturing, assembling, repairing or refinishing furniture made of wood.
- Businesses engaged in manufacturing or assembling caskets made of wood.

Products may be custom-made or stock, for residential or commercial use.

Manufacturers in this classification may upholster their furniture, sell it unfinished, or finish it with various lacquers by spraying, dipping, or applying by hand.

Furniture includes, but is not limited to:

- Altars;
- Baptisteries;
- Beds;
- Benches;
- Bookcases;
- Chairs;
- Chests;
- Credenzas;
- Desks;
- Dressers;
- Hutches;
- Love seats;
- Pews;
- Pool tables;
- Pulpits;
- Sofas;
- Stools;
- Tables.

Furniture repaired or refinished in this classification may be:

- New;
- Used;
- Antique;
- Furniture with factory defects or damages from shipping.

Repair in this classification includes:

- Disassembling;
- Fabricating replacement parts;
- Recaning chairs and similar activities;
- Regluing and reassembling;
- Reinforcing structural weak points.

Refinishing in this classification includes:

- Stripping;
- Sanding;
- Filling;
- Priming;
- Finishing with stain, oil, paint, or lacquer.

Materials used include, but are not limited to:

- Dimensional lumber;
- Furniture stock;
- Glue;
- Hardware;
- Lacquer;
- Oils;
- Paint;
- Particleboard;
- Plastic laminates;
- Plywood;
- Polyfoam;
- Stain;
- Upholstery materials (fabric, stuffing, cardboard, metal springs);
- Veneer.

Machinery used include, but are not limited to:

- Air compressors;
- Boring machines;
- Drill presses;
- Drying ovens;
- Dust collectors;
- Forklifts;
- Glue spreaders;
- Hand drills;
- Jointers;
- Lathes;
- Molders;
- Mortises;
- Pallet jacks;
- Planers;
- Pneumatic nail, screw and staple guns;
- Routers;
- Sanders;
- Saws (table, panel, rip, cut-off, radial arm, trim, circular, band, jig and miter);
- Sewing machines;
- Shapers;
- Spray guns;

- Steam irons;
- Tenons.

Casket manufacturing process includes, but is not limited to:

- Cutting wood to size;
- Planing and sanding wood;
- Joining sections to form the shell;
- Finishing with lacquer, oil, or stain;
- Adding hardware;
- Stapling interior upholstery in place;
- Gluing exterior upholstery on;
- Assembling caskets from purchased components;
- Manufacturers of wood caskets often purchase ready-made fiber-glass or metal casket shells, refinish them, mount the hardware, and upholster them. This is incidental to the main operation and is included in this classification.

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

Physically separated upholstery departments of businesses engaged in furniture or casket manufacturing, assembly, or finishing may be reported separately in classification 3808 when the conditions of the general reporting rules covering the division of employee hours have been met.

Exclusions:

- All activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed;
- Businesses engaged in stripping and refinishing furniture, but do not otherwise repair it, are classified in 3603;
- Businesses engaged in the manufacture of wood cabinets, countertops, or fixtures are classified in 2907;
- Businesses engaged in the manufacture of furniture or caskets from metal or plastic, which are classified in the classifications applicable to the work being performed.

Special note: Businesses primarily engaged in the manufacture of furniture or caskets may make other wood products such as cabinets, countertops, and fixtures as an incidental activity. The incidental manufacture of these products can be included within the scope of this classification. Furniture is generally moveable and unsecured. Fixtures are usually secured, stationary, or permanently built-in objects. Even though some fixtures may not be secured to a wall or floor, they are not intended to be relocated, unlike furniture, which is frequently and more easily arranged.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-2906 Classification 2906.

2906-01 Pattern or model - Metal, plastic or wood: Manufacturing

~~((Applies to establishments engaged in making metal, plastic, or wood patterns or models. Patterns or models produced may include industrial, aircraft, foundry, architectural scale and mechanical models. Use of this classification is limited to the fabrication of indi-~~

vidual or prototype pieces. Work contemplated is limited to fabricating the pattern or model using woodworking and metal cutting tools, sanding and filling voids with fillers (wood or plastic); and extensive hand finishing of all these mediums when performed by employees of an employer subject to this classification.

This classification excludes pattern or model making by other manufacturers unless specifically allowed for in the manufacturing classification, and establishments engaged in the manufacture of plastic or wood model kits (assembly of a scale model of a car, boat, or plane) which is to be reported separately in the applicable classification.

2906-14 Wood piano or musical instrument: Manufacturing

Applies to establishments engaged in the manufacture of wood musical instruments including, but not limited to, pianos, organs, violins, harps, and guitars. Work contemplated by this classification includes various phases of woodworking techniques required to manufacture cases, sounding boards, pedals and action boards, metal working techniques required to produce components such as pipes, frames, switches, magnets, wind reservoirs and blower systems, and incidental tanning of skins for drums and banjos when done by employees of an employer having operations subject to this classification. This classification applies whether the company is producing all component parts or assembling a wooden musical instrument from purchased parts. This classification includes the reconditioning and subsequent sale of reconditioned pianos, organs, and wooden musical instruments.

This classification excludes the manufacture of metal musical instruments which is to be reported separately in classification 3404; tuning or repair of pianos which is to be reported separately in classification 4107; and the sale of new piano and organs or wooden musical instruments which is to be reported separately in the applicable store classification.)

Applies to:

Businesses engaged in making metal, plastic, or wood patterns or models.

Use of this classification is limited to the fabrication of individual or prototype pieces.

Products produced may include:

- Aircraft models or patterns;
- Architectural scale models or patterns;
- Foundry models or patterns;
- Industrial models or patterns;
- Mechanical models or patterns.

Work activities in this classification are limited to:

- Fabricating the pattern or model using woodworking and metal cutting tools;
- Sanding and filling voids with fillers (wood or plastic);
- Extensive hand finishing of all these mediums when performed by employees of an employer subject to this classification.

Exclusions:

- Pattern or model making by other manufacturers, unless specifically allowed for in the manufacturing classification, are classified in the manufacturing classification;

• Manufacturing plastic or wood model kits (assembly of a scale model of a car, boat, or plane) is classified in the applicable manufacturing classification.

2906-14 Wood piano or musical instrument: Manufacturing

Applies to:

Businesses engaged in manufacturing wood musical instruments.

This classification applies whether the company is producing all component parts or assembling a wooden musical instrument from purchased parts.

Wooden musical instruments manufactured in this classification include, but are not limited to:

- Guitars;
- Harps;
- Organs;
- Pianos;
- Violins.

Work activities include, but are not limited to:

- Woodworking techniques required to manufacture cases, sounding boards, pedals and action boards;
- Metal working techniques required to produce components such as pipes, frames, switches, magnets, wind reservoirs and blower systems;
- Reconditioning and subsequent sale of reconditioned pianos, organs, and wooden musical instruments;
- Incidental tanning of skins for drums and banjos when done by employees of an employer having operations subject to this classification.

Exclusions:

- Manufacturing metal musical instruments is classified in 3404;
- Tuning or repairing pianos is classified in 4107;
- Sale of new piano and organs or wooden musical instruments is classified in the applicable store classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2909 Classification 2909.

2909-00 Woodenware - Household and sporting goods N.O.C.: Manufacturing or assembly

~~((Applies to establishments engaged in light woodworking, not covered by another classification (N.O.C.), for the manufacture of woodenware household goods, sporting goods and a wide range of decorative woodenware items that require a minimal amount of cutting, shaping, drilling, sanding, assembling and finishing. Items produced in this classification include, but are not limited to, towel bars, tissue holders, magazine racks, spice racks, knife holders, recipe boxes, cutting boards, rolling pins, salad forks, bowls, picture and mirror frames, candle holders, speaker shells, bases for turntables, trophy and plaque bases, house numbers, window blinds and shades, drapery woodenware (rods, brackets, supports, rings), broom and brush handles, bobbins and spools, crutches, hat blocks, pegs, coat hangers, toothpicks, gift boxes, tobacco pipes, toys, games, basketball backboards, baseball bats, boomerangs, pool or shuffleboard cues, hockey sticks,~~

oars, paddles, archery bows and arrow shafts. Establishments in this classification generally purchase ready-made components which they assemble with pneumatic or hand tools such as, but not limited to, nail or glue guns, spray or paint guns, staple guns, screw guns, drills, shaping tools, and brushes. Products may be left natural, or finished by applying paint, stain, lacquer or varnish, or hand dipping or rubbing. A limited assortment of basic wood shop machinery such as, but not limited to, table saws, circular saws, band saws, miter saws, jig saws, routers, shapers, belt sanders, edge sanders, drill presses, boring machines, and finger jointer may be used for the occasionally cutting of a piece of wood. Other materials include, but are not limited to, molding stock, dowels, plywood, glue, staples, screws, and small nails. In most cases, products are small and the manufacturers do not provide installation. This is a shop or plant only classification. It does, however, include work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; and the manufacture or assembly of wood products such as, but not limited to, molding stock, outdoor playground equipment, marine floats and docks, gazebos, solariums, saunas, ladders, or cable spools from dimension lumber which is to be reported separately in the applicable classifications.)

Applies to:

Businesses engaged in light woodworking, not covered by another classification (N.O.C.), for the manufacture of woodenware household goods, sporting goods, and decorative woodenware items that require a minimal amount of cutting, shaping, drilling, sanding, assembling, and finishing.

Wooden items produced in this classification include, but are not limited to:

- Archery bows and arrow shafts;
- Baseball bats;
- Bases for turntables;
- Basketball backboards;
- Bobbins and spools;
- Boomerangs;
- Bowls;
- Broom and brush handles;
- Candle holders;
- Coat hangers;
- Crutches;
- Cutting boards;
- Drapery woodenware (rods, brackets, supports, rings);
- Frames (picture and mirror);
- Games;
- Gift boxes;
- Hat blocks;
- Hockey sticks;
- House numbers;
- Knife holders;
- Magazine racks;
- Oars;
- Paddles;
- Pegs;

- Pool or shuffleboard cues;
- Recipe boxes;
- Rolling pins;
- Salad forks;
- Speaker shells;
- Spice racks;
- Tissue holders;
- Tobacco pipes;
- Toothpicks;
- Towel bars;
- Toys;
- Trophy and plaque bases;
- Window blinds and shades.

Materials used include, but are not limited to:

- Dowels;
- Glue;
- Molding stock;
- Plywood;
- Ready-made components;
- Screws;
- Small nails;
- Staples.

Wood shop machinery and pneumatic or hand tools used include, but are not limited to:

- Band saws;
- Belt sanders;
- Boring machines;
- Brushes;
- Circular saws;
- Drill presses;
- Drills;
- Edge sanders;
- Finger jointer;
- Glue guns;
- Jig saws;
- Miter saws;
- Nail guns;
- Routers;
- Screw guns;
- Shapers;
- Shaping tools;
- Spray or paint guns;
- Staple guns;
- Table saws.

Work activities or processes include, but are not limited to:

- Assembling ready-made components;
- Finishing products by applying paint, stain, lacquer or varnish, or hand dipping or rubbing;
- Work being performed in an adjacent yard when operated by an employer having operations subject to this classification. This is a shop or plant only classification.

In most cases, products are small and the manufacturers do not provide installation.

Exclusions:

- All activities away from the shop or plant are reported separately in the classification applicable to the work being performed;
- Manufacturing or assembly of wood products such as, but not limited to, molding stock, outdoor playground equipment, marine floats and docks, gazebos, solariums, saunas, ladders, or cable spools from dimension lumber are classified in the applicable classifications.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-3102 Classification 3102.

3102-04 Stone wool insulation: Manufacturing

~~((Applies to establishments engaged in the manufacture of mineral wool insulation from siliceous materials such as, but not limited to, rock, slag, and glass, or combinations thereof. In a special furnace, hot air or steam is blown through molten rock or slag, shredding the material into a mass of fine intertwined fibers to form the wool. To produce fiberglass insulation material, molten glass is drawn at high speeds through orifices, then subjected to jets of high pressure steam which break the glass filaments into fine fibers. The final product, regardless of raw material, may be shipped in granules which are bagged, or formed into flat sheets, cut to size, enclosed in paper or foil, and packaged. Incidental rock, slag, and glass crushing operations are contemplated by this classification.~~

~~This classification excludes the digging or quarrying of raw materials which is to be reported separately in the classification appropriate to the work being performed, and the manufacture of asbestos products which is to be reported separately in classification 3104.))~~

Applies to:

Businesses manufacturing mineral wool insulation from siliceous materials.

Materials used include, but are not limited to:

- Glass;
- Rock;
- Slag;
- Other siliceous materials.

Work activities include, but are not limited to:

- Blowing hot air or steam through molten rock or slag in a special furnace.
- Drawing molten glass at high speeds through orifices, then subjecting it to jets of high pressure steam which break the glass filaments into fine fibers to produce fiberglass insulation material.
- Shredding the material into a mass of fine intertwined fibers to form the wool.
- Forming and shipping the final product, such as granules which are bagged, or flat sheets which are cut to size, enclosed in paper or foil, and packaged.
- Incidental rock, slag, and glass crushing.

Exclusions:

- Digging or quarrying of raw materials is classified in the classification appropriate to the work being performed.
- Manufacturing asbestos products is classified in 3104.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3103 Classification 3103.

3103-01 Cement or lime: Manufacturing

~~((Applies to establishments engaged in the manufacture of cement or lime. Cement is a mixture of various granulated raw materials which may include limestone, shale, clay, slate, alumina, silica sand, iron ore and gypsum. The manufacturing process involves crushing and grinding the raw materials into a powder state. Materials are then blended with water to create a slurry, then kiln burned at high temperatures which chemically changes the mixture. This mixture is then combined with gypsum and ground into the final product. Cement may be sold as is or mixed with water and coarse aggregate to make concrete. Lime production involves a similar process using crushing and blending machinery and large kilns. Cement and lime manufacturers may own a limestone quarry as it is the major component of both products.~~

~~This classification excludes the quarrying of raw material which is to be reported separately in classification 1704; ready mix concrete dealers who are to be reported separately in classification 3101; and the manufacturing of concrete products which is to be reported separately in classification 3105.~~

3103-02 Lightweight aggregate building or insulation material: Manufacturing

~~Applies to establishments engaged in the manufacture of lightweight aggregate building material or insulation material. Types of products covered by this classification include, but are not be limited to, vermiculite, perlite, pozzolan, magnesite, expanded shale aggregate and fiberglass. The manufacturing process contemplates crushing of raw materials and blending and heating of materials in large furnaces.~~

~~This classification excludes the quarrying of raw material which is to be reported separately in classification 1704, and the manufacture of fiberglass products which is to be reported separately in the appropriate manufacturing classification.))~~

Applies to:

Businesses engaged in the manufacture of cement or lime.

Cement is a mixture of various granulated raw materials. Cement may be sold dry or mixed with water and coarse aggregate to make concrete.

Raw materials may include:

- Alumina;
- Clay;
- Gypsum;
- Iron ore;
- Limestone;
- Shale;
- Silica sand;
- Slate.

The cement manufacturing process includes:

- Crushing and grinding the raw materials into a powder state;
- Blending materials with water to create a slurry;
- Kiln burning at high temperatures which chemically changes the mixture;

- Combining the mixture with gypsum;
- Grinding into the final product.

Lime production involves a process similar to cement manufacturing, using crushing and blending machinery and large kilns.

Cement and lime manufacturers may own a limestone quarry as it is the major component of both products.

Exclusions:

- Worker hours engaged in quarrying of raw material are reported separately in classification 1704;
- Ready mix concrete dealers are classified in 3101;
- Manufacturing of concrete products is classified in 3105.

3103-02 Lightweight aggregate building or insulation material: Manufacturing

Applies to:

Businesses engaged in the manufacture of lightweight aggregate building material or insulation material.

Types of products covered by this classification include, but are not limited to:

- Expanded shale aggregate;
- Fiberglass;
- Magnesite;
- Perlite;
- Pozzolan;
- Vermiculite.

The manufacturing process includes crushing of raw materials and blending and heating of materials in large furnaces.

Exclusions:

- Worker hours engaged in quarrying of raw material are reported separately in classification 1704;
- Manufacturing fiberglass products is classified in the appropriate manufacturing classification.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-3105 Classification 3105.

3105-06 Concrete blocks, bricks, poles, piles, tiles and beams manufacturing

~~((Applies to establishments engaged in the manufacture of concrete blocks, bricks, poles, tiles, and beams. Sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics are received from others. Raw materials are mixed with water and fed into molds or forming machines. Heavy mesh wire or rods may be inserted into the molds for strength. The formed products are usually steam dried and placed in the yard for curing prior to shipping. This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.~~

~~This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying, or excavation classification; the installation or erection of products manufactured under this classification which is to be reported separately in the classification applicable to the work being per-~~

formed; the manufacture of concrete sewer and irrigation pipes, septic tanks and concrete products not classified elsewhere which is to be reported separately in classification 3105-07; the manufacture of statuary and ornamental items from plaster or concrete which is to be reported separately in classification 3509; and the manufacture of brick or clay products which is to be reported separately in classification 3501.

Special note: This classification differs from classification 3509 "statuary or ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.

~~3105-07 Concrete sewer and irrigation pipes, concrete septic tanks and concrete products, N.O.C. manufacturing~~

Applies to establishments engaged in the manufacture of concrete sewer and irrigation pipes, septic tanks and other concrete products not covered by another classification (N.O.C.), such as, but not limited to, panels, tubs, catch basin covers, chimney caps, columns, incinerators, manhole covers, pier footings, monuments, coffins, caskets, and burial vaults. Sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics are received from others. Raw materials are mixed with water and fed into molds or forming machines. Heavy mesh wire or rods may be inserted into the molds for strength. The formed products are usually steam dried and placed in the yard for curing prior to shipping. The manufacture of concrete panels generally involves the cutting and welding of metal to form a frame to which concrete fiberboard is attached. Additional steps may involve the application of an adhesive to the frame and the attachment of decorative material such as crushed rock, gravel, ceramic tile or brick. The fabrication of the metal framing is included within the scope of this classification when performed by employees of an employer engaged in manufacturing concrete panels. This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.

This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying, or excavation classification; the installation or erection of products manufactured under this classification which is to be reported separately in the applicable classification; the manufacture of concrete blocks, bricks, poles, piles, tiles and beams which is to be reported separately in classification 3105-06; the manufacture of statuary and ornamental items from plaster or concrete which is to be reported separately in classification 3509; and the manufacture of brick or clay products which is to be reported separately in classification 3501.

Special note: This classification differs from classification 3509 "statuary and ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.)

Applies to:

Businesses engaged in the manufacture of concrete blocks, bricks, poles, tiles, and beams.

This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.

Work activities and processes include, but are not limited to:

- Receiving raw materials from others. Raw materials include sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics.
- Mixing raw materials with water.
- Feeding the mixture of raw materials and water into molds or forming machines.
- Inserting heavy mesh wire or rods into the molds for strength.
- Steam drying the formed products.
- Placing dried products in the yard for curing.
- Shipping products.

Exclusions:

- Worker hours engaged in the production of raw materials are reported separately in the applicable mining, quarrying, or excavation classification;
- Worker hours engaged in installation or erection of products manufactured under this classification are reported separately in the classification applicable to the work being performed;
- Manufacturing concrete sewer and irrigation pipes, septic tanks, and concrete products not classified elsewhere is classified in 3105-07;
- Manufacturing statuary and ornamental items from plaster or concrete is classified in 3509;
- Manufacturing brick or clay products is classified in 3501.

Special note: This classification differs from classification 3509 "statuary or ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.

3105-07 Concrete sewer and irrigation pipes, concrete septic tanks, and concrete products, N.O.C. manufacturing

Applies to:

Businesses engaged in the manufacture of concrete sewer and irrigation pipes, septic tanks and other concrete products not covered by another classification (N.O.C.).

This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.

Concrete products manufactured include, but are not limited to:

- Burial vaults;
- Caskets;
- Catch basin covers;
- Chimney caps;
- Coffins;
- Columns;
- Incinerators;
- Irrigation pipes;

- Manhole covers;
- Monuments;
- Panels;
- Pier footings;
- Septic tanks;
- Sewer pipes;
- Tubs.

Work activities and processes include, but are not limited to:

- Receiving raw materials from others. Raw materials include sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics.
- Mixing raw materials with water.
- Feeding the mixture of raw materials and water into molds or forming machines.
- Inserting heavy mesh wire or rods into the molds for strength.
- Steam drying the formed products.
- Placing dried products in the yard for curing.
- Shipping products.
- Manufacturing concrete panels generally involves the cutting and welding of metal to form a frame to which concrete fiberboard is attached. The fabrication of the metal framing is included within the scope of this classification when performed by employees of an employer engaged in manufacturing concrete panels.
- Additional steps may involve applying an adhesive to the frame and attaching decorative material such as crushed rock, gravel, ceramic tile, or brick.

Exclusions:

- Worker hours engaged in the production of raw materials are reported separately in the applicable mining, quarrying, or excavation classification;
- Worker hours engaged in installation or erection of products manufactured under this classification are reported separately in the classification applicable to the work being performed;
- Manufacturing concrete blocks, bricks, poles, piles, tiles, and beams is classified in 3105-06;
- Manufacturing statuary and ornamental items from plaster or concrete is classified in 3509;
- Manufacturing brick or clay products is classified in 3501.

Special note: This classification differs from classification 3509 "statuary and ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.

AMENDATORY SECTION (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

WAC 296-17A-3403 Classification 3403.

3403-00 Aircraft: Manufacturing

~~((Applies to establishments engaged in the manufacture of aircraft. For the purposes of this classification "aircraft manufactur-~~

ing" means the original manufacture of such aircraft as distinguished from rebuilding, modifying, or converting existing aircraft and applies *only* to the production of units that, when completed, are capable of in-air flight as distinguished from aircraft kits to be assembled by the purchaser that are not capable of air flight when sold. This classification includes aircraft operations incidental to the manufacture, such as test flights.

This classification excludes establishments engaged in the original manufacture of aircraft parts which are to be reported separately in classification 3405 or as otherwise provided for in WAC 296-17A-3405; the manufacture of aircraft kits which is to be reported separately in the classification applicable to the work being performed; modification, repair or conversions made to an existing aircraft which are to be reported separately in classification 6804; and the assembly of aircraft kits into an airplane which is to be reported separately in classification 6804.)

Applies to:

Businesses engaged in aircraft manufacturing.

For the purposes of this classification "aircraft manufacturing" means the original manufacture of such aircraft as distinguished from rebuilding, modifying, or converting existing aircraft and applies *only* to the production of units that, when completed, are capable of in-air flight as distinguished from aircraft kits to be assembled by the purchaser that are not capable of air flight when sold.

Work activities include, but are not limited to:

• Aircraft operations incidental to the manufacture, such as test flights.

Exclusions:

• Manufacture of aircraft parts is classified in 3405, or as otherwise provided for in WAC 296-17A-3405;

• Manufacture of aircraft kits is classified in the classification applicable to the work being performed;

• Modifications, repairs or conversions made to an existing aircraft are classified in 6804;

• Assembly of aircraft kits into airplanes is classified in 6804.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3408 Classification 3408.

3408-00 Natural gas companies

((Applies to establishments engaged in the operation of natural gas companies which distribute gas through gas mains or pipes to local consumers. Employments covered in this classification include clerical office and sales personnel, store employees, meter readers, and drivers. This classification also includes local gas main connection, new construction and extension of lines, maintenance and operation of plant equipment, installation and repair of plant pressure regulators, and installation and repair of meters, appliances, furnaces and gas regulators on piping within a customers' premises when performed by employees of an employer subject to this classification.

This classification excludes contractors engaged in gas line construction, maintenance or repair who are to be reported separately in

~~classification 0107; contractors engaged in the installation of heating systems who are to be reported separately in classification 0307; contractors engaged in the installation of gas appliances who are to be reported separately in classification 0607; and contractors engaged in the installation of hot water tanks who are to be reported separately in classification 0306.)~~)

Applies to:

Businesses engaged in the operation of natural gas companies which distribute gas through gas mains or pipes to local consumers.

Work activities include, but are not limited to:

- Installation and repair of meters, appliances, furnaces, and gas regulators on piping within a customers' premises when performed by employees of an employer subject to this classification;
- Installation and repair of plant pressure regulators;
- Local gas main connection;
- Maintenance and operation of plant equipment;
- New construction and extension of lines.

Occupations include, but are not limited to:

- Clerical office;
- Drivers;
- Meter readers;
- Sales personnel;
- Store employees.

Exclusions:

- Contractors engaged in gas line construction, maintenance, or repair are classified in 0107;
- Contractors engaged in the installation of heating systems are classified in 0307;
- Contractors engaged in the installation of gas appliances are classified in 0607; and
- Contractors engaged in the installation of hot water tanks are classified in 0306.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3409 Classification 3409.

3409-00 Self-service gas stations

~~((Applies to establishments engaged in self-service gas operations. A self-service station is a facility where the customers pump gas into their own vehicles with no assistance from any of the establishment's employees. Typically, the only employee involved in the operation is a cashier who monitors the pumps from inside a booth and collects the payment from the customer. Sales of cigarettes and limited snack items are allowed in this classification.~~

~~This classification excludes full service stations, establishments with both self-serve and full or limited service operations at the same location, or any type of service stations with gasoline operations that offer any repair or direct services to the customer's vehicle, regardless of the percentage of the activities, at the same location, which are to be reported separately in classification 3406; and establishments who operate a self-service gas station with a con-~~

~~venience store or mini-mart operations which are to be reported separately in classification 3410.~~

~~**Special note:** The extent and type of the groceries available for sale at a self-service only establishment must be determined to assign the appropriate classifications. Generally, if only convenience items such as oil, gas additives, cigarettes and snack foods such as candy, gum, chips, and soft drinks are available, classification 3409 would be allowed. However, if more than the items listed above are available such as milk, bread, canned food, or fast food service, classification 3410 would apply. Establishments with multiple locations are to be classified in accordance with the general reporting rule covering the operation of a secondary business.))~~

Applies to:

Businesses engaged in self-service gas operations.

A self-service station is a facility where the customers pump gas into their own vehicles with no assistance from any of the establishment's employees. Typically, the only employee involved in the operation is a cashier who monitors the pumps from inside a booth and collects the payment from the customer.

Limited items allowed to be sold include:

- Cigarettes and other tobacco items;
- Gas additives;
- Motor oil;
- Snack items such as candy, chips, gum, and soft drinks.

Exclusions:

• Full service stations and businesses with both self-serve and full or limited service as described in 3406 operations at the same location are classified in 3406;

• Any type of service station with gasoline operations that offers any repair or direct services to the customer's vehicle as described in 3406, regardless of the percentage of the activities, are classified in 3406; and

• Self-service gas stations with convenience stores, mini-mart operations, or grocery items such as milk, bread, canned foods, or fast food for sale are classified in 3410.

Special note: Establishments with multiple locations are classified in accordance with the general reporting rules covering the operation of a secondary business.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3410 Classification 3410.

3410-00 Convenience grocery stores or minimarkets with self-service gasoline operations

~~((Applies to establishments engaged in operating convenience grocery stores or mini-markets with self-service gasoline operations. These establishments provide retail sale of convenience grocery items, not just snack items, in addition to self-service gasoline. Gasoline operations are limited to self-service only where the store employee is a cashier who monitors the pumps and collects the payments inside the store. Self-service/convenience store operations in classification 3410 differ from self-service gas stations in classification 3409 in~~

~~that establishments in classification 3410 provide a more extensive line of grocery items. In addition to snack foods, staples such as bread, milk, and canned foods are available for sale. They may also prepare food such as sandwiches, chicken, jo jos, or hot dogs, and occasionally fill a customer's propane tank, and offer automobile or truck washing services, all of which is included within the scope of this classification.~~

~~This classification excludes establishments which provide any full service or limited services in addition to self-service operations at the same location which are to be reported separately in classification 3406; establishments which provide only self-service gasoline operations and whose grocery items are limited to prepared snack foods such as chips and candy, and cigarettes which are to be reported separately in classification 3409; and convenience stores with no gasoline services which are to be reported separately in classification 6403.)~~

Applies to:

Businesses engaged in operating convenience grocery stores or mini-markets with self-service gasoline operations.

These businesses provide retail sale of convenience grocery items, not just snack items, in addition to self-service gasoline.

Gasoline operations are limited to self-service only where the store employee is a cashier who monitors the pumps and collects the payments inside the store.

Self-service/convenience store operations in classification 3410 differ from self-service gas stations in classification 3409 in that establishments in classification 3410 provide a more extensive line of grocery items.

Products sold include, but are not limited to:

- Bread;
- Canned foods;
- Milk;
- Prepared foods such as chicken, hotdogs, jo-jos, and sandwiches;
- Snack foods.

Additional services provided include, but are not limited to:

- Automobile or truck washing services;
- Propane tank filling.

Exclusions:

• Businesses providing any full or limited services as described in 3406-00 in addition to self-service operations at the same location are classified in 3406;

• Businesses providing only self-service gasoline operations and whose grocery items are limited to prepared snack foods such as chips and candy, and cigarettes are classified in 3409; and

• Convenience stores with no gasoline services are classified in 6403.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3412 Classification 3412.

((3412-00 Automobile and truck: Body and fender repair shops

Applies to establishments engaged in repairing and refinishing automobile and truck body panel components for others. Work contemplated by this classification includes, but is not limited to, all phases of auto body repair work and panel replacement, finish removal, sand-blasting or plastic medium blasting, painting, washing, vacuuming, and waxing vehicles, glass repair, upholstery work, and automobile and truck detailing such as striping, vinyl repair, window tinting (applying film to windows), installation of body and wheel molding and sun-roofs, incidental glass repair or mechanical repair associated with a collision repair or car restoration, and installation of electronic accessories when performed by employees of an employer subject to this classification. The repair of fiberglass or sheet metal boat bodies and spray-on pickup truck bedliners is also included in this classification. This classification includes shop managers, parts and paint mixing department employees, towing service for in-shop repairs, incidental sales of rebuilt cars and trucks, and customer courtesy van or car drivers. Estimators may be reported separately in classification 6303 provided all the conditions of the general reporting rule covering standard exception employees have been met.

This classification excludes the routine servicing or repair of automobiles or trucks not done in conjunction with collision repair or car restoration which is to be reported separately in classification 3411; the servicing or repair of mechanical or electrical systems in boats which is to be reported separately in classification 3414; and the repair of wooden boats which is to be reported separately in classification 2903.

Special notes: Auto body shops will routinely have a physically separate area where they store and mix paints. The separate paint storage and mixing area is generally a requirement of local fire codes and insurance policies. This separate area does not constitute a separate operation subject to a different classification. Some shops may also carry an inventory of repair panels, trim pieces and molding. Regardless of the volume of parts and supplies it is included within the basic scope of classification 3412. Establishment engaged in providing towing service for hire are to be reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the repair shop.

Care must be taken in assigning classification 3411-01 to an establishment engaged in body and fender repair. An establishment could have both classifications 3411 and 3412 if they also provide routine mechanical or electrical repair services not in conjunction with collision repair or car restoration.)

3412-00 Automobile or truck: Body or fender repair**Applies to:**

- Businesses engaged in repairing and refinishing automobile and truck body panel components for others.
- Businesses engaged in repairing fiberglass or sheet metal boat bodies or spray-on pickup truck bedliners.

Work activities include, but are not limited to:

- All phases of automobile body repair work and panel replacement;
- Automobile and truck detailing such as striping, vinyl repair, window tinting (applying film to windows);

- Finish removal;
- Glass repair;
- Incidental mechanical repair associated with a collision repair or car restoration;
- Incidental sales of rebuilt cars and trucks;
- Installation of body and wheel molding and sunroofs;
- Installation of electronic accessories when performed by employees of an employer subject to this classification;
- Painting, washing, vacuuming, and waxing vehicles;
- Sandblasting or plastic medium blasting;
- Towing service for in-shop repairs;
- Upholstery work.

Work occupations include, but are not limited to:

- Customer courtesy van or car drivers;
- Parts and paint mixing department employees;
- Shop managers.

Note: Estimators may be reported separately in classification 6303 provided all the conditions of the general reporting rule covering standard exception employees have been met.

Exclusions:

- Repair of wooden boats is classified in 2903.
- Routine servicing or repair of automobiles or trucks not done in conjunction with collision repair or car restoration are classified in 3411.
- Servicing or repair of mechanical or electrical systems in boats is classified in 3414.

Special notes: Auto body shops will routinely have a physically separate area where they store and mix paints. The separate paint storage and mixing area is generally a requirement of local fire codes and insurance policies. This separate area does not constitute a separate operation subject to a different classification. Some shops may also carry an inventory of repair panels, trim pieces, and molding. Regardless of the volume of parts and supplies it is included within the basic scope of classification 3412. Businesses engaged in providing towing service for hire are reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the repair shop.

Care must be taken in assigning classification 3411-01 to a business engaged in body and fender repair. A business could have both classifications 3411 and 3412 if they also provide routine mechanical or electrical repair services not in conjunction with collision repair or car restoration.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3501 Classification 3501.

3501-00 Brick or clay products, N.O.C: Manufacturing

~~((Applies to establishments engaged in the manufacture of brick or clay products not covered by another classification (N.O.C.), such as, but not limited to, drainage or roofing tiles, building or paving bricks, wall copings, glazed or unglazed sewer or drain pipes or conduits, or similar products which are generally for industrial or con-~~

struction use. Clay, which is any earth that forms a paste when added to water and hardens when heated, is widely used in making bricks and other products as described above. Brick is a molded rectangular block of clay, baked by the sun or in a kiln until hard. Similar products made of earthenware, which is a variety of coarse, porous baked clay, are included in this classification. To make bricks, clay is broken up by dry pan grinders. After grinding, the particles pass through any one of several types of screens used for separating and grading. The mixture is fed through a pug mill to be cut and mixed then mixed with water to the desired consistency. After tempering, the pug mill extrudes a column of clay through a die, which shapes and determines the dimensions of the brick. A rotating wire cutter slices the column into proper thicknesses. Bricks are either machine molded or hand molded. The "green" bricks must be dried by sun and air, or in natural gas or electric-fired regulated kilns prior to firing. Firing dehydrates, oxidizes, and vitrifies the bricks. To make other products, clay is mixed with sand or shale, ground in a mixing machine and water is added. The liquid substance is mechanically poured into standard or specially shaped molds. All products are dried by natural warm air or steam heat. After removal from the molds, products are baked in kilns. If glazing is desired, salt is added to the kiln; the salt vaporizes and coats the products. To produce a greater degree of concentration, pressing or repressing operations may be performed, usually with hydraulic presses, subsequent to the actual formation of the products.

This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying or excavation classification; installation or erection of any products manufactured by establishments in this classification which is to be reported separately in the classification applicable to the type of construction or installation work being performed; the manufacture of household or decorative pottery items, including tile, which is to be reported separately in classification 3503; and the manufacture of statuary and ornamental items from concrete or plaster which is to be reported separately in classification 3509.

Special note: Clays are generally mined by the open-pit method. After clay has been extracted, it may be stockpiled inside for use during inclement weather. In most cases, the manufacturing of brick takes place alongside the extraction site. Clay is delivered to the manufacturing site only when clay of a different characteristic is needed to blend with the "home" clay.

3501-01 Refractory products: Manufacturing

Applies to establishments engaged in the manufacture of refractory products such as, but not limited to, fireproofing tile or bricks, roofing tile, flue lining, boiler or stoker tiles, enameled bricks, retorts, kiln parts, or crucibles from refractory clays with or without other refractory materials. Refractory clays are resistant to heat. Refractory materials, such as alumina, silica, and magnesite, dolomite, bauxite, do not significantly deform or change chemically in high temperatures. Usually all types of refractory products are produced in the same plant. Clay and other materials are ground, screened and mixed with water in a mixing machine. The partly fluid substance is poured into molds to form the product. After removal of the forms, items are kiln dried. The enamels are vitreous coatings produced from solutions of chemicals, salt, lead oxide or tin, into which the brick is dipped. Enameled brick requires two or three kiln burns.

~~This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying or excavation classification; installation or erection of any products manufactured by establishments in this classification which is to be reported separately in the classification applicable to the type of construction or installation work being performed; the manufacture of household or decorative pottery items, including tile, which is to be reported separately in classification 3503; and manufacture of statuary and ornamental items from plaster or concrete which is to be reported separately in classification 3509.)~~)

Applies to:

Businesses engaged in manufacturing brick or clay products not covered by another classification (N.O.C.).

Clay is any earth that forms a paste when added to water and hardens when heated, and is widely used in making bricks and other products as described below.

Brick is a molded rectangular block of clay, baked by the sun or in a kiln until hard.

Products manufactured include, but are not limited to:

- Building or paving bricks;
- Drainage tiles;
- Glazed or unglazed sewer pipes, drain pipes, or conduits;
- Roofing tiles;
- Wall copings;
- Similar products, which are generally for industrial or construction use;
- Similar products made of earthenware; a variety of coarse, porous baked clay; are included in this classification.

Work activities and processes to make bricks include:

- Clay is broken up by dry-pan grinders;
- After grinding, the particles pass through any one of several types of screens used for separating and grading;
- The mixture is fed through a pug mill to be cut and mixed then mixed with water to the desired consistency;
- After tempering, the pug mill extrudes a column of clay through a die, which shapes and determines the dimensions of the brick;
- A rotating wire cutter slices the column into proper thicknesses;
- Bricks are either machine molded or hand molded;
- "Green" bricks must be dried by sun and air, or in natural gas or electric-fired regulated kilns prior to firing;
- Firing dehydrates, oxidizes, and vitrifies the bricks.

Work activities and processes to make other clay products include:

- Clay is mixed with sand or shale, ground in a mixing machine and water is added;
- The liquid substance is mechanically poured into standard or specially shaped molds;
- All products are dried by natural warm air or steam heat;
- After removal from the molds, products are baked in kilns;
- If glazing is desired, salt is added to the kiln; the salt vaporizes and coats the products;
- To produce a greater degree of concentration, pressing or repressing operations may be performed, usually with hydraulic presses, subsequent to the actual formation of the products.

Exclusions:

- Worker hours engaged in the production of raw materials are reported separately in the applicable mining, quarrying or excavation classification;
- Worker hours engaged in installation or erection of any products manufactured by establishments in this classification are reported separately in the classification applicable to the type of construction or installation work being performed;
- Manufacturing household or decorative pottery items, including tile, is classified in 3503;
- Manufacturing statuary and ornamental items from concrete or plaster is classified in 3509.

Special note: Clays are generally mined by the open-pit method. After clay has been extracted, it may be stockpiled inside for use during inclement weather. In most cases, the manufacturing of brick takes place alongside the extraction site. Clay is delivered to the manufacturing site only when clay of a different characteristic is needed to blend with the "home" clay.

3501-01 Refractory products: Manufacturing**Applies to:**

Businesses engaged in manufacturing refractory products.

Refractory clays are resistant to heat. Refractory materials, such as alumina, silica, and magnesite, dolomite, bauxite, do not significantly deform or change chemically in high temperatures.

Products manufactured from refractory clays with or without other refractory materials include, but are not limited to:

- Boiler or stoker tiles;
- Crucibles;
- Enameled bricks;
- Fireproofing tile or bricks;
- Flue lining;
- Kiln part;
- Retorts;
- Roofing tile.

Usually all types of refractory products are produced in the same plant.

Work activities and processes include, but are not limited to:

- Clay and other materials are ground, screened and mixed with water in a mixing machine;
- The partly fluid substance is poured into molds to form the product;
- After removal of the forms, items are kiln dried;
- Enamels are vitreous coatings produced from solutions of chemicals, salt, lead oxide or tin, into which the brick is dipped;
- Enameled brick requires two or three kiln burns.

Exclusions:

- Worker hours engaged in production of raw materials are reported separately in the applicable mining, quarrying or excavation classification;
- Worker hours engaged in installation or erection of any products manufactured by establishments in this classification are reported separately in the classification applicable to the type of construction or installation work being performed;

- Manufacturing household or decorative pottery items, including tile, is classified in 3503;
- Manufacturing statuary and ornamental items from plaster or concrete is classified in 3509.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-3512 Classification 3512.

3512-02 Plastic goods: Manufacturing - Cutting, milling or bending

~~((Applies to establishments engaged in the manufacture of a variety of plastic goods from premanufactured components such as sheets, rods, or tubes by cutting, milling, or bending. Products include, but are not limited to, display stands, racks, dispensers for snack food items, vinyl windows and sashes, fiberglass panels used for aircraft or recreational vehicle interiors, and signs. Essentially anything that can be done with wood can be done with plastic, so shops in this classification usually resemble a cabinet or woodworking shop. They use the same type of tools such as, but not limited to, saws, routers, planers, and grinders, to cut or mill the plastic goods. To bend plastic material, it is first heated in an oven or with a torch, then bent to shape. Buffers are used for polishing, or the pieces may be flame polished (heated with a gas torch). Products may be formed by joining pieces with glue, hardware or other fasteners.~~

~~This classification excludes establishments engaged in the manufacture of plastic items by blow molding, extrusion, vacuum forming, foam, rotary, or liquid molding, or injection molding, and establishments engaged in the manufacture of artificial marble items or graphite composite goods, which are to be reported separately in classification 3510; establishments engaged in the manufacture of fiberglass goods which are to be reported separately in classification 3511; and sign manufacturers that purchase precut plastic backings from others, then paint lettering or designs or attach vinyl lettering to them in their own shops which are to be reported separately in classification 4109.~~

~~**Special note:** The cutting, milling, or bending of plastic goods incidental to the manufacturing process for products made from wood, metal or other materials is included in the classification applicable to those manufacturing processes.))~~

Applies to:

Businesses engaged in the manufacture of a variety of plastic goods from premanufactured components such as sheets, rods, or tubes by cutting, milling, or bending.

Products manufactured include, but are not limited to:

- Dispensers for snack food items;
- Display stands;
- Fiberglass panels used for aircraft or recreational vehicle interiors;
- Racks;
- Signs;
- Vinyl windows and sashes.

Equipment used include, but are not limited to:

- Grinders;

- Planers;
- Routers;
- Saws.

Work activities include, but are not limited to:

- Cutting and milling plastics;
- Heating plastic material in an oven or with a torch, then bending to shape;
- Using buffers for polishing;
- Flame polishing (heated with a gas torch);
- Forming products by joining pieces with glue, hardware, or other fasteners.

Exclusions:

- Manufacture of plastic items by blow molding, extrusion, vacuum forming, foam, rotary, or liquid molding, or injection molding is classified in 3510;
- Manufacture of artificial marble items or graphite composite goods is classified in 3510;
- Manufacture of fiberglass goods is classified in 3511;
- Sign manufacturers that purchase precut plastic backings from others, then paint lettering or designs or attach vinyl lettering to them in their own shops is classified in 4109.

Special note: The cutting, milling, or bending of plastic goods incidental to the manufacturing process for products made from wood, metal, or other materials is included in the classification applicable to those manufacturing processes.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3513 Classification 3513.

3513-00 Rubber goods, N.O.C.: Manufacturing

~~((Applies to establishments engaged in manufacturing rubber goods not covered by another classification (N.O.C.) from natural or synthetic rubber which may be hard, soft, or liquid. Products manufactured in this classification include a wide variety of items such as, but not limited to, gaskets, seals, floor tiles, O-rings, hoses, belts, rubber bands, foam rubber cushions or pads, sponge rubber novelties, shoe parts, floor mats, interior pieces for computer circuit boards, and latex rubber goods such as gloves. Establishments in this classification also mix and compound rubber for sale to tire dealers that recap or retread tires. This classification includes establishments that manufacture rubber tires, or that shred used tires or other rubber products. Used rubber is run through granulators or rotary shearers that shred it to small pieces. Shredded material can be used as filler for asphalt for running tracks, or mixed with coal for fuel in industrial plants or further processed into oil. This classification also includes establishments that use heavy machinery to cut used tires into large pieces which are then formed into bumpers for boats, loading docks or similar items. Manufacturing processes include washing, mixing, rolling, extruding, calendaring, molding, and curing, all of which cause chemical reactions to the rubber until it reaches the desired "property or state." Vulcanization, which improves the strength, resiliency and odor of rubber by combining it with sulfur or~~

other additives in the presence of heat and pressure, occurs in various stages of manufacturing processes. Machinery includes but is not limited to: *Shearer*: Cuts bulk rubber into strips or chunks. *Extruder*: Mixes and heats pieces of rubber to high temperature, then forces the mixture out through dies, forming it into "ropes." O-rings are made with extruded ropes.) *Rubber mill*: Has two heavy rollers (each about 1 foot diameter) that spin towards each other; the friction of the spinning rollers causes heat. Strips of raw rubber and dry chemicals are fed into the rollers where they are mashed and pressed, forming it into different grades or densities. The rubber emerges from the mill in flat, pliable strips, ready for further treatments. *Calendar*: Passes rubber through more rollers which work it to a smooth, even, glossy finish. *Hydraulic steam press*: There are several types of molding which involve placing strips of the rubber after it has been milled and rolled into cast iron molds. The molds are inserted into a press where heat and pressure are applied until the rubber is molded to desired shape, then removed and cooled. *Injection mold press*: Rubber is shot into the cavity of the molds, and the press heats it to an almost liquid form, then it becomes stable. A vacuum pump sucks air from the molds to form the product. *Deflasher machine*: Resembles a clothes dryer with a basket inside; used to remove flashing (the excess rubber that has squeezed out of the mold during forming). Molded items are placed in the basket; nylon pellets are added to the machine. As the machine spins, the pellets beat the flashing from the molded pieces. Flashing is sometimes trimmed by hand with exacto knives or smoothed on grinders. *Curing oven*: The final step for most processes which dries and sets the rubber. Establishments subject to this classification may also make some products by cutting and gluing premanufactured materials. If any rubber molding is performed, the entire operation is to be covered under this classification.

This classification excludes establishments engaged in the manufacture of rubber goods by cutting and gluing premanufactured rubber or composite sheets (*no molding*) which are to be reported separately in classification 3802; tire dump operations which are to be reported separately in classification 4305; and the manufacture of synthetic rubber and the "advanced recycling" of shredded tires or rubber which is to be reported separately in classification 3407.)

Applies to:

- Businesses engaged in manufacturing rubber goods not covered by another classification (N.O.C.) from natural or synthetic rubber, which may be hard, soft, or liquid.
- Businesses that manufacture rubber tires; mix and compound rubber for sale to tire dealers that recap or retread tires; use heavy machinery to cut used tires into large pieces which are then formed into bumpers for boats, loading docks or similar items; or shred used tires or other rubber products.

Rubber goods manufactured in this classification include a wide variety of items such as, but not limited to:

- Belts;
- Floor mats;
- Floor tiles;
- Foam rubber cushions or pads;
- Gaskets;
- Hoses;
- Interior pieces for computer circuit boards;
- Latex rubber goods, such as gloves;

- O-rings;
- Rubber bands;
- Seals;
- Shoe parts;
- Sponge rubber novelties.

Shredding tires or other rubber products includes:

- Running used rubber through granulators or rotary shearers that shred it to small pieces.
- Shredded material can be used by customers as filler for asphalt for running tracks, for mixing with coal, for fuel in industrial plants, or for further processing into oil.

Manufacturing processes includes:

- Washing, mixing, rolling, extruding, calendaring, molding, and curing, all of which cause chemical reactions to the rubber until it reaches the desired property or state.
- Vulcanization, which improves the strength, resiliency and odor of rubber by combining it with sulfur or other additives in the presence of heat and pressure.
- Trimming flashing by hand with knives or smoothing with grinders.
- Businesses subject to this classification may also make some products by cutting and gluing premanufactured materials. If any rubber molding is performed, the entire operation is covered under this classification.

Machinery includes, but is not limited to:

- Shearer - Cuts bulk rubber into strips or chunks.
- Extruder - Mixes and heats pieces of rubber to high temperature, then forces the mixture out through dies, forming it into "ropes." O-rings are made with extruded ropes.
- Rubber mill - Has two heavy rollers (each about 1 foot diameter) that spin towards each other; the friction of the spinning rollers causes heat. Strips of raw rubber and dry chemicals are fed into the rollers where they are mashed and pressed, forming it into different grades or densities. The rubber emerges from the mill in flat, pliable strips, ready for further treatments.
- Calendar - Passes rubber through rollers which work it to a smooth, even, glossy finish.
- Hydraulic steam press - Placing strips of rubber into cast iron molds after they have been milled and rolled. The molds are inserted into a press where heat and pressure are applied until the rubber is molded to desired shape, then removed and cooled.
- Injection mold press - Rubber is shot into the cavity of molds. The press heats it to an almost liquid form, then it becomes stable. A vacuum pump sucks air from the molds to form the product.
- Deflasher machine - Resembles a clothes dryer with a basket inside and used to remove flashing (the excess rubber that has squeezed out of the mold during forming). Molded items are placed in the basket. Nylon pellets are added to the machine. As the machine spins, the pellets beat the flashing from the molded pieces.
- During oven - The final step for most processes which dries and sets the rubber.

Exclusions:

- Businesses manufacturing rubber goods without rubber molding, but only by cutting and gluing premanufactured rubber or composite sheets are classified in 3802;

- Tire dump operations are classified in 4305;
- Manufacturing synthetic rubber and the "advanced recycling" of shredded tires or rubber is classified in 3407.

AMENDATORY SECTION (Amending WSR 09-16-110, filed 8/4/09, effective 10/1/09)

WAC 296-17A-3603 Classification 3603.

3603-10 Furniture stripping and refinishing; metal plating or polishing, rustproofing, N.O.C.

~~((Applies to establishments engaged in stripping and refinishing wood or metal furniture, or metal plating (a coating of metal on an object), polishing, and rustproofing that is not covered by another classification (N.O.C.). Furniture refinishing contemplated by this classification includes, but is not limited to, preparing articles for finishing or refinishing by dipping in chemical solutions/acid baths to remove the old finish or dirt, sanding and wire brushing as needed, thoroughly removing all residues, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. Metal plating contemplated by this classification may be done by dipping in hot solution or spraying with a very high pressure, heated gun. Electroless plating is another type of dipping process which can be used to plate metals, plastics, and other materials by first preparing the surface with a chemical to ensure adhesion of the metal plating material. Rustproofing, as contemplated by this classification, is usually applied by dipping or spraying. Plated items may be finished by lacquering and polishing. Polishing may also be conducted as a separate contract on metal and nonmetal items.~~

~~This classification excludes furniture finishing/refinishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; metal plating, polishing, rustproofing and finishing done in conjunction with manufacturing of metal or a metal product which is to be reported separately as applicable to the product; undercoating of automobiles or other vehicles which is to be reported separately in classification 3411; metal plating done by an electrolytic method and rustproofing by anodizing method which are to be reported separately in classification 3603-11.~~

3603-11 Electroplating and detinning, N.O.C.

~~Applies to establishments engaged in providing electroplating or detinning services that are not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to, preparing items by dipping in chemical solution/acid baths to remove old finish or dirt, sanding and wire brushing as needed, removing all residues thoroughly, electroplating to create the new finish, air or oven drying, any appropriate finish work such as polishing and buffing, and electrolytic or chemical baths for detinning processes, when done by employees of an employer having operations subject to this classification. Electroplating (including galvanizing and tinning) to achieve a protective or decorative coating is done by immersing the metal object in a solution which contains the desired metallic particles (metals commonly used are gold, silver, nickel, zinc and chromium) and passing an electric charge through the~~

solution which causes the metal particles to adhere to the object being plated. Typical items plated include, but are not limited to, jewelry, plumbing hardware and components, silverware, eyeglass frames, medical instruments, and various specialized industrial components of any size. Plated items may be polished and lacquered as part of the finishing process. This classification includes *anodizing* to rustproof aluminum and some aluminum alloys by immersion in an acid bath and applying an electric charge to the metal which causes the finish to form on it. *Detinning* is the process of recovering tin from tin plated scrap. The "chemical process" involves using caustics and an oxidizing agent which causes the tin to separate from the metal it was plated to. A variation of this method introduces electrolysis to achieve a purer reclamation. The "chlorine process" uses chlorine applied under pressure to dissolve the tin and separate it from the tin plated scrap.

This classification excludes any electroplating or rustproofing by electrolytic methods done in conjunction with the manufacturing of metal or a metal product which is to be reported separately as applicable to the product; metal plating, polishing or rustproofing not using electrolytic methods which is to be reported separately in classification 3603-10; galvanizing or tinning done by hot dip process which is to be reported separately in classification 3604; and any detinning not done by a specialty shop as described above.

3603-12 Painting in shop, N.O.C.

Applies to establishments engaged in providing painting services at their shop, that are not covered by another classification (N.O.C.). This includes painting wood, metal, plastic, glass or other items. Customers include manufacturers, cabinetmakers or millwork manufacturers who do not do their own finish painting/staining/varnishing, or individuals who need only one item painted. Work contemplated by this classification includes, but is not limited to, preparing items for finishing by cleaning, sanding and wire brushing as needed, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. This classification includes application of nonmetallic coatings by dipping (such as nonstick surfaces) and painting with an electrostatic paint gun.

This classification excludes *sign painting* when done by establishments who do not manufacture the sign, which is to be reported separately in classification 4109; any painting done in conjunction with the manufacture of a sign which is to be reported separately in classification 2903, 3402, 3503 or 3510 as applicable; painting done in conjunction with the repair of an exterior sign which is to be reported separately in classification 0403; furniture stripping and refinishing services which are to be reported in classification 3603-10; furniture finishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; automobile painting which is to be reported separately in classification 3412; the permanent yard or shop of a painting contractor which is to be reported separately in classification 5206 provided the conditions set forth in WAC 296-17A-5206 have been met; and the painting/staining/varnishing of any item done in conjunction with the manufacturing of that item which is to be reported separately as applicable to the product.)

Applies to:

Businesses engaged in stripping and refinishing wood or metal furniture; or metal plating (a coating of metal on an object), polishing, and rustproofing that is not covered by another classification (N.O.C.).

Furniture refinishing may include, but is not limited to:

- Preparing articles for finishing or refinishing by dipping in chemical solutions/acid baths to remove the old finish or dirt;
- Sanding and wire brushing as needed;
- Thoroughly removing all residues;
- Applying new finish by brushing, rolling, spraying or dipping, air or oven drying;
- Any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification.

Additional work activities and processes may include, but are not limited to:

- Electroless plating is a type of dipping process which can be used to plate metals, plastics, and other materials by first preparing the surface with a chemical to ensure adhesion of the metal plating material;
- Metal plating contemplated by this classification may be done by dipping in hot solution or spraying with a very high-pressure, heated gun;
- Plated items may be finished by lacquering and polishing;
- Polishing, which may also be conducted as a separate contract on metal and nonmetal items;
- Rustproofing, as contemplated by this classification, is usually applied by dipping or spraying.

Exclusions:

- Furniture finishing/refinishing done in conjunction with manufacturing or repair is classified in 2905;
- Metal plating, polishing, rustproofing and finishing done in conjunction with manufacturing of metal or a metal products is classified in the class applicable to the product manufactured;
- Undercoating of automobiles or other vehicles is classified in 3411;
- Metal plating done by an *electrolytic method* or rustproofing by *anodizing method* are classified in 3603-11.

3603-11 Electroplating and detinning, N.O.C.

Applies to:

Businesses engaged in providing electroplating or detinning services that are not covered by another classification (N.O.C.).

Typical items plated include, but are not limited to:

- Eyeglass frames;
- Jewelry;
- Medical instruments;
- Plumbing hardware and components;
- Silverware;
- Various specialized industrial components of any size.

Work activities and processes include, but are not limited to:

- Preparing items by dipping in chemical solution/acid baths to remove old finish or dirt;

- Sanding and wire brushing as needed to remove all residues thoroughly;

- Electroplating to create the new finish. Electroplating (including galvanizing and tinning) to achieve a protective or decorative coating is done by immersing the metal object in a solution which contains the desired metallic particles (metals commonly used are gold, silver, nickel, zinc and chromium) and passing an electric charge through the solution which causes the metal particles to adhere to the object being plated;

- Air or oven drying;

- Finish work such as polishing, buffing, or lacquering;

- Anodizing to rustproof aluminum and some aluminum alloys by immersion in an acid bath and applying an electric charge to the metal which causes the finish to form on it;

- Electrolytic or chemical baths for detinning processes, when done by employees of an employer having operations subject to this classification. Detinning is the process of recovering tin from tin plated scrap. The "chemical process" involves using caustics and an oxidizing agent, which causes the tin to separate from the metal it was plated to. A variation of this method introduces electrolysis to achieve a purer reclamation. The "chlorine process" uses chlorine applied under pressure to dissolve the tin and separate it from the tin plated scrap.

Exclusions:

- Any electroplating or rustproofing by electrolytic methods done together with the manufacturing of metal or a metal product is classified in the classification applicable to the product;

- Metal plating, polishing or rustproofing not using electrolytic methods is classified in 3603-10;

- Galvanizing or tinning done by hot dip process is classified in 3604;

- Any detinning not done by a specialty shop as described above is classified in the classification applicable to the business.

3603-12 Painting in shop, N.O.C.**Applies to:**

Businesses engaged in providing painting services at their shop, not covered by another classification (N.O.C.).

Customers of business in this classification include, but are not limited to:

- Cabinetmakers or millwork manufacturers;

- Other types of manufacturers;

- Individuals who need only one item painted.

Work activities and processes include, but are not limited to:

- Preparing items made of wood, metal, plastic, glass, or other materials for finishing by cleaning, sanding and wire brushing as needed;

- Applying new finish by brushing, rolling, spraying or dipping;

- Air or oven drying;

- Any appropriate finish work, such as waxing, polishing and buffing, when done by employees of an employer having operations subject to this classification;

- Applying nonmetallic coatings by dipping (such as nonstick surfaces) or painting with an electrostatic paint gun.

Note: The permanent yard or shop of a painting contractor is reported separately in classification 5206 when the conditions set forth in WAC 296-17A-5206 have been met.

Exclusions:

- Sign painting, when done by businesses who do not manufacture the sign, is classified in 4109;
- Any painting done in conjunction with the manufacture of a sign is classified in 2903, 3402, 3503 or 3510 as applicable;
- Worker hours engaged in painting done together with the repair of an exterior sign is reported separately in classification 0403;
- Furniture stripping and refinishing services are classified in 3603-10;
- Furniture finishing done together with manufacturing or repair is classified in 2905;
- Automobile painting is classified in 3412;
- Painting/staining/varnishing of any item done together with the manufacturing of that item is classified in the classification applicable to the product manufacture.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3604 Classification 3604.

3604-16 Galvanizing or tinning - Not electrolytic, N.O.C.

~~((Applies to establishments engaged in providing galvanizing or tinning services, not using an electrolytic method, that are not covered by another classification (N.O.C.). This process uses molten zinc or tin dip to coat metals to deter corrosion (galvanizing) and tarnish (tinning). The process is used on all types of metal products from hand tools to automobile body parts and pieces of machinery. Work contemplated by this classification includes, but is not limited to, preparing metal by cleaning and washing in an acid solution, flushing with clean water, dipping in a metallic solution, immersion in the molten zinc or tin, and draining and/or blowing away the excess to achieve a smooth finish before cooling.~~

~~This classification excludes galvanizing or tinning using an electrolytic process which is to be reported separately in classification 3603-11 and any galvanizing or tinning operations conducted in conjunction with a metal or metal product manufacturing operation which is to be reported separately as appropriate to the product.))~~

Applies to:

Businesses providing galvanizing or tinning services not using an electrolytic method that are not covered by another classification (N.O.C.).

Galvanizing or tinning can be used on all types of metal products, from hand tools to automobile body parts and pieces of machinery.

Work activities and processes include:

- Using molten zinc or tin dip to coat metals to deter corrosion (galvanizing) and tarnish (tinning);
- Preparing metal by cleaning and washing in an acid solution;
- Flushing the metal with clean water;
- Dipping metal in a metallic solution;
- Immersing metal in molten zinc or tin;

- Draining or blowing away the excess zinc or tin to achieve a smooth finish;
- Cooling metal.

Exclusions:

- Worker hours engaged in galvanizing or tinning using an electrolytic process are reported separately in classification 3603-11;
- Any galvanizing or tinning operations conducted in conjunction with a metal or metal product manufacturing operation is classified as appropriate to the product manufactured.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3605 Classification 3605.**3605-28 Truck: Manufacturing or assembly**

~~((Applies to establishments engaged in the manufacture or assembly of complete trucks. Truck manufacturers subject to this classification are the nonpassenger type vehicles such as semi-trucks. These establishments may manufacture the chassis, body and other truck components or they may purchase any of these items from other manufacturers and simply assemble the trucks. Usually they will purchase the axle assemblies, transmissions, electrical and cooling systems, and steering gears from others. The determining factor to assign this classification is that they do the final assembly of the various components to make the truck operational.~~

~~This classification excludes auto or passenger vehicle manufacturing including pick-up trucks which is to be reported separately in classification 3402; truck component manufacturing which is to be reported separately in the appropriate manufacturing classification; and semi-truck repair and service centers which are to be reported separately in classification 6409.))~~

Applies to:

Businesses manufacturing or assembling complete trucks.

Truck manufacturers subject to this classification are the nonpassenger type vehicles such as semi-trucks. The determining factor to assign this classification is that they do the final assembly of the various components to make the truck operational.

Work activities include, but are not limited to:

- Manufacturing the chassis, body, and other truck components;
- Purchasing the chassis, body, or other truck components from other manufacturers and assembling the trucks;
- Purchasing the axle assemblies, transmissions, electrical and cooling systems, and steering gears from others.

Exclusions:

- Auto or passenger vehicle manufacturing including pick-up trucks is classified in 3402;
- Truck component manufacturing is classified in the appropriate manufacturing classification; and
- Semi-truck repair and service centers are classified in 6409.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3808 Classification 3808.

3808-00 Upholstery work, N.O.C.

~~((Applies to establishments engaged in upholstery work not covered by another classification (N.O.C.). Upholstery work is the custom finishing of furniture and vehicle interiors with stuffing, cushioning, springs, and covering material. Some sewing is usually necessary. Items upholstered include, but are not limited to, chairs, sofas, foot stools, caskets, and seats for aircraft, automobiles, boats or other recreational vehicles (RVs). Upholstery work becomes part of the furniture or vehicle as opposed to removable pillows or cushions which are not permanently attached to the structure. Upholstery shops also perform refurbishing or renovation work which involves removing the old materials, replacing springs, stuffing or cushioning as necessary, and covering with new material. They might replace a vinyl top, trim molding, striping tape, or door edge guards on a car or boat which is included in this classification when done by employees of an employer subject to this classification. Customers usually bring the furniture or vehicle to the shop for upholstery work. Upholstery shops in this classification may sell some fabric as an incidental part of their operation; however, if any upholstery work is done at the shop, the entire operation is to be reported separately in classification 3808. This classification includes businesses which produce furniture entirely from foam rubber or other cushioning or stuffing, springs, and a covering material.~~

~~This classification excludes establishments engaged in the manufacture of mattresses which are to be reported separately in classification 3708; establishments engaged in making "throw pillows or cushions" which are to be reported separately in classification 3802; and establishments engaged in selling upholstery materials (but do no upholstery work) which are to be reported separately in classification 6406.~~

~~**Special note:** Classification 3808-00 may be assigned to physically separated upholstery departments of furniture or casket manufacturers, and automobile, aircraft, or RV manufacturers provided the conditions set forth in the general reporting rule covering the division of worker hours have been met.))~~

Applies to:

~~Upholstery work not covered by another classification (N.O.C.). Upholstery work becomes part of the furniture or vehicle as opposed to removable pillows or cushions, which are not permanently attached to the structure. Upholstery shops may also perform refurbishing or renovation work.~~

~~Customers usually bring the furniture or vehicle to the shop for upholstery work.~~

~~This classification includes businesses that produce furniture entirely from foam rubber, other cushioning, or stuffing; springs; and a covering material.~~

Items upholstered include, but are not limited to:

- ~~• Caskets;~~
- ~~• Chairs;~~
- ~~• Footstools;~~

- Seats for aircraft, automobiles, boats or other recreational vehicles (RVs);
- Sofas.

Materials used include, but are not limited to:

- Covering material;
- Cushioning;
- Springs;
- Stuffing.

Work activities include, but are not limited to:

- Custom finishing of furniture and vehicle interiors.
- Sewing.
- Refurbishing or renovation work that involves removing the old materials, replacing springs, stuffing or cushioning as necessary, and covering with new material.
- Replacing a vinyl top, trim molding, striping tape, or door edge guards on a car or boat is included in this classification when done by employees of an employer subject to this classification.
- Selling some fabric is an incidental part of this classification. If any upholstery work is done at the shop, the entire operation is reported in classification 3808.

Exclusions:

- Manufacturing mattresses is classified in 3708;
- Manufacturing throw pillows or cushions is classified in 3802;
- Selling upholstery materials without doing upholstery work is classified in 6406.

Note: Classification 3808-00 may be assigned to physically separated upholstery departments of furniture or casket manufacturers, and automobile, aircraft, or RV manufacturers provided the conditions set forth in the general reporting rule covering the division of worker hours have been met. For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3903 Classification 3903.

3903-08 Sugar refining; molasses and syrup, N.O.C.: Manufacturing

((Applies to establishments engaged in processing (milling) sugar cane and sugar beets into various forms of powdered and granulated sugar, and the manufacture of molasses and sugar syrups not covered by another classification (N.O.C.). Operations contemplated by this classification include the receipt of sugar cane or sugar beets directly from growers or dealers, crushing or rolling cane to obtain the juice or washing, slicing, and cooking the beets to obtain the juice, evaporating the juice to produce a crystallized substance, and further processing to produce the final product such as granular sugar, white powdered sugar, and brown sugar. Common by-products of a sugar refining operation are molasses and sugar syrups. In some cases an establishment may produce only the sugar syrup and/or molasses, not the crystallized forms of sugar. This classification applies to all of the above operations as the processes to produce sugar syrup and molasses products are similar to those used to produce crystallized sugar.

This classification excludes establishments engaged in the manufacture of fruit syrup, juice, cider, jam or jelly which are to be reported separately in classification 3902.)

Applies to:

- Businesses processing (milling) sugar cane and sugar beets into various forms of powdered and granulated sugar;
- Businesses manufacturing molasses and sugar syrups not covered by another classification (N.O.C.).

Work activities include, but are not limited to:

- Receiving sugar cane or sugar beets directly from growers or dealers;
- Crushing or rolling sugar cane to obtain the juice;
- Washing, slicing, and cooking sugar beets to obtain the juice;
- Evaporating the juice to produce a crystallized substance;
- Further processing to produce the final product.

Products manufactured include, but are not limited to:

- Brown sugar;
- Granular sugar;
- Molasses;
- Sugar syrups;
- White powdered sugar.

Exclusions:

- Manufacturing of fruit syrup, juice, cider, jam, or jelly is classified in 3902.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4103 Classification 4103.

4103-01 Newspaper publishing

~~((Applies to establishments engaged in publishing daily or periodic newspapers. This classification includes the printing, distribution and general maintenance activities of the newspaper. The printing operation usually consists of one of three processes: Offset lithography, letterpress, or flexography. After the papers are printed, they are cut, folded and stacked either manually or by computer-operated machinery. Route managers then distribute the papers to door-to-door carriers or independent route delivery drivers. Typical occupations covered by this classification include bindery workers, press operators, freight handlers, machine feeders, production helpers, maintenance workers and drivers.~~

~~This classification excludes photo composition or prepress work such as photographic or computerized typesetting, layout, paste up, editing, proofreading, camera work and automated platemaking which is to be reported separately in classification 4904; outside reporters, photographers, sales personnel, advertising staff and circulation solicitors who are to be reported separately in classification 6303; and establishments engaged in printing operations for newspapers published by other firms which are to be reported separately in classification 4101.~~

~~**Special note:** Employees of an employer subject to this classification who have both photographic composition/prepress work duties and duties which are subject to this classification (4103) are to be reported separately in classification 4103 without a division of work hours.~~

~~Newspapers without any printing operations are governed by the general reporting rule covering businesses described by a standard exception classification.))~~

Applies to:

Businesses engaged in publishing daily or periodic newspapers.

Work activities include, but are not limited to:

- Printing which usually consists of one of three processes: Off-set lithography, letterpress, or flexography;
- Cutting;
- Folding;
- Stacking either manually or by computer-operated machinery;
- Distribution using door-to-door carriers or independent route delivery drivers;
- General maintenance activities of the newspaper.

Occupations include, but are not limited to:

- Bindery workers;
- Drivers;
- Freight handlers;
- Machine feeders;
- Maintenance workers;
- Press operators;
- Production helpers.

Exclusions:

- Photo composition or prepress work such as photographic or computerized typesetting, layout, paste up, editing, proofreading, camera work, and automated platemaking is classified in 4904;
- Outside reporters, photographers, sales personnel, advertising staff, and circulation solicitors are classified in 6303;
- Businesses engaged in printing operations for newspapers published by other firms are classified in 4101.

Special note: Employees of an employer subject to this classification who have both photographic composition/prepress work duties and duties which are subject to this classification (4103) are classified in 4103 without a division of work hours.

Newspapers without any printing operations are governed by the general reporting rule covering businesses described by a standard exception classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4108 Classification 4108.

4108-15 Letter service shops and mailing or addressing companies

~~((Applies to establishments engaged in providing large volume mailing and addressing services. This could be the routine mailing of periodicals or advertising brochures or a one-time letter to a particular list of recipients. Work contemplated by this classification includes, but is not limited to, folding, sorting, labeling and stuffing envelopes (either by hand or machine), clerical support, outside sales work, pick up of preprinted material from a client's location and delivery of completed work to the client or post office when done by em-~~

~~ployees of an employer having operations subject to this classification. Companies in this classification may also research and compile mailing lists as an additional service for their clients who are involved in direct mail advertising. This classification includes contracting of complete mail room services at a client's location.~~

~~This classification excludes printing of advertising material which is to be reported separately in classification 4101 and photocopying or duplicating of printed material, private mail box services (receipt and mailing of routine ready-to-mail letters and packages) for box renters, and package wrapping/mailing services, all of which are to be reported separately in classification 6406.)~~

Applies to:

Businesses engaged in providing large volume mailing and addressing services.

This could be the routine mailing of periodicals or advertising brochures or a one-time letter to a particular list of recipients.

Work activities include, but are not limited to:

- Clerical office;
- Outside sales;
- Folding, sorting, labeling, and stuffing envelopes (either by hand or machine);
- Pick up of preprinted material from a client's location and delivery of completed work to the client or post office;
- Research and compile mailing lists as an additional service for their clients who are involved in direct mail advertising;
- Complete mail room services at a client's location.

Exclusions:

- Printing of advertising material is classified in 4101;
- Photocopying or duplicating of printed material, private mail box services (receipt and mailing of routine ready-to-mail letters and packages) for box renters, and package wrapping/mailing services, are classified in 6406.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4401 Classification 4401.

4401-00 Cold storage lockers

~~((Applies to establishments that rent cold storage lockers to the public. These establishments do not own equity in the merchandise that is stored. Other than being cold storage facilities they are similar to mini-warehouse storage operations. Typically these operations will be a part of a retail or wholesale food or beverage establishment such as meat markets or wine stores. Typical activities contemplated by this classification include maintenance and security of the facility.~~

~~This classification excludes establishments engaged in fruit/vegetable freezer operations which are to be reported separately in classification 3902; establishments engaged in cold storage warehouse operations which are to be reported separately in classification 4404; general merchandise warehouses (not cold storage) which are to be reported separately in classification 2102; mini-storage warehouses which are to be reported separately in classification 4910; and field bonded warehouses which are to be reported in classification 2008.~~

Special note: The distinction between this classification (4401) and cold storage warehouse operations (4404) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storage of personal items.)

Applies to:

Businesses that rent cold storage lockers to the public.

These businesses do not own equity in the merchandise that is stored. Other than being cold storage facilities they are similar to mini-warehouse storage operations. Typically these operations will be a part of a retail or wholesale food or beverage establishment such as meat markets or wine stores.

Work activities include, but are not limited to:

- Maintenance of facility;
- Security of facility.

Exclusions:

- Fruit and vegetable freezer operations are classified in 3902;
- Cold storage warehouse operations are classified in 4404;
- General merchandise warehouses (not cold storage) are classified in 2102;
- Mini-storage warehouses are classified in 4910; and
- Field bonded warehouses are classified in 2008.

Special note: The distinction between this classification (4401) and cold storage warehouse operations (4404) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storage of personal items.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4402 Classification 4402.

4402-00 Ice: Manufacturing or harvesting

((Applies to establishments engaged in the manufacture of ice or the harvesting of naturally occurring ice from frozen bodies of water such as lakes or ponds. Ice is made by treating, forming, and freezing water in refrigeration compressor systems. The ice blocks may be scored, cut or sawed, then left in blocks or crushed and bagged. Refrigeration systems are generally freezer coils or pipes running through or around tanks, or refrigerated vaults. Other equipment includes, but is not limited to, tanks, tin molds of various pound sizes or shapes, filtering systems, ice cube making systems which consist of water tanks, tubing and cutting blades, conveyors, incline screws, holding bins, bagging machines, winches, and forklifts. Ice harvesting is the cutting of natural ice from lakes, ponds, or other bodies of water that have frozen over to a suitable thickness and storing it in refrigerated warehouses. Ice manufacturers and harvesters either deliver their ice directly to their customers or sell it to ice dealers.

~~This classification excludes ice dealers who are to be reported separately in classification 4402-02 and manufacturers of "dry ice" who are to be reported separately in classification 3701.~~

~~4402-02 Ice dealers~~

~~Applies to establishments engaged as dealers of ice manufactured or harvested by others. Ice dealers either pick up ice directly from manufacturers and deliver it, or store it in their own refrigerated warehouses or ice stations prior to delivery to their customers. Refrigerated, insulated trucks and trailers are used to deliver ice. Customers may include, but not be limited to, restaurants, lounges, service stations, grocery and convenience stores. Ice dealers may also own coin-operated dispensing machines, at various locations, which they refill.~~

~~This classification excludes establishments engaged in the manufacture of ice in refrigerated systems and the harvesting of natural ice which are to be reported separately in classification 4402-00 and establishments engaged in the manufacture of "dry ice" which are to be reported separately in classification 3701.)~~

Applies to:

- Businesses manufacturing ice made by treating, forming, and freezing water in refrigeration compressor systems;
- Harvesting of naturally occurring ice from frozen bodies of water such as lakes or ponds.

Work activities include, but are not limited to:

- Scoring, cutting, or sawing ice into blocks;
- Crushing ice blocks;
- Bagging crushed ice;
- Cutting of natural ice from lakes, ponds, or other bodies of water that have frozen over to a suitable thickness and storing it in refrigerated warehouses;
- Delivering ice directly to customers or selling it to ice dealers.

Equipment used include, but are not limited to:

- Bagging machines;
- Conveyors;
- Filtering systems;
- Forklifts;
- Holding bins;
- Ice cube making systems;
- Inline screws;
- Molds;
- Refrigeration systems (which are generally freezer coils or pipes running through or around tanks, or refrigerated vaults);
- Tubing or cutting blades;
- Water tanks;
- Winches.

Exclusions:

- Ice dealers are classified in 4402-02;
- Manufacturing of dry ice is classified in 3701.

4402-02 Ice Dealers

Applies to:

Dealers of ice manufactured or harvested by others.

Work activities include, but are not limited to:

- Picking up ice directly from manufacturers;
- Storing ice in their own refrigerated warehouses or ice stations prior to delivery to their customers;
- Delivering ice;
- Ice dealers may own coin-operated dispensing machines, at various locations, which they refill.

Equipment used include, but are not limited to:

- Refrigerated and insulated trucks;
- Trailers.

Customers include, but are not limited to:

- Grocery and convenience stores;
- Lounges;
- Restaurants;
- Service stations.

Exclusions:

- Manufacture of ice in refrigerated systems and the harvesting of natural ice is classified in 4402-00;
- Manufacturing of dry ice is classified in 3701.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4404 Classification 4404.

4404-05 Cold storage warehouse

~~((Applies to establishments engaged in providing a cold storage facility for general merchandise. These establishments do not own equity in the merchandise they store. The cold storage facility, which is maintained through a mechanical refrigeration process, typically stores items such as, but not limited to, food products, furs, and pharmaceuticals. Work contemplated by this classification includes maintenance and security of the facility, incidental repackaging, and loading and unloading of the warehoused items when performed by employees of an employer having operations subject to this classification.~~

~~This classification excludes establishments engaged in fruit/vegetable freezer operations which are to be reported separately in classification 3902; establishments engaged in cold storage locker operations which are to be reported separately in classification 4401; general merchandise warehouses (not cold storage) which are to be reported separately in classification 2102; mini-storage warehouses which are to be reported separately in classification 4910; and field bonded warehouses which are to be reported separately in classification 2008.~~

~~**Special note:** The distinction between this classification (4404) and cold storage locker operations (4401) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storing of their personal items.)~~

Applies to:

Businesses providing a cold storage facility for general merchandise. These businesses do not own equity in the merchandise they store.

The cold storage facility is maintained through a mechanical refrigeration process.

Products stored include, but are not limited to:

- Food products;
- Furs;
- Pharmaceuticals.

Work activities include, but are not limited to:

- Maintenance and security of the facility;
- Incidental repackaging and loading and unloading of the warehoused items when performed by employees of an employer having operations subject to this classification.

Exclusions:

- Fruit/vegetable freezer operations are classified in 3902;
- Cold storage locker operations are classified in 4401;
- General merchandise warehouses (not cold storage) are classified in 2102;
- Mini-storage warehouses are classified in 4910; and
- Field bonded warehouses are classified in 2008.

Special note: The distinction between this classification (4404) and cold storage locker operations (4401) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storing of their personal items.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4911 Classification 4911.

4911-00 Construction estimators

~~((Applies to employees of construction or erection contractors who work as cost and materials estimators preparing bids for contracts away from their employer's business offices. Employees covered by this rule may have exposure to the hazards of job sites, customer's premises, and/or undeveloped land. This classification is restricted in that employees reported in it cannot have any other duties other than construction estimating during their work shift or work day. Any employee working as an estimator and having any construction-related duties during the same work shift or day is to be reported separately in the applicable construction or erection classification for that entire work shift.))~~

Applies to:

Employees of construction or erection contractors who work as cost and materials estimators preparing bids for contracts away from their employer's business offices.

Work activities include, but are not limited to:

- Exposure to the hazards of job sites, customer's premises, and/or undeveloped land.

Notes: This classification is restricted in that employees reported in it cannot have any other duties other than construction estimating during their work shift or work day.
Any employee working as an estimator and having any construction-related duties during the same work shift or day is to be reported separately in the applicable construction or erection classification for that entire work shift.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5002 Classification 5002.

5002-00 Booming and rafting logs

~~((Applies to establishments engaged in booming and rafting logs on water. Booming involves making a barrier in the water usually with existing floating logs tied together with rope or chain to enclose other free floating logs. This type of barrier is referred to as a bundle. Rafting involves the use of a boom boat or tugboat to push the bundles together and tow the bundles to a particular destination. The destination may be a port where logs are loaded directly onto vessels, or to a sawmill, lumber mill or log sorting yard. This classification includes the loading of logs into or out of the water when performed by employees of the booming and rafting business.~~

~~**Special note:** Care should be exercised prior to assignment of this classification as the workers may be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act.))~~

Applies to:

Businesses engaged in booming and rafting logs on water.

Work activities include, but are not limited to:

- Booming by making a barrier in the water, usually with existing floating logs tied together with rope or chain to enclose other free floating logs. This type of barrier is referred to as a bundle.
- Rafting which involves using a boom boat or tugboat to push the bundles together and towing the bundles to a particular destination.
- Loading logs into or out of the water when performed by employees of the booming and rafting business.

The logs may be rafted to a port where they are loaded directly onto vessels or to a sawmill, lumber mill, or log sorting yard.

~~**Special note:** Care should be exercised prior to assignment of this classification as the workers may be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act.~~

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-5109 Classification 5109.

5109-46 Heavy machinery & equipment including locomotive engines: Manufacture or repair; Press roller recoating/resurfacing

~~((Applies to establishments engaged in the manufacture, assembly, and repair of heavy equipment. Machinery and equipment subject to this classification are usually made of steel and steel/iron castings and include, but are not limited to, bulldozers, dump trucks, graders, skidders, forklifts and logging towers. The component parts may weigh~~

several hundred to thousands of pounds. Overhead cranes are commonly used in the assembly process. Machinery used in the manufacturing, assembly, and repair includes, but is not limited to, boring mills, lathes, iron workers, welders/cutters, cut saws, and drills. Some establishments use CNC (computer numeric controlled) machinery; however, most establishments in this classification primarily use manual machinery and conventional welders/cutters. Other common operations covered by this classification include paint, welding, and electronic assembly areas. This classification also includes establishments that repair, recoat or resurface press rollers such as, but not limited to, the type rollers used by printing and paper making mills. Operations include repairing the interior shafts of the rollers, then grinding fiberglass or ceramic finishes until they are smooth. For rubber-coated surfaces, they remove the old rubber from the metal surface, sandblast the roller, then recoat it with new rubber. Most establishments that recoat the surface with rubber will mix and extrude their own rubber which is included in this classification when performed by employees of employers subject to this classification.

This classification excludes the manufacture of nonpassenger type vehicles such as semi-trucks which are to be reported in classification 3605; auto or passenger vehicle manufacturing which is to be reported in 3402. Semi-truck repair and service centers are to be reported separately in classification 6409.

Special note: Field work as well as shop work is contemplated as an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

5109-47 Heavy arms: Manufacturing or repair

Applies to establishments engaged in the manufacture or repair of heavy arms including large munitions. This classification applies to all types of guns 20 MM and larger including, but not limited to, aircraft guns, tank guns, naval guns, torpedoes and aircraft gun turrets.

Special note: Field work as well as shop work is contemplated as an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.)

Applies to:

- Businesses engaged in the manufacture, assembly, and repair of heavy equipment. Machinery and equipment subject to this classification are usually made of steel and steel/iron castings.
- Businesses that repair, recoat, or resurface press rollers.

Equipment manufactured/assembled/repaired include, but are not limited to:

- Bulldozers;
- Dump trucks;
- Graders;
- Forklifts;
- Logging towers;
- Rollers used by printing and paper making mills;

- Skidders.

Component parts may weigh several hundred to thousands of pounds.

Machinery used include, but are not limited to:

- Boring mills;
- Cut saws;
- Drills;
- Iron workers;
- Lathes;
- Overhead cranes;
- Welders/cutters.

Some establishments use CNC (computer numeric controlled) machinery; however, most establishments in this classification primarily use manual machinery and conventional welders/cutters.

Work activities include, but are not limited to:

- Electronics assembling;
- Machining;
- Painting;
- Welding;
- Repairing the interior shafts of press rollers;
- Grinding fiberglass or ceramic finishes until they are smooth;
- For rubber-coated press roller surfaces, removing the old rubber from the metal surface, sandblasting the roller, then recoating it with new rubber. Most establishments that recoat the surface with rubber will mix and extrude their own rubber which is included in this classification when performed by employees of employers subject to this classification.

Most establishments that recoat the surface with rubber will mix and extrude their own rubber which is included in this classification when performed by employees of employers subject to this classification.

Special note: In addition to shop work, field work is an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

Exclusions:

- Manufacture of nonpassenger type vehicles such as semi-trucks is classified in 3605;
- Auto or passenger vehicle manufacturing is classified in 3402;
- Semi-truck repair and service centers are classified in 6409.

5109-47 Heavy arms: Manufacturing or repair

Applies to:

Manufacture or repair of heavy arms including large munitions 20 mm and larger.

Equipment manufactured include, but are not limited to:

- All types of guns 20 mm and larger;
- Aircraft guns;
- Aircraft gun turrets;
- Naval guns;
- Tank guns;
- Torpedoes.

Special note: In addition to shop work, field work is an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field

vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5204 Classification 5204.

5204-58 Railroad car: Manufacturing or repair

Railroad car wheel: Manufacturing or repair

~~((Applies to establishments engaged in the manufacture or repair of railroad cars and/or railroad car wheels. This classification includes the repair or rebuilding of freight cars, repair of railroad rolling stock tank cars or passenger cars. Inspections of railroad cars are usually conducted prior to making the repairs. Types of repair include, but are not limited to, electrical, mechanical (such as for brakes), or welding (such as on handrails and steps).))~~

Applies to:

• Businesses engaged in the manufacture or repair of railroad cars and/or railroad car wheels.

Work activities include, but are not limited to:

- Inspecting railroad cars which is usually conducted prior to making repairs;
- Repair or rebuilding of freight cars, repair of railroad rolling stock tank cars or passenger cars;
- Repairing electrical, and mechanical (such as brakes) parts or systems;
- Welding (such as on handrails and steps).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6201 Classification 6201.

6201-00 Mortuaries, funeral homes, crematoriums

~~((Applies to establishments engaged in all operations of a mortuary, funeral home or crematorium. Funeral homes generally provide a complete burial service which includes, but is not limited to, preparing the deceased for cremation or burial (this could include beautician services), providing the casket and burial plot, conducting the funeral service, providing transportation for family of the deceased, and providing flowers. Employments in this classification include drivers, organists, singers and other musicians, embalmers, and crematory employees if they are employed by the funeral home.~~

~~This classification excludes cemetery operations which are to be reported separately in classification 6202.))~~

Applies to:

Businesses engaged in all operations of a mortuary, funeral home, or crematorium.

Funeral homes generally provide a complete burial service.

Occupations include, but are not limited to:

- Crematory employees, if they are employed by the funeral home;
- Drivers;
- Embalmers;
- Organists, singers and other musicians.

Work activities include, but are not limited to:

- Preparing the deceased for cremation or burial (this could include beautician services);
- Providing the casket and burial plot;
- Conducting the funeral service;
- Providing transportation for family of the deceased;
- Providing flowers.

Exclusions:

- Cemetery operations are classified in 6202.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6203 Classification 6203.

6203-00 YMCA/YWCA institutions

~~((Applies to establishments engaged in the operation of a Young Men's or Young Women's Christian or Hebrew Associations. These are international community service organizations which generally respond to the needs of their communities. Typical operations include, but are not limited to, providing temporary residential facilities, swimming and exercise facilities, basketball courts, aerobic and fitness classes, child care, youth sports programs, social and educational programs, and day camp operations. Some facilities will provide a food and beverage service. This classification includes clerical office and sales personnel.~~

~~This classification excludes overnight camp operations which are to be reported separately in classification 6209.~~

6203-01 Boys or girls clubs

~~Applies to establishments engaged in operating boys or girls clubs. These clubs are nonprofit organizations which provide recreation, cultural enrichment, health and physical education, and personal adjustment services for boys and girls from 6 to 18 years of age. These facilities differ from location to location, but many offer gymnasiums, organized sports programs, day camp operations, game rooms, library or computer rooms, classes and various other supervised activities where young people can spend time. Some facilities also have swimming pools and offer meal programs. This classification includes clerical office and sales personnel.~~

~~This classification excludes overnight camp operations which are to be reported separately in classification 6209.)~~

Applies to:

Businesses engaged in the operation of a Young Men's or Young Women's Christian or Hebrew Associations.

These are international community service organizations which generally respond to the needs of their communities.

Operations include, but are not limited to:

- Aerobic and fitness classes;
- Basketball courts;

- Child care;
- Clerical office;
- Day camp operations;
- Food and beverage operations;
- Providing temporary residential facilities;
- Sales personnel;
- Social and educational programs;
- Swimming and exercise facilities;
- Youth sports programs.

Exclusions:

- Overnight camp operations are classified in 6209.

6203-01 Boys or Girls Clubs**Applies to:**

Businesses engaged in operating Boys or Girls Clubs.

These clubs are nonprofit organizations which provide recreation, cultural enrichment, health and physical education, and personal adjustment services for boys and girls from six to 18 years of age.

Operations include, but are not limited to:

- Classes and various other supervised activities where young people can spend time;
- Clerical office;
- Computer rooms;
- Day camp operations;
- Game rooms;
- Gymnasiums;
- Library rooms;
- Meal programs;
- Organized sports programs;
- Sales personnel;
- Swimming pools.

Exclusions:

- Overnight camp operations are classified in 6209.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6402 Classification 6402.**6402-00 Stores: Grocery, N.O.C. - Retail**

~~((Applies to establishments engaged in providing retail sale of a full line of grocery items. To qualify for this classification an establishment must provide for retail sale all of the following items: Canned goods, dairy products, a full line of fresh meats, frozen meats, vegetables and fruits, baked goods, carbonated and alcoholic beverages, juices, household cleaners, laundry and health care products. These stores will generally be of the supermarket size but there may be some smaller stores which are also to be included in this classification if all of the items listed above are in their inventory. Also included in this classification, when performed by employees of the store, are in-store departments or services that are provided for the customer's convenience such as in-store bakeries, delis, video rental, film developing, florists, and wine departments.~~

~~This classification excludes in-store pharmacies which are to be reported separately in classification 6406, espresso street carts or stands and lunch counter/restaurant operations which are to be reported separately in classification 3905; convenience store or mini-markets that do not sell all of the above mentioned items which are to be reported separately in classification 6403; grocery or convenience stores with self-service gasoline operations which are to be reported separately without division of hours in classification 3410; and specialty retail stores that sell only dairy products, fruits and vegetables, soft drinks or wine and/or liquor which are to be reported separately in classification 6403.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.))~~

Applies to:

Businesses providing retail sale of a full line of grocery items.

To qualify for this classification a business **must** provide for retail sale all of the following items listed below.

These stores will generally be of the supermarket size but there may be some smaller stores which are also to be included in this classification if all of the items listed below are in their inventory. Also included in this classification, when performed by employees of the store, are in-store departments or services that are provided for the customer's convenience such as in-store bakeries, delis, video rental, film developing, florists, and wine departments.

Products that must be for retail sale include, but are not limited to:

- Baked goods;
- Canned goods;
- Carbonated and alcoholic beverages;
- Dairy products;
- Frozen meats;
- Full line of fresh meats;
- Health care products;
- Household cleaners;
- Juices;
- Laundry products; and
- Vegetables and fruits.

Exclusions:

- In-store pharmacies are classified in 6406;
- Espresso street carts or stands and lunch counter/restaurant operations are classified in 3905;
- Convenience store or mini-markets that do not sell all of the above mentioned items are classified in 6403;
- Grocery or convenience stores with self-service gasoline are classified in 3410; and
- Specialty retail stores that sell only dairy products, fruits and vegetables, soft drinks or wine and/or liquor are classified in 6403.

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-6608 Classification 6608.

6608-00 Motion picture production

~~((Applies to establishments engaged in the production of motion pictures. Elaborate sets are often constructed at the production sites and filmed with cameras mounted on large booms. This classification includes all employment such as, but not limited to, staff who design and construct the sets, actors and entertainers, stunt personnel, camera and lighting personnel, musicians, writers, costume designers, make-up artists, film editing, directors, producers, sales personnel, and clerical office employees.~~

~~This classification excludes video taping or production work conducted in a studio or on location for a television broadcasting company which is to be reported separately in classification 4502.))~~

Applies to:

Businesses engaged in the production of motion pictures.

Work activities often include constructing elaborate sets at the production sites and filming with cameras mounted on large booms.

Employments include, but are not limited to:

- Actors and entertainers;
- Camera and lighting personnel;
- Clerical office employees;
- Costume designers;
- Directors;
- Film editors;
- Makeup artists;
- Musicians;
- Producers;
- Sales personnel;
- Set builders;
- Set designers;
- Stunt personnel;
- Writers.

Exclusions:

• Video taping or production work conducted in a studio or on location for a television broadcasting company is classified in 4502.

Special note: Care should be exercised when assigning this classification as the entertainers or musicians may be exempt from coverage as specified in RCW 51.12.020(9).

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

WAC 296-17A-6902 Classification 6902.

6902-02 Logging road: Construction or maintenance

~~((Applies to the construction or maintenance of logging roads. For purposes of this classification logging roads are roads for which the basic use is to provide access into a timber or forest area and for the transporting of logs out of the area by truck. This classification includes roads constructed on public or private land in connec-~~

tion with timber sales or logging, such as roads being constructed in accordance with the State Department of Natural Resources or the United States Forest Service timber sales. Logging roads contemplated by this classification are typically cleared and graded with a bulldozer and then paved with gravel, crushed rock, or large stones. Logging roads are generally engineered to support the weight of logging equipment and trucks but not necessarily to handle speeds and volume of nonlogging traffic. As a rule, these roads are not surfaced with asphalt or paved with concrete. Classification 6902 includes log road maintenance which is limited to keeping the road bed in good repair such as regrading and fill to repair washouts and ruts.

This classification excludes:

- The felling of timber, bucking and delimiting of all trees in the proposed roadway or adjacent shoulder and all other logging activities which are to be reported separately in classification 5001;
- All excavation, land clearing or grading as a part of roadway construction not in connection with a logging road which is to be reported separately in classification 0101;
- Construction of asphalt roads which is to be reported separately in classification 0210;
- Construction of concrete roads which is to be reported separately in classification 0214;
- Mechanical roadside brushing or machine application of chemicals which is to be reported separately in classification 5006; and
- Permanent shop or yard operations which are to be reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.

6902-03 Logging railroad: Construction or maintenance

Applies to the construction or maintenance of logging railroads. For purposes of this classification logging railroads are side tracks and spurs which feed into existing railroad main lines. Log trucks haul logs from the cutting site to the logging railroad where they are loaded onto the logging railroad cars and transported to the main line. This classification includes railroads constructed on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the State Department of Natural Resources or the United States Forest Service timber sales. The construction includes clearing and grading with use of a bulldozer; laying dirt, rock and ballast; laying ties and track; and installing crossover frogs, switches, switch stands, switch mechanisms and crossing planks as needed. This classification also includes log railroad maintenance which is limited to keeping the railroad line operational.

This classification excludes:

- The falling of timber, bucking and delimiting of all trees in the proposed roadway or adjacent shoulder, and all other logging activities which are to be reported separately in classification 5001;
- The construction of railroad lines not in connection with a logging railroad which is to be reported separately in classification 0101;
- Construction of logging roads which is to be reported separately in classification 6902-02; and
- Maintenance and storage of equipment and material at a permanent yard or shop which is to be reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.)

Applies to:

Construction or maintenance of logging roads. For purposes of this classification logging roads are roads for which the basic use is to provide access into a timber or forest area and for the transporting of logs out of the area by truck.

Work activities include, but are not limited to:

- Constructing roads on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the state department of natural resources or the United States Forest Service timber sales;
- Clearing and grading logging roads with a bulldozer;
- Paving with gravel, crushed rock, or large stones;
- Maintaining logging roads which is limited to keeping the road bed in good repair, such as regrading and fill to repair washouts and ruts.

Note: As a rule, these logging roads are built to support the weight of logging equipment and trucks, but not necessarily to handle speeds and volume of nonlogging traffic. These roads are not surfaced with asphalt or paved with concrete.

Exclusions:

- Felling of timber, bucking, and delimiting of all trees in the proposed roadway or adjacent shoulder and all other logging activities are classified in 5001;
- All excavation, land clearing, or grading as a part of roadway construction not in connection with a logging road is classified in 0101;
- Construction of asphalt roads is classified in 0210;
- Construction of concrete roads is classified in 0214;
- Mechanical roadside brushing or machine application of chemicals is classified in 5006; and
- Worker hours engaged in permanent shop or yard operations is reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.

6902-03 Logging railroad: Construction or maintenance

Applies to:

Construction or maintenance of logging railroads. For purposes of this classification logging railroads are side tracks and spurs which feed into existing railroad main lines.

Work activities include, but are not limited to:

- Constructing railroads on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the state department of natural resources or the United States Forest Service timber sales;
- Clearing and grading with a bulldozer;
- Laying dirt, rock, and ballast;
- Laying ties and track;
- Installing crossover frogs, switches, switch stands, switch mechanisms, and crossing planks as needed; and
- Maintaining logging railroads, which is limited to keeping the railroad line operational.

Exclusions:

- Felling of timber, bucking, and delimiting of all trees in the proposed roadway or adjacent shoulder, and all other logging activities are classified in 5001;
- Construction of railroad lines not in connection with a logging railroad is classified in 0101;
- Construction of logging roads are classified in 6902-02; and

• Worker hours engaged in maintenance and storage of equipment and material at a permanent yard or shop is reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6903 Classification 6903.

6903-03 Aerial spraying, seeding, crop dusting, or firefighting

~~((Applies to the flying crew of establishments engaged in aerial spraying, seeding, crop dusting, and firefighting, which involves the low altitude release of agricultural chemicals, seeds, water, or fire retardant compound.~~

~~This classification excludes aircraft ground crew operations which are to be reported separately in classification 6804.)~~

Applies to:

Flying crew of businesses engaged in aerial spraying, seeding, crop dusting, and firefighting.

Work activities include, but are not limited to:

Flight crew activities for low altitude release of:

- Agricultural chemicals;
- Fire retardant compound;
- Seeds;
- Water.

Exclusions:

- Aircraft ground crew operations are classified in 6804.

OTS-5577.2

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3407 Classification 3407.

3407-00 Gas or oil dealers, wholesale or retail, including fuel oil, propane or butane

~~((Applies to establishments engaged in the distribution of fuel oil, liquefied petroleum gases (propane and butane) and gasoline on a retail or wholesale basis. Dealers may maintain their own storage tanks on their premises and receive gas or oil through a pipeline from a refinery, by rail or tanker truck, or they may receive their supplies from a separate distribution facility. Gas dealers will deliver gasoline and lubricating oils directly to retail gas stations in large tank trucks. Fuel oil is delivered to customers by pump trucks and pumped into the customer's tank. Liquefied petroleum gases (LPG) is delivered to customers by pump truck or in prefilled cylinders. Some dealers may also provide, through sale or lease, the installation and maintenance of gas appliances which is included in this classification~~

when done by employees of an employer subject to this classification. This classification includes the incidental mixing or blending of oil or gas with additives, the draining, repair, installation or removal of customer's oil tanks, maintenance contracts and emergency repairs.

This classification excludes the repair, installation or removal of underground oil storage tanks by a contractor which is to be reported separately in classification 0108; the installation or repair of furnaces by a contractor which is to be reported separately in classification 0307; and the construction or repair of exterior commercial storage tanks by a contractor which is to be reported separately in classification 0508.

3407-01 Asphalt, bitumen dealers

Applies to establishments engaged as dealers of asphalt and bitumen which can be either a by-product of petroleum refining or found in naturally occurring deposits. Dealers may grind and mix the raw asphalt and bitumen with sand, gravel or limestone to produce a mixture which can be suitable for some paving applications or sold to an asphalt paving material manufacturer for further processing. The product is usually not packaged, but sold by the truckload. When this mixing process is conducted in connection with an oil/petroleum refining operation, it is to be reported in classification 3407-03.

This classification excludes the mining or quarrying of raw materials which is to be reported separately as applicable; establishments engaged in the manufacture of asphalt mixtures for road paving which is to be reported separately in classification 3407-18; and the paving of roads or other surfaces which is to be reported separately in classification 0210 or 0212.

3407-02 Processing waste oils, solvents, antifreeze, paints, and similar materials

Applies to establishments engaged in processing waste oils, used solvents, antifreeze, paints, and similar hazardous materials. Mobile recycling units engaged in similar activities are included in this classification. The processes used by establishments in this classification are similar in that a sample of the waste material usually has been laboratory tested so the composition of the substance is known prior to either being picked up by the establishment's own trucks, or delivered by the customer. Depending on the material and quantity, it may arrive in drums or by tanker trucks. Incoming oil is pumped into waste oil storage tanks where water settles out. After the settling process, the oil goes to treatment tanks where it is heated to boil off remaining water and vaporize gases. There are other methods of recycling the oil, using chemicals, which are also included in this classification. The end product can be used in industrial burners or for cutter fuel. Solvents and antifreeze can be recycled through a distilling process, and used again.

This classification excludes establishments engaged in hazardous/toxic material processing or handling, not described above, such as processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land - classification 0101), and reprocessing or handling of low-level radioactive materials which are to be reported separately in classification 4305.

3407-03 Oil refining - Petroleum, including manufacture of products from oil; gasohol - Distilling or refining

Applies to establishments engaged in the operation of oil refineries. Oil refineries receive crude oil by pipeline, truck or tanker

ship, process it into products such as, but not limited to, gasoline, natural gas, kerosene, fuel oil, lubricating oils and asphalt, and distribute it to their customers. Current refining processes involve four basic steps; separation, conversion, treating and blending. These processes are highly automated and involve the use of receiving tanks, processing units, distillation towers, intermediate storage and pipelines. Included within the scope of this classification are any additional processing methods used to produce the finished secondary products. This classification includes the production of gasohol and the preliminary separation of crude oil (called "topping") at a well site by a contractor.

This classification excludes oil refinery maintenance by a contractor which is to be reported separately in classification 0603; construction of an oil refinery or storage tanks which is to be reported separately in classification 0508; cleaning of storage tanks by a contractor which is to be reported separately in classification 0504; operation of an oil well and incidental preliminary separation of crude oil ("topping") at the well site which is to be reported separately in classification 3407-05; and operation of an oil pipeline only which is to be reported separately in classification 3407-12.

3407-04 Asphalt or tar -- Distilling or refining

Applies to establishments engaged in the production of commercial asphalt or tar. Products produced in this classification differ from those in 3407-01 in that products in 3407-04 are refined to, and sold as, a liquid or semiliquid. Low grade crude oil, petroleum distillate (by-product of oil refining operations) and coal-tar oil must be treated in a heat exchange system and still before undergoing a final processing in a fractioning tower (a process also used in oil refining) to separate the asphalt or tar. Finished products and by-products include, but are not limited to, asphalt roofing compound, asphalt for use in manufacturing felt roofing paper, trinidad asphalt used in road paving, tar to be used in various paving and waterproofing applications and coal tar which is used in drugs and waterproofing products. When this process is conducted in connection with an oil/petroleum refining operation, it is to be reported in classification 3407-03.

This classification excludes contractors engaged in distillery/refinery maintenance which is to be reported separately in classification 0603; contractors engaged in cleaning of storage tanks which is to be reported separately in classification 0504; and construction of refineries and storage tanks which is to be reported separately in classification 0508.

3407-05 Gas or oil well operation

Applies to establishments or contractors engaged in the routine operation of producing oil or gas wells. Work contemplated by this classification includes, but is not limited to, all routine operation and maintenance required such as, but not limited to, land clearing and excavation to create slush pits, fire walls, pipe laying, machinery and equipment (such as oil, gas or water pumps) installation and operation, preliminary separation of crude oil, and monitoring of oil or gas production when performed by employees of an employer having operations subject to this classification.

This classification excludes derrick or storage tank erection which is to be reported separately in classification 0508; oil well drilling which is to be reported separately in classification 0103; excavation by a contractor which is to be reported separately in classification 0101; pipe laying by a contractor which is to be reported

separately in classification 0107; cleaning of storage tanks by a contractor which is to be reported separately in classification 0504; machinery or equipment maintenance by a contractor which is to be reported separately in classification 0603; and the operation of an oil or gas pipeline only which is to be reported separately in classification 3407-12.

3407-07 Oil or gas wells -- Cementing

Applies to establishments engaged in providing cementing services to oil and gas well drilling operations. Cementing is required to fill the space between the outer edge of the hole being drilled and the metal casing which is being installed in segments to line the hole. The mixed cement is pumped, under pressure, down into the casing. When it reaches the bottom of the existing hole, the continuing pressure forces it upward around the outside of the casing to the top of the hole or to where it will meet the last segment to have been cemented. This will serve to keep the casing stable and also to prevent any leakage of oil or gas from the casing into the surrounding soil when the well is operational. Cementing contractors can use the drilling derrick already in place to support their machinery. This classification also includes filling the entire well hole with cement, after the casing is disassembled and removed, when the well is no longer operational.

This classification excludes oil or gas well cementing done by employees of an oil well drilling contractor which is to be reported separately in classification 0103.

3407-12 Oil or gas pipeline operation

Applies to establishments engaged in operating an oil or gas pipeline. The pipeline may be used to transport crude oil from a well to a refinery or processed oil from a refinery to a remote storage facility or customer. Work contemplated by this classification includes, but is not limited to, operating and maintaining above or below-ground pipelines, feeder and distribution lines, pumping stations to maintain flow, storage facilities, and meters and monitoring equipment. This classification is appropriate whether the pipeline is being operated by the owner or a contractor.

This classification excludes oil or gas pipeline operations done in connection with an oil refinery which are to be reported in classification 3407-03; oil or gas pipeline operations done in connection with the operation of an oil or gas well which are to be reported in classification 3407-05; contractors engaged in above or below ground pipe installation which is to be reported separately in classification 0107; construction of oil refineries and/or storage tanks which is to be reported separately in classification 0508; and the installation of pumps or monitoring equipment which is to be reported separately in classification 0603.

3407-17 Asphalt roofing material -- Manufacturing

Applies to establishments engaged in the manufacture of asphalt mixtures used in the preparation of building or roofing papers and shingles from raw materials purchased from others. The operations may include the incidental distillation of the asphalt flux.

Asphalt Roofing Materials — Some plants are fully automated, with controls, gauges, and valves housed in a separate room. Liquid asphalt flux, purchased from refineries, is hauled in by tanker trucks owned either by the refineries or the manufacturer, and is pumped directly into "air stills" or into holding tanks. An oxidation process takes

place in the air stills. The asphalt flux is heated, then pumped into cooling tanks before it is pumped through pipes to a bulk loading/delivery station or to another area for further use. The processed hot asphalt may also be pumped into a blending tank where it can be blended with mineral spirits or naphtha to produce "cut-back" asphalt which is used in "cold asphalt" applications, or mixed with water to obtain an emulsified asphalt which "sets up" when it cools.

Asphalt Impregnated Felt Roofing Paper — Large rolls of felt paper are unrolled and automatically fed into a saturation tank where the paper is impregnated with the hot asphalt mixture. The paper then goes through several large rollers for cooling and smoothing, and is finally cut to size and rolled to produce rolls of asphalt coated felt roofing paper ready for use.

Asphalt Fiberglass Shingles — Limestone is delivered in bulk by suppliers' trucks and blown pneumatically into storage tanks. In the production processes it goes through a heater and is then mixed with the liquid asphalt. The production line starts with huge rolls of fiberglass which are fed continuously (roll ends spliced together automatically) into the process. The asphalt mixture is crushed into both sides of the fiberglass by large rollers and the excess asphalt scraped off. Granules are applied to the top side and sand is applied to the back side of the asphalt coated fiberglass. The coated fiberglass is then run through coolers. Granules are pressed into the coating and the material is fed/hung into "loopers" for additional cooling. After cooling, the coated material is automatically cut into strips, cut to specified width and length, "dragon teeth" (notches) cut, asphalt applied to the back of the "dragon teeth," then the "teeth" applied to the shims, and the asphalt shingle is complete.

This classification excludes asphalt or bitumen dealers who are to be reported separately in classification 3407-01, asphalt or tar distilling or refining operations which are to be reported separately in classification 3407-04, and asphalt paving material manufacturers who are to be reported separately in classification 3407-18.

3407-18 Asphalt paving material - Manufacturing

Applies to establishments engaged in the manufacture of asphalt mixtures used for road paving operations from raw materials purchased from others. This classification applies only to the operation of the asphalt plant which usually consists of a loader, a control operator, and a maintenance worker. (To qualify for classification 3407-18 the maintenance worker's duties must relate only to the asphalt plant.) This classification does not apply to workers involved in pit, crusher and bunker operations. The operations may include the incidental distillation of the asphalt flux which is included in this classification. Asphalt paving mixture plants are usually fully automated and controlled from a central control room overlooking the production area. Sand and gravel may be obtained from the producer's own gravel pit or purchased from independent suppliers. Liquid asphalt is obtained directly from either the refineries or from an asphalt dealer. Suppliers usually deliver raw materials to the manufacturing plant.

In a *batch plant*, each batch is made separately. The stored aggregate is loaded into hoppers, then carried by conveyor through a dust collecting system prior to entering the dryer drum. In the dryer drum the aggregate is dried and heated to specified temperatures before being conveyed to the "batcher" where it is screened, then stored in bins. Heated liquid asphalt is weighed to precise specifications required for that batch. Measured amounts of aggregate and liquid as-

phalt are in a pug mill to desired state, then discharge into trucks to be delivered to customers or stored in a silo.

In a *drum plant* the mix is continuous with several of the processing steps being combined in the drum. The measured cold aggregate is fed directly into the burner end of the drum for drying and heating. A measured amount of hot oil asphalt is dumped into the drum and mixed with the heated aggregate. The mixed product is conveyed into storage silos where it is held until pumped into delivery trucks.

This classification excludes workers involved in pit, crusher and bunker operations who are to be reported separately in classification 0112; paving contractors who manufacture asphalt paving material for their own use who are to be reported separately in the appropriate construction classifications; asphalt or bitumen dealers who are to be reported separately in classification 3407-01; asphalt or tar distilling or refining operations which are to be reported separately in classification 3407-04; and establishments engaged in the manufacture of asphalt roofing material which are to be reported separately in classification 3407-17.

Special note: If the product is manufactured by paving contractors for sale to the general public, as well as for their own use, and if the employees operating the asphalt plant have no other duties, classification 3407-18 would apply to the asphalt plant employees.

3407-19 Dewatering sludge; advanced recycling of plastics and tires; On-site oil filtering

Applies to establishments engaged in providing mobile dewatering services to waste sludge producers through the use of mobile decanter centrifuges. The centrifuges and control instrumentation is highly specialized equipment designed specifically for the dewatering of sludge to concise quality specifications as determined by the client. Mobile decanter centrifuge installations include dredging and pumping equipment, flocculation systems, and portable electrical supply, as well as trucks for transferring the dewatered sludge. The ultimate disposal of the dewatered sludge is provided by either a subcontractor or by the client. The dewatered sludge can be used in a wide variety of applications such as composting and land reclamation. This classification also applies to establishments engaged in advanced recycling of plastics and tires. The process is similar to a small refinery. Either pelletized or shredded plastic material made from used consumer materials, or shredded used tire material may be used. The plastic or tire material is fed into a retort which decomposes the material using heat without oxygen, so the material is not burned. As the hot vapor gas cools, it is condensed into oil. Oil from the plastic processing is shipped to refineries where it will be refined further into plastic base material. Oil from the chipped tires is usually sold to oil blending companies. This classification also applies to on-site oil filtering. The usual process is filtering the oil through a filtering mechanism and then back into its original tank. This service may be performed on ships, in industrial plants, or at gas or oil storage facilities.

This classification excludes the "rig up/down" process (unloading and setting up the equipment at a new job site, and tearing it down and loading it on trucks to haul it to the next job site) which is to be reported separately in classification 0603.)

Applies to:

Businesses engaged in the distribution of fuel oil, liquefied petroleum gases (propane and butane), and gasoline on a retail or wholesale basis.

Dealers may maintain their own storage tanks on their premises and receive gas or oil through a pipeline from a refinery, by rail or tanker truck, or they may receive their supplies from a separate distribution facility.

Work activities include, but are not limited to:

- Delivering gasoline and lubricating oils directly to retail gas stations in large tank trucks;
- Delivering fuel oil to customers by pump trucks; pumping the fuel oil into the customer's tank;
- Delivering liquefied petroleum gases (LPG) to customers by pump truck or in prefilled cylinders;
- Draining, repairing, installing, or removing of customer's oil tanks;
- Incidental mixing or blending of oil or gas with additives;
- Selling or leasing of gas appliances and maintenance contracts, including installing, maintaining, and emergency repairing of the gas appliances which is included in this classification when done by employees of an employer subject to this classification.

Exclusions:

- Repair, installation, or removal of underground oil storage tanks by a contractor is classified in 0108;
- Installation or repair of furnaces by a contractor is classified in 0307;
- Construction or repair of exterior commercial storage tanks by a contractor is classified in 0508.

3407-02 Processing waste oils, solvents, antifreeze, paints, and similar materials; dewatering sludge; advanced recycling of plastics and tires; on-site oil filtering

Applies to:

- Businesses processing waste oils, used solvents, antifreeze, paints, and similar hazardous materials;
- Businesses providing mobile dewatering services to waste sludge producers through the use of mobile decanter centrifuges;
- Businesses for the advanced recycling of plastics and tires;
- Mobile recycling units engaged in similar activities are included in this classification, whether on ships, in industrial plants, or at gas or oil storage facilities.

Processes include, but are not limited to:

- Sampling the waste material for laboratory testing so the composition of the substance is known prior to pick up and processing;
- Picking up or accepting delivery from customers, which may be in drums or in tanker trucks;
- Pumping incoming oil into waste oil storage tanks where water settles out;
- Heating the oil in treatment tanks to boil off remaining water and vaporize gases;
- Using chemical methods of recycling oil is also included in this classification;
- Recycling solvents and antifreeze through a distilling process for reuse;

- Dewatering sludge to concise quality specifications as determined by the client;
- Advanced recycling of plastics and tires similar in process to a small refinery: Either pelletized or shredded plastic material made from used consumer materials, or shredded used tire material may be used; the plastic or tire material is fed into a retort which decomposes the material using heat without oxygen, so the material is not burned; as the hot vapor gas cools, it is condensed into oil;
- On-site oil filtering, which includes filtering the oil through a filtering mechanism and then back into its original tank.

Products manufactured include, but are not limited to:

- Oil which can be used in industrial burners or for cutter fuel;
- Dewatered sludge can be used in a wide variety of applications such as composting and land reclamation. The ultimate disposal of the dewatered sludge is provided by either a subcontractor or by the client;
- Oil from the plastic processing is shipped to refineries where it will be refined further into plastic base material;
- Oil from the chipped tires is usually sold to oil blending companies.

Equipment used include, but are not limited to:

- Flatbed, tanker, or other specialized trucks;
- Centrifuges and control instrumentation that is highly specialized and designed specifically for the dewatering of sludge;
- Mobile decanter centrifuge installations include dredging and pumping equipment, flocculation systems, and portable electrical supply;
- Filtering systems;
- Retorts - Which decompose the material using heat without oxygen;
- Treatment tanks;
- Waste oil storage tanks.

Exclusions:

- Worker hours unloading and setting up the equipment at a new job site, and tearing it down and loading it on trucks to haul it to the next job site (the "rig up/down" process) must be reported separately in classification 0603;
- Worker hours processing or handling hazardous/toxic material, not described above, such as processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land - Classification 0101), and reprocessing or handling of low-level radioactive materials must be reported separately in classification 4305.

3407-03 Oil refining - Petroleum, including manufacture of products from oil; gasohol - Distilling or refining

Applies to:

- Businesses operating oil refineries;
- Preliminary separation of crude oil (called "topping") at a well site by a contractor.

Processes include, but are not limited to:

- Receiving crude oil by pipeline, truck, or tanker ship;
- Refining processes involving four basic steps: Separation, conversion, treating, and blending; these processes are highly automated;
- Distributing to customers.

Included within the scope of this classification are any additional processing methods used to produce the finished secondary products.

Equipment used include, but are not limited to:

- Distillation towers;
- Intermediate storage;
- Pipelines;
- Processing units;
- Receiving tanks.

Products manufactured include, but are not limited to:

- Asphalt;
- Fuel oil;
- Gasohol;
- Gasoline;
- Kerosene;
- Lubricating oils;
- Natural gas.

Exclusions:

- Oil refinery maintenance by a contractor is classified in 0603;
- Cleaning of storage tanks by a contractor is classified in 0504;
- Operation of an oil well or pipeline, and incidental preliminary separation of crude oil ("topping") at the well site is classified in 3407-05;
- Worker hours constructing an oil refinery or storage tanks must be reported separately in classification 0508.

3407-05 Gas or oil well operation; oil or gas pipeline operation

Applies to:

Businesses operating oil or gas wells or pipelines, whether operated by the owner or a contractor.

Pipelines may be used to transport crude oil from a well to a refinery, or processed oil from a refinery to a remote storage facility or customer.

Work activities include, but are not limited to:

- Land clearing and excavation to create slush pits and fire walls;
- Pipe laying;
- Equipment installation and operation;
- Preliminary separation of crude oil;
- All routine operation and maintenance for wells, above and below ground pipelines, feeder and distribution lines, pumping stations, storage facilities, meters, and monitoring equipment;
- Monitoring of oil or gas production when performed by employees of an employer having operations subject to this classification.

Equipment used include, but are not limited to:

- Meters and monitoring equipment;
- Oil, gas, and water pumps.

Exclusions:

- Oil or gas pipeline operations in connection with an oil refinery is classified in 3407-03;
- Derrick, storage tank, or oil refinery construction is classified in 0508;
- Oil well drilling is classified in 0103;

- Excavation by a contractor is classified in 0101;
- Pipe laying by a contractor is classified in 0107;
- Cleaning of storage tanks by a contractor is classified in 0504;
- Machinery or equipment maintenance by a contractor is classified in 0603;
- Above or below ground pipe installation by contractors is classified in 0107;
- Worker hours installing pumps or monitoring equipment must be reported separately in classification 0603.

3407-07 Oil or gas wells - Cementing

Applies to:

Businesses providing cementing services to oil and gas well drilling operations.

Cementing is required to fill the space between the outer edge of the hole being drilled and the metal casing which is being installed in segments to line the hole.

Work activities include, but are not limited to:

- Pumping mixed cement, under pressure, down into the casing. When it reaches the bottom of the existing hole, the continuing pressure forces it upward around the outside of the casing to the top of the hole or to where it will meet the last segment to have been cemented. This will serve to keep the casing stable and also to prevent any leakage of oil or gas from the casing into the surrounding soil when the well is operational;
- Cementing contractors can use the drilling derrick already in place to support their machinery;
- Filling the entire well hole with cement, after the casing is disassembled and removed, when the well is no longer operational.

Exclusions:

- Oil or gas well cementing done by employees of an oil well drilling contractor is classified in 0103.

3407-17 Asphalt, bitumen dealers; asphalt or tar - Distilling or refining; asphalt roofing material - Manufacturing; asphalt paving material - Manufacturing

Applies to:

- Businesses producing commercial asphalt or tar;
- Businesses manufacturing asphalt mixtures used in the preparation of building or roofing papers and shingles from raw materials purchased from others;
- Businesses manufacturing asphalt mixtures used for road paving operations from raw materials purchased from others;
- Businesses operating as dealers of asphalt and bitumen which can be either a by-product of petroleum refining or found in naturally occurring deposits.

Work activities include, but are not limited to:

- Refining asphalt or tar to a liquid or semiliquid;
- Separating the asphalt or tar - Low grade crude oil, petroleum distillate (by-product of oil refining operations) and coal-tar oil must be treated in a heat exchange system and still before undergoing a final processing in a fractioning tower (a process also used in oil refining);
- Incidental distillation of asphalt flux;

- Grinding and mixing raw asphalt and bitumen with sand, gravel, or limestone;
- Manufacturing asphalt roofing materials - Some plants are fully automated, with controls, gauges, and valves housed in a separate room. Liquid asphalt flux, purchased from refineries, is hauled in by tanker trucks owned either by the refineries or the manufacturer, and is pumped directly into "air stills" or into holding tanks. An oxidation process takes place in the air stills. The asphalt flux is heated, then pumped into cooling tanks before it is pumped through pipes to a bulk loading/delivery station or to another area for further use. The processed hot asphalt may also be pumped into a blending tank where it can be blended with mineral spirits or naphtha to produce "cut-back" asphalt which is used in "cold asphalt" applications, or mixed with water to obtain an emulsified asphalt which "sets up" when it cools;
- Manufacturing asphalt impregnated felt roofing paper - Large rolls of felt paper are unrolled and automatically fed into a saturation tank where the paper is impregnated with the hot asphalt mixture. The paper then goes through several large rollers for cooling and smoothing, and is finally cut to size and rolled to produce rolls of asphalt coated felt roofing paper ready for use;
- Manufacturing asphalt fiberglass shingles - Limestone is delivered in bulk by suppliers' trucks and blown pneumatically into storage tanks. In the production processes it goes through a heater and is then mixed with the liquid asphalt. The production line starts with huge rolls of fiberglass which are fed continuously (roll ends spliced together automatically) into the process. The asphalt mixture is crushed into both sides of the fiberglass by large rollers and the excess asphalt scraped off. Granules are applied to the top side and sand is applied to the back side of the asphalt coated fiberglass. The coated fiberglass is then run through coolers. Granules are pressed into the coating and the material is fed/hung into "loopers" for additional cooling. After cooling, the coated material is automatically cut into strips, cut to specified width and length, "dragon teeth" (notches) cut, asphalt applied to the back of the "dragon teeth," then the "teeth" applied to the shims, and the asphalt shingle is complete;
- Manufacturing asphalt paving mixture - Plants are usually fully automated and controlled from a central control room overlooking the production area. Sand and gravel may be obtained from the producer's own gravel pit or purchased from independent suppliers. Liquid asphalt is obtained directly from either the refineries or from an asphalt dealer. Suppliers usually deliver raw materials to the manufacturing plant.

In a batch plant, each batch is made separately. The stored aggregate is loaded into hoppers, then carried by conveyor through a dust collecting system prior to entering the dryer drum. In the dryer drum the aggregate is dried and heated to specified temperatures before being conveyed to the "batcher" where it is screened, then stored in bins. Heated liquid asphalt is weighed to precise specifications required for that batch. Measured amounts of aggregate and liquid asphalt are in a pug mill to desired state, then discharge into trucks to be delivered to customers or stored in a silo.

In a drum plant, the mix is continuous with several of the processing steps being combined in the drum. The measured cold aggregate is fed directly into the burner end of the drum for drying and heating. A measured amount of hot oil asphalt is dumped into the drum and

mixed with the heated aggregate. The mixed product is conveyed into storage silos where it is held until pumped into delivery trucks.

Products manufactured include, but are not limited to:

- Asphalt or asphalt mixture used for paving applications or sold to an asphalt paving material manufacturer for further processing;
- Asphalt fiberglass shingles;
- Asphalt impregnated felt roofing paper;
- Asphalt roofing compound;
- Asphalt used in manufacturing felt roofing paper;
- Coal tar which is used in drugs and waterproofing products;
- Tar to be used in various paving and waterproofing applica-

tions.
Products are usually not packaged, but sold by the truckload.

Exclusions:

- Operations conducted in connection with an oil/petroleum refinery are classified in 3407-03;
- Distillery/refinery maintenance by contractors is classified in 0603;
- Cleaning of storage tanks by contractors is classified in 0504;
- Paving of roads or other surfaces is classified in 0210 or 0212;
- Mining or quarrying of raw materials which is to be reported separately as applicable;
- Constructing oil refineries and/or storage tanks is classified in 0508;
- Paving or roofing contractors who manufacture asphalt paving or roofing material for their own use must be reported separately in the appropriate construction classifications.

Special note: If the product is manufactured by paving or roofing contractors for sale to the general public, as well as for their own use, and if the employees operating the asphalt plant have no other duties, classification 3407-17 would apply to the asphalt plant employees.

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

WAC 296-17A-4804 Classification 4804.

~~((4804-00 Farms: Poultry~~

~~**Applies to:**~~

~~Establishments engaged in operating poultry farms of all types.~~

~~**Work in this classification includes, but is not limited to:**~~

- ~~• Breeding and raising birds for human consumption or for sale for research, laboratories or egg production farms;~~
- ~~• Sheltering;~~
- ~~• Tending;~~
- ~~• Feeding and watering birds;~~
- ~~• Raising crops for feed;~~
- ~~• Erecting or mending fences, cages and pens;~~
- ~~• Breeding birds;~~
- ~~• Cleaning pens and cages;~~
- ~~• Transporting animals to market;~~
- ~~• Maintaining or installing sprinkler or irrigation systems.~~

What activities are not included in this classification?

- Feed milling operations (report in classification 2101);
- Butchering and processing of poultry (report in classification 3304); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-03 Farms: Egg production**Applies to:**

Establishments engaged in operating egg production farms.

Work in this classification includes, but is not limited to:

- Raising brood stock for future egg production or sale to other farms;
- Sheltering;
- Tending;
- Feeding and watering birds;
- Raising crops for feed;
- Erecting or mending fences, cages and pens;
- Breeding birds;
- Cleaning pens and cages;
- Related packing or grading of eggs;
- Transporting eggs to market;
- Maintaining or installing sprinkler or irrigation systems.

Notes:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

- Feed milling operations (report in classification 2101);
- Butchering and processing of poultry (report in classification 3304); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).

What is a farm labor contractor?

- ~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and~~
- ~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~**What risk classification are farm labor contractors to report in?**~~

- ~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
- ~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

~~**4804-05 Farms: Fur bearing animals**~~

~~**Applies to:**~~

~~Establishments engaged in raising fur bearing animals for pelts (skins) or for sale.~~

~~**Work in this classification includes, but is not limited to:**~~

- ~~• Sheltering;~~
- ~~• Tending;~~
- ~~• Breeding;~~
- ~~• Feeding;~~
- ~~• Killing animals;~~
- ~~• Fleshing and drying skins;~~
- ~~• Erecting or mending fences;~~
- ~~• Erecting, maintaining and cleaning kennels or cages;~~
- ~~• Veterinary care when performed by employees of an employer subject to this classification.~~

~~**Typical animals:**~~

Chinchilla	Mink
Fox	

~~**What activities are not included in this classification?**~~

- ~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).~~

~~**What is a farm labor contractor?**~~

- ~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as feeding animals, grooming, and cleaning kennels; and~~
- ~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~**What risk classification are farm labor contractors to report in?**~~

- ~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
- ~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

~~**4804-06 Farms: Worm**~~

~~**Applies to:**~~

~~Establishments engaged in raising worms.~~

~~**Work in this classification includes, but is not limited to:**~~

- ~~• Preparation of soils and soil mixes;~~

- Maintaining proper soil moisture to encourage worm growth and reproduction;

- Digging worms;
- Sorting and packaging.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-07 Farms: Apiaries (bees)

Applies to:

Establishments engaged in raising honey bees for making honey, or for sale to growers or farmers who use them as pollinators, or to laboratories or research centers. Also included is collection of bees and bee hives from unrelated properties, and raising of insects such as crickets.

Work in this classification includes, but is not limited to:

- Sheltering;
- Building structures to accommodate bee hives;
- Collecting honey from hives;
- Growing vegetation and plants to support the production of honey or population of bees;
- Processing and packaging of honey, honey comb and bees wax.

Notes:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

~~What risk classification are farm labor contractors to report in?~~

- ~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
- ~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

~~4804-08: Aviaries (birds)~~**~~Applies to:~~**

~~Establishments engaged in raising and selling all varieties of birds including game birds and exotic birds.~~

~~Work in this classification includes, but is not limited to:~~

- ~~• Sheltering;~~
- ~~• Tending;~~
- ~~• Feeding and watering;~~
- ~~• Raising crops for feed or protective covering;~~
- ~~• Erecting or mending fences, cages, coops, and pens;~~
- ~~• Breeding birds;~~
- ~~• Cleaning pens, cages, and coops;~~
- ~~• Transporting birds to market;~~
- ~~• Maintaining or installing sprinkler or irrigation systems;~~
- ~~• Store operations.~~

~~Typical birds:~~

~~Game-birds
Emu~~

~~Ostrich~~

~~What activities are not included in this classification?~~

- ~~• Feed milling operations (report in classification 2101); and~~
- ~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).~~

~~What is a farm labor contractor?~~

- ~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning pens, weeding, planting, irrigating and fertilizing; and~~
- ~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~What risk classification are farm labor contractors to report in?~~

- ~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
- ~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

~~4804-09 Egg grading, candling and packing~~**~~Applies to:~~**

~~Establishments engaged in grading, candling, and packing eggs for retail or wholesale markets.~~

~~Work in this rate classification includes, but is not limited to:~~

- ~~• Sorting;~~
- ~~• Grading;~~
- ~~• Washing;~~
- ~~• Candling;~~

- ~~Packing eggs into cartons or crates;~~
- ~~Transporting eggs to market;~~
- ~~Store operations located at or near packaging facility.~~

What activities are not included in this classification?

- ~~Establishments engaged in egg breaking (report in classification 3902).~~

Special note:

- ~~Establishments assigned to this classification are not engaged in raising poultry or operating egg production farms.~~
- ~~The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.)~~

4804-00 Farms: Poultry, aviaries (birds), and fur bearing animals

Applies to:

- Businesses engage in poultry farms operations, breeding and raising birds for human consumption, for sale, for research laboratories, or for egg production farms.
- Businesses engaged in raising fur-bearing animals for pelts (skins) or for sale.
- Businesses engaged in raising and selling all varieties of birds including game birds and exotic birds.

Typical animals:

<u>Chickens</u>	<u>Chinchilla</u>
<u>Ducks</u>	<u>Emu</u>
<u>Fox</u>	<u>Game birds</u>
<u>Geese</u>	<u>Mink</u>
<u>Ostrich</u>	<u>Turkeys</u>

Work in this classification includes, but is not limited to:

- Breeding;
- Sheltering;
- Tending;
- Feeding and watering;
- Raising crops for feed or protective covering;
- Erecting or mending fences, cages, coops, kennels, and pens;
- Cleaning cages, coops, kennels, or pens;
- Transporting animals to market;
- Maintaining or installing sprinkler or irrigation systems;
- Killing animals;
- Fleshing and drying skins;
- Veterinary care when performed by employees of an employer subject to this classification.

Store operations:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as, but not limited to, those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

Exclusions:

- Feed milling operations are classified in 2101;

• Businesses engaged in butchering and processing of poultry are classified in 3304;

• Contractors hired by a farm to install, repair or build any farm equipment or structures are classified in the classification applicable to work being performed.

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-03 Farms: Egg production

Applies to:

Businesses operating egg production farms.

Work in this classification includes, but is not limited to:

• Raising brood stock for future egg production or sale to other farms;

• Sheltering;

• Tending;

• Feeding and watering birds;

• Raising crops for feed;

• Erecting or mending fences, cages and pens;

• Breeding birds;

• Cleaning pens and cages;

• Related packing or grading of eggs;

• Transporting eggs to market;

• Maintaining or installing sprinkler or irrigation systems.

Store operations:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as, but not limited to, those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

Exclusions:

• Feed milling operations are classified in 2101;

• Businesses engaged in butchering and processing of poultry are classified in 3304;

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-07 Farms: Apiaries (bees), worms, and insects**Applies to:**

- Businesses raising honey bees for making honey, for sale to growers or farmers who use them as pollinators, or for laboratories or research centers.
- Businesses raising insects, such as crickets.
- Businesses raising worms.

Work in this classification includes, but is not limited to:

- Sheltering;
- Building structures to accommodate bee hives;
- Collecting honey from farm hives;
- Collecting bees and bee hives from unrelated properties;
- Growing vegetation and plants to support the production of honey or population of bees, worms, or insects;
- Processing and packaging of honey, honeycomb and bees wax;
- Preparation of soils and soil mixes;
- Maintaining proper soil moisture to encourage worm growth and reproduction;
- Digging worms;
- Sorting and packaging.

Store operations:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as, but not limited to, those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

Exclusions:

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating, and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-09 Egg grading, candling and packing**Applies to:**

Businesses engaged in grading, candling, and packing eggs for retail or wholesale markets.

Work in this rate classification includes, but is not limited to:

- Sorting;
- Grading;
- Washing;
- Candling;
- Packing eggs into cartons or crates;
- Transporting eggs to market;
- Store operations located at or near packaging facility.

Exclusions:

- Businesses engaged in egg breaking are classified in 3902.
- Businesses engaged in raising poultry are classified in 4804-00.
- Businesses engaged in operating egg production farms are classified in 4804-03.

Special note: The farm labor contractor provision is not applicable to this classification as these establishments are not engaged in a farming operation.

AMENDATORY SECTION (Amending WSR 23-23-155, filed 11/21/23, effective 1/1/24)

WAC 296-17A-6121 Classification 6121.**6121-00 Acute care hospitals - Without a fully implemented safe patient handling program (to be assigned only by the hospital underwriter)**

Applies to establishments that meet the definition of an acute care hospital contained in WAC 296-17-35203(7) but that are not using the required patient lifting and moving equipment as part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). This classification contemplates all necessary and usual employments found in hospitals including, but not limited to, admissions, clerical, and sales staff, medical professionals, pharmacy staff, dietitians and food preparation staff, and laundry, housekeeping, custodial and grounds keeping staff.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-6501 Classification 6501.

Barbers, salons, tattoo shops

~~((Establishments in this classification offer personal grooming and beautification services for their customers. These businesses frequently advertise as a day spa but they do **not** operate baths, soaking pools, or steam rooms. Employers in this classification offer the following types of services:~~

- ~~• Barber;~~
- ~~• Beauty salon — Cosmetology;~~
- ~~— Hair styling;~~
- ~~— Hair removal, electrolysis, laser, threading, waxing;~~
- ~~— Manicure, pedicure;~~
- ~~— Esthetician services, facials, skin care, body scrubs;~~
- ~~— Tanning.~~
- ~~• Tattoo shop;~~
- ~~— Body art;~~
- ~~— Body piercing;~~
- ~~— Permanent cosmetics;~~
- ~~— Tattooing.~~

~~When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501. Barber and beauty services may also be performed at a customer's home or in hospitals. This classification includes clerical office and sales employees of the business.~~

~~Excluded from this classification are:~~

- ~~• Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.~~
- ~~• Massage therapy, foot massage, or reflexology businesses that are assigned classification 6109.~~

~~**Note:** Salons in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.~~

~~For administrative purposes, classification 6501 is divided into the following subclassifications:~~

~~**6501-00 Barber shops**~~

~~**6501-01 Beauty, tanning, and nail salons**~~

~~**6501-02 Tattoo, piercing shops.))**~~

~~**6501-00 Barber shops**~~

Applies to:

~~Businesses engaged in barber services for customers. Barber services may be performed in a barber shop, at a customer's home, or in other environments such as hospitals. This classification includes clerical office and sales employees of the business.~~

~~**Services offered may include, but are not limited to:**~~

- Hair cutting;
- Hair removal using electrolysis, lasers, threading, shaving, or waxing;
- Hair styling.

Exclusions:

- Massage therapy, foot massage, or reflexology businesses are classified in 6109;
- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

Note: Businesses in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.

6501-01 Beauty, tanning, and nail salons**Applies to:**

- Businesses engaged in beauty salon services.
- Businesses engaged in nail salon services.
- Tanning salon businesses.

Beauty and nail services may be performed in a shop, at a customer's home, or in other environments such as hospitals. This classification includes clerical office and sales employees of the business.

Services offered may include, but are not limited to:

- Esthetician services such as facials, skin care, or body scrubs;
- Hair cutting;
- Hair removal using electrolysis, lasers, threading, shaving, or waxing;
- Hair styling;
- Manicures;
- Pedicures;
- Tanning.

When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501.

Exclusions:

- Massage therapy, foot massage, or reflexology businesses are classified in 6109;
- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

Note: Salons in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.

6501-02 Tattoo, piercing shops**Applies to:**

Businesses engaged in providing tattooing services. Tattoo services may be performed in a shop or in other environments such as tattoo show or conventions. This classification includes clerical office and sales employees of the business.

Services offered may include, but are not limited to:

- Body art;
- Body piercing;

- Permanent cosmetics;
- Tattoo design;
- Tattooing.

When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501.

Exclusions:

- Massage therapy, foot massage, or reflexology businesses are classified in 6109;
- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

Note: While salons in classification 6501 often operate by renting or leasing a booth or station to licensed individuals who are booth renters, tattooists and piercers are not booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-6506 Classification 6506.

6506-00 Photography studios

~~((Applies to establishments engaged in the operation of photography studios. Photographers use a wide range of still and motion cameras; services include both sitting portraits and motion pictures of special events, and are photographed in the studio or at outside locations. Photographers may develop and print photographs in their own studio darkrooms, or they may contract out to an independent photo finishing shop. Studios may also offer services such as retouching negatives, restoration work, mounting and framing pictures, and enlarging photographs. This classification includes glamour and boudoir photography studios which often have a salon where clients have their hair styled and make-up applied. This classification also includes booths, usually located in malls, that will produce photography novelty items such as, but not limited to, cups, shirts and calendars from photographs. Photographs may be taken on location or the customer may bring a picture or negative in to have the image applied to the particular item. Video taping services performed in connection with photography studios is included in this classification.~~

~~This classification excludes delivery drivers who are to be reported separately in classification 1101; and establishments engaged in video taping services not in connection with photography studio operations which are to be reported separately in classification 6303.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

6506-01 Film processing shops

~~Applies to establishments engaged in processing film. Operations include, but are not limited to, processing film, reproducing negatives, prints or slides, enlarging pictures, mounting and finishing, storing and mixing chemicals, and inspecting and packaging finished products. Finishing processes may be manual or automated. These shops may offer retail type film developing services to commercial laboratories that provide mass film developing and/or one-hour processing services.~~

~~This classification excludes delivery drivers who are to be reported separately in classification 1101.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

6506-02 Motion picture film exchanges

~~Applies to establishments engaged in the operation of motion picture film exchanges. These exchanges receive fully processed movie films from producers, which they catalogue and store for subsequent rental or sale to commercial movie theaters, television networks, or other groups. Film exchanges have a projection room where customers may view the film before they book it. When rented films are returned, they are inspected and repaired as necessary. Repair usually consists of cutting out damaged section and splicing the film with special adhesive and pressure.~~

~~This classification excludes delivery drivers who are to be reported separately in classification 1101 and video rental stores which are to be reported separately in classification 6411.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

6506-03 Microfilming

~~Applies to establishments engaged in providing microfilming services for others. Microfilming reproduces and preserves documents onto film in greatly reduced sizes to allow the storage of information in less space. Documents are photographed; the film is developed in automatic processing units, then stored on reels or cartridges or cut into microfiche. Establishments subject to this classification usually offer related services such as, but not limited to, advice on setting up micrographic systems, the sale or rental of supplies or equipment, storage facilities, keypunch services, film restoration, and/or the destruction of source materials.~~

~~This classification excludes drivers who are to be reported separately in classification 1101.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.))~~

Applies to:

- Businesses operating photography studios, including glamour and boudoir photography studios which often have a salon where clients have their hair styled and make-up applied;
- Businesses operating booths, usually located in malls, which will produce photography novelty items from photographs taken on location or from customers' photographs or negatives.

Services include, but are not limited to:

- Production of novelty items such as calendars, cups, shirts;
- Photographs taken in the studio or at outside locations;
- Sitting portraits;
- Video of special events performed by photography studios.

Work activities include, but are not limited to:

- Contracting work out to an independent photo finishing shop;
- Developing and printing of photographs in the studio darkroom;
- Enlarging photographs;
- Mounting and framing pictures;

- Restoration work;
- Retouching negatives;
- Using a wide range of still and motion cameras.

Exclusions:

- Worker hours for delivery drivers must be reported separately in classification 1101;
- Videotaping not in connection with photography studio operations is classified in 6303.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-03 Microfilming, film processing shops, and motion picture film exchanges**Applies to:**

- Businesses providing microfilming services for others. Microfilming reproduces and preserves documents onto film in greatly reduced sizes to allow the storage of information in less space;
- Businesses processing photography film;
- Businesses operating motion picture film exchanges.

Work activities include, but are not limited to:

- Photographing documents;
- Developing microfilm in automatic processing units;
- Storing the microfilm on reels or cartridges;
- Cutting the microfilm into microfiche;
- Destroying of source materials;
- Providing storage facilities for microfiche;
- Advising customers on setting up micrographic systems;
- Sale or rental of microfilming supplies or equipment;
- Restoring microfilm;
- Key punching services, which transcribe data onto punched tape media;
- Processing film, whether manual or automated, for commercial labs or direct to the consumer;
- Enlarging pictures;
- Mounting and finishing pictures;
- Reproducing negatives, prints, or slides;
- Storing and mixing chemicals;
- Inspecting and packaging finished products;
- Receiving fully processed movies from producers;
- Cataloging and storing movies for rental or sale to commercial movie theaters, television networks, or other groups;
- Inspection and repair of movie film, including cutting and splicing;
- Using a projection room for customers to view the movie before they book it.

Exclusions:

- Worker hours for delivery drivers must be reported separately in classification 1101;
- Video rental stores are classified in 6411.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-6705 Classification 6705.

6705-00 Ski facilities

~~((Applies to establishments engaged in operating facilities for all types of skiing such as downhill or cross country. Work contemplated by this classification includes, but is not limited to, parking attendants, operation of artificial snow making machines, ski tows and lifts, ski patrols, ski instruction, conducting excursions, trail grooming, and snow compacting when performed by employees of an employer subject to this classification. This classification also applies to establishments that operate facilities for other similar recreational activities such as snow tubing, windboard sailing, and snowmobiling.~~

~~This classification excludes ski rental and sales operations which are to be reported separately in classification 6406; overnight lodging facilities which are to be reported separately in classification 4905; food and beverage services which are to be reported separately in classification 3905; ski instructors who are to be reported separately in classification 6705-04 and ticket sales and collection personnel who work exclusively in an office environment or ticket sales booth and have no other duties in or about the employer's premises who may be reported separately in classification 4904.~~

~~6705-03 Excursions — Outdoor recreational, N.O.C.~~

~~Applies to establishments engaged in providing outdoor recreational excursions and guide services that are not covered by another classification (N.O.C.). Outdoor excursions include, but are not limited to, fishing, hunting, hiking, horseback riding, backpacking, mountain climbing, camping, river rides, white water rafting, and teaching survival skills. Employees of employers subject to this classification will routinely include course instructors and guides who conduct excursions. Work contemplated by this classification may include, but not be limited to, accompanying customers on excursions, teaching first aid, survival skills, hygiene, navigation and other courses in connection with outdoor activities, and maintaining equipment.~~

~~This classification excludes snow skiing excursions or wind board sailing instruction which are to be reported separately in classification 6705-04.~~

~~6705-04 Ski instructors~~

~~Applies to establishments who are engaged in providing instruction only in snow/water skiing, surf boarding, sailing and wind sail boarding. Work contemplated by this classification includes, but is not limited to, providing appropriate equipment (skis, snowboards, canoes, etc.) maintaining the equipment, and teaching the technique. This classification excludes establishments that provide the full scope of ski resort services, with or without ski instructors, which are to be reported separately in classification 6705-00 subject to all appropriate exclusions, and the operation of any other full service resort or campground, with or without instructors, which is to be reported separately as applicable.~~

~~6705-05 Ski patrols~~

~~Applies to establishments engaged in providing *ski patrolling services only*. Work contemplated by this classification includes, but is not limited to, routine surveillance of a ski facility to ensure~~

~~safe conditions and sufficient snow cover, encouraging safe use of the facility by patrons, and conducting search and rescue for lost or injured skiers either by contract with a ski resort or on an on-call basis in an emergency. This classification excludes establishments that provide the full scope of ski resort services, with or without a ski patrol, which are to be reported separately in classification 6705-00.)~~)

Applies to:

- Businesses operating facilities for:
 - Skiing such as downhill or cross country;
 - Snow tubing;
 - Snowmobiling; and
 - Wind board sailing.
- Businesses providing ski patrolling services.

Work activities include, but are not limited to:

- Conducting excursions;
- Operating artificial snow making machines, ski tows or lifts;
- Parking attendants;
- Snow compacting;
- Ski instruction;
- Ski patrolling; and
- Trail grooming.

Exclusions:

- Food and beverage services are classified in 3905;
- Ski instructors operating independent of the ski facility are classified in 6705-04;
- Ski rental and sales operations are classified in 6406;
- Overnight lodging facilities are classified in 4905;
- Ticket sales and collection personnel who work exclusively in an office environment or ticket sales booth and have no other duties in or about the employer's premises may be classified in 4904.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

6705-03 Excursions - Outdoor recreational, N.O.C.

Applies to:

Businesses providing outdoor recreational excursions and guide services that are not covered by another classification (N.O.C.).

Work activities include, but are not limited to:

- Accompanying and guiding customers on excursions;
- Maintaining equipment;
- Providing course instruction; and
- Teaching first aid, survival skills, hygiene, navigation, and other courses in connection with outdoor activities.

Types of outdoor excursions include, but are not limited to:

- Backpacking;
- Camping;
- Fishing;
- Hiking;
- Horseback riding;
- Hunting;
- Mountain climbing;
- River rides;
- White water rafting; and
- Teaching survival skills.

Exclusions:

• Snow skiing excursions or wind board sailing instruction are classified in 6705-04.

6705-04 Ski instructors**Applies to:**

Businesses providing instruction only in snow/water skiing, surf boarding, sailing and wind sail boarding.

Work activities include, but are not limited to:

- Maintaining equipment;
- Providing appropriate equipment (skis, snowboards, canoes, etc.); and
- Teaching the technique.

Exclusions:

• Businesses that provide the full scope ski resort services, with or without ski instructors, are classified in 6705-00 subject to all appropriate exclusions; and

• Full service resorts or campgrounds, with or without instructors, are reported separately as applicable.

WSR 24-23-082
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 19, 2024, 9:36 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The purpose of this rule making is to implement requirements of SHB 2127, chapter 90, Laws of 2024, under chapter 296-19A WAC, Vocational rehabilitation. This rule making corrects RCW subsection references, updates benefit amounts for job modification and pre-job accommodations, and clarifies the ability of vocational counselors to help workers access skill enhancement training and how these skills are reported.

The department of labor and industries (L&I) is also conducting a separate rule making to amend chapters 296-16 WAC, Employer—Worker reemployment incentives, and 296-16A WAC, Stay-at-work program, to implement 2024's SHB 2127.

The following sections are amended to reference the correct subsection under RCW 51.32.095 and 51.32.096: WAC 296-19A-040 What vocational rehabilitation services require authorization?, 296-19A-050 What are vocational recovery services?, 296-19A-065 What is an ability to work assessment?, 296-19A-090 What are vocational rehabilitation plan development services?, 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims?, 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed?, 296-19A-130 What are the requirements for a forensic evaluation?, 296-19A-191 When may the department authorize prejob accommodations?, and 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1?

WAC 296-19A-050 What are vocational recovery services? Clarify that vocational counselors have the ability to help workers access skill enhancement training.

WAC 296-19A-070 What information must an assessment report include? Clarify how vocational counselors report skills obtained from skill enhancement training.

WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed? Clarify how vocational counselors report skills obtained from skill enhancement training.

WAC 296-19A-190 How much is available for job modification assistance? Maximum amount allowed for job modifications is increased from \$5,000 to \$10,000.

WAC 296-19A-192 How much is available for prejob accommodations? Maximum amount allowed for prejob accommodations is increased from \$5,000 to \$10,000.

WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers? Replace RCW 51.32.099 with RCW 51.32.096. SHB 1496, chapter 137, Laws of 2015, added a new section codified as RCW 51.32.096, replacing RCW 51.32.099, which subsequently expired.

Citation of Rules Affected by this Order: Amending WAC 296-19A-040, 296-19A-050, 296-19A-065, 296-19A-070, 296-19A-090, 296-19A-098, 296-19A-100, 296-19A-130, 296-19A-190, 296-19A-191, 296-19A-192, 296-19A-570, and 296-19A-629.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.096, and 51.32.250.

Adopted under notice filed as WSR 24-20-112 on October 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 13, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2024.

Joel Sacks
Director

OTS-5882.1

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-040 What vocational rehabilitation services require authorization? (1) All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Vocational recovery; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Self-insurers may also make any of the listed referrals and/or provide any other services they consider appropriate to address priorities listed in RCW 51.32.095(~~((2))~~) (3). Each referral is a separate authorization for vocational rehabilitation services.

(2) Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-050 What are vocational recovery services? (1) Vocational recovery services are intended to ensure appropriate support is provided to an industrially injured or ill worker so that they return to work, continue to work, or are enabled to become employable at gainful employment consistent with the priorities listed in RCW 51.32.095 (~~((2))~~) (3)(a) through (g) with the highest priority given to returning a worker to employment:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills; and
- (g) Modification of a new job with a new employer.

(2) In each case referred to a vocational provider, the vocational recovery services include work disability prevention best practices identified by the department and periodically published through policy bulletins available from the department and recorded with the office of the code reviser. These best practice services include, but are not limited to, the following which must be addressed by the vocational provider prior to consideration of when and which of the priorities listed in subsection (1) of this section may be most appropriate for the worker:

- (a) Identify and, as appropriate, use their skills and professional judgment along with accessing available community resources that do not impose a cost on the department or injured worker to proactively address barriers that may interfere with or prevent the worker from returning to any work, including transitional or modified work;
- (b) Assist the worker in identifying return to work goals and steps necessary to achieve those goals, including participation by the worker in optional skill enhancement training that may be authorized and paid for by the department or self-insured employer; and
- (c) Assess the worker's potential preferred worker status, educating the worker and employer(s) on transitional and permanently modified work, the Washington stay at work program, and the preferred worker benefits, if appropriate.

(3) Vocational recovery services also include, but are not limited to, those described below specific to the priorities listed in RCW 51.32.095(~~((2))~~) (3).

(a) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), in evaluating the priorities listed in RCW 51.32.095 (~~((2))~~) (3)(a) through (d) which involve return to work with the same employer, the vocational provider will:

(i) Except for return to work at the previous job with the same employer, assist the worker with job readiness and job placement services, if applicable;

(ii) Plan and work with the worker, the employer, the attending provider, and the department or self-insured employer to identify and pursue possible return to work opportunities and any necessary job modifications and prejob accommodations, when applicable;

(iii) Work with the worker and the employer to develop job description(s) or job analysis(es) that include the physical demands necessary to perform the work. Vocational providers must use their professional judgment when determining whether a job description or job analysis is appropriate, except during an ability to work assessment as outlined in WAC 296-19A-065 during which job analyses are required;

(iv) Based on the job description or descriptions, obtain approval from the attending provider that the job or jobs are appropriate for the worker's accepted condition(s), when applicable;

- (v) Assist the employer with an offer of employment, and assist with resolution of disagreements about job offers, if needed;
 - (vi) Assist the employer with accessing return to work incentives such as those offered through the Washington stay at work and preferred worker programs, when applicable;
 - (vii) Document all offers of employment and the worker's response;
 - (viii) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.
- (b) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), for the priorities listed in RCW 51.32.095 (~~((2))~~) (3)(e) through (g) which involve return to work at a job with a new employer, the vocational provider will:
- (i) Assist the worker with job readiness and job placement services, and in identifying opportunities through WorkSource partners and other organizations that support return to work;
 - (ii) Assist the worker to develop a resume or work history as a tool to identify the worker's knowledge, skills, and interests;
 - (iii) Plan and work with the worker, the new employer, if applicable, the attending provider, and the department or self-insured employer on necessary job modifications and prejob accommodations;
 - (iv) Work with the worker and with the new employer, if applicable, to develop a job description that includes the physical demands necessary to perform the work;
 - (v) Based on the job description or descriptions, obtain medical approval from the worker's attending provider that the job or jobs are appropriate for the worker's accepted conditions;
 - (vi) Assist the new employer with an offer of employment, if needed;
 - (vii) Assist the new employer with accessing return to work incentives such as those offered through the preferred worker program, if applicable;
 - (viii) Document all offers of employment and the worker's response;
 - (ix) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.
- (4) To ensure appropriate assistance has been provided or offered to the worker so that they return to work, continue to work, or are enabled to become employable as outlined in subsections (2) and (3) of this section the vocational provider must document their efforts to provide the services outlined in subsection (3)(a)(i) through (viii) and (b)(i) through (ix) of this section, including offers of employment and the worker's response(s), prior to requesting a referral for an ability to work assessment as described in WAC 296-19A-065.

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-065 What is an ability to work assessment? (1)

Workers may be referred to a vocational provider for assessment activities at the discretion of the department or self-insured employer to determine if a worker is eligible to receive vocational rehabilitation plan development services. Assessment activities will generally occur after all of the following:

(a) The vocational provider has applied the services outlined in WAC 296-19A-050 What are vocational recovery services?;

(b) The services did not result in a return to work or a valid job offer or offers; and

(c) The vocational provider has documented such efforts.

(2) During an ability to work assessment, the vocational provider will maintain regular communication with the worker, addressing the worker's concerns, assisting to resolve barriers, as appropriate, and updating them on assessment activities to include information requested and/or collected.

(3) Assessment activities may include, but are not limited to, the following:

(a) Documenting work restrictions;

(b) Performing job analyses;

(c) Evaluating the worker's ability to work at the job of injury or any other job including an assessment of the worker's transferable skills;

(d) Conducting labor market surveys as defined in WAC 296-19A-140;

(e) Evaluating the worker's ability to benefit from plan development services, including any and all vocational testing considered necessary to support a recommendation for retraining eligibility, if appropriate;

(f) Documenting a recommendation to the department or self-insured employer on whether the worker is employable at gainful employment, consistent with RCW 51.32.095 (~~((2))~~) (3)(a) through (g) or whether vocational plan development is both necessary and likely to make the worker employable at gainful employment;

(g) Assessing the worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit; and

(h) If a worker indicates an interest in returning to work and, in the professional judgment of the vocational provider, the worker has the necessary skills and abilities to do so consistent with their medical restrictions, the vocational provider may provide those services listed in WAC 296-19A-050 as they deem appropriate.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-070 What information must an assessment report include? (1) The assessment report must include information and evaluation of the worker's:

(a) Age;

(b) Education, including information about education level, courses or transcripts, licenses, and certifications or registrations that the worker may have obtained in the past;

(c) Complete work history, addressing any gaps in employment;

(d) Transferable skills and experience, whether obtained from prior employment, prior courses and training, prior vocational rehabilitation services or plans, or nonwork related activities such as hobbies and/or volunteer experience;

(e) Skills gained through skill enhancement training pursuant to RCW 51.32.095(2);

(f) Physical and mental conditions proximately caused by the worker's injury or occupational disease, and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

~~((f))~~ (g) Preexisting physical and mental conditions and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

~~((g))~~ (h) Postinjury physical and mental conditions and the effect of those nonrelated conditions on the worker's ability to work and/or benefit from vocational services;

~~((h))~~ (i) Wage and employment pattern at the time of injury;

~~((i))~~ (j) Barriers to employment, including whether the barriers can be removed and/or what is needed to address the barriers; and

~~((j))~~ (k) Labor market information as defined in WAC 296-19A-140.

(2) If the vocational rehabilitation provider cannot obtain one or more of the above categories of information, the provider must document in the report all efforts made to obtain the information and why the information could not be obtained.

(3) The report must address whether the worker can return to work in any capacity with the employer of injury or if the worker is employable at a new job with transferable skills.

(4) The assessment report must also include one of the following recommendations:

(a) **Able to work:** The worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis for the job or jobs at which the worker is able to work. When this is not obtainable, medically approved physical capacities information regarding the worker's ability to perform the job may be used; and

(iii) Labor market information as defined in WAC 296-19A-140 supporting the vocational rehabilitation provider's recommendation. Labor market information is not necessary when the worker is medically released to work for their job of injury at their previous work pattern;

(b) **Further services appropriate:** Vocational rehabilitation services are necessary and likely to enable the worker to become employable at gainful employment. The report must include:

(i) The specific return to work possibilities investigated and the reasons why they were ruled out which may include labor market information as defined in WAC 296-19A-140;

(ii) An analysis explaining how vocational rehabilitation plan development services are likely to enable the worker to become employable at gainful employment. The analysis may include but is not limited to:

(A) Vocational evaluation that addresses the worker's ability to benefit from vocational rehabilitation services;

(B) Information regarding the worker's medical and/or psychological condition(s);

(C) Labor market survey that was conducted as defined in WAC 296-19A-140;

(D) A discussion of the worker's participation in vocational activities to date; and

(E) Any other relevant information.

(c) **Further services not appropriate:** The worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) Barriers identified that will make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, psychological or other vocationally relevant information; and

(iv) Labor market information as defined in WAC 296-19A-140 and other information, as necessary, supporting the vocational rehabilitation provider's recommendations.

(d) **Return to work:** The worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work; and

(iv) The worker's monthly wages.

(5) When the worker has returned to work to the job of injury or is medically released without restrictions, the vocational rehabilitation provider should complete the closing report. No other work should be performed without the prior authorization of the referral source.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-090 What are vocational rehabilitation plan development services? Vocational rehabilitation plan development services are authorized to obtain the vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for a worker. The vocational rehabilitation provider will work with the worker in the development of the plan. Covered services include, but are not limited to:

(1) An initial meeting between the assigned vocational rehabilitation provider and the worker.

The assigned vocational rehabilitation provider must meet with the worker in person and fully inform the worker of the return to work priorities set forth in RCW 51.32.095(~~(+2)~~) (3) and of his or her rights and responsibilities under the workers' compensation vocational system. The vocational rehabilitation provider must use tools provided by the department in order to document this requirement.

Exception: For out-of-state referrals, the counselor providing direct services to the worker may be considered the assigned vocational rehabilitation provider for purposes of this meeting.

The rights and responsibilities include but are not limited to:

(a) The responsibility of the worker and vocational rehabilitation provider to cooperate with the plan development process and to submit a plan within (~~ninety~~) 90 calendar days;

(b) An explanation of the benefits available to the worker, including the right to choose to participate in retraining or elect option 2 benefits after a plan has been approved; and

(c) An explanation of the possible action the department or self-insured employer may take under RCW 51.32.110 and WAC 296-14-410 should the worker be determined to be noncooperative during the plan development process.

- (2) Vocational counseling and occupational exploration;
- (3) Identifying a potential job goal and estimating the training needs, resources, and expenses necessary to complete that goal;
- (4) Vocational testing; and
- (5) Coordinating with medical providers to obtain approval of job analyses and a release to participate in a vocational rehabilitation plan.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims? (1) The vocational rehabilitation provider must submit a written progress report to the department every (~~thirty~~) 30 calendar days from the date of the electronic referral or upon request of the department.

(2) The first progress report must document the assigned vocational rehabilitation provider met with the worker in person and fully informed the worker of the return to work priorities in RCW 51.32.095(~~(+2+)~~) (3) and his or her rights and responsibilities.

(3) All progress reports must summarize progress during the most recent reporting period and include the following:

(a) Description of the return to work goals explored, accepted or ruled out, including any jobs offered by the employer;

(b) Review of the return to work priorities being addressed;

(c) Summary of all actions taken, including progress on previously recommended actions;

(d) Description of the worker's participation in vocational activities and compliance with the responsibilities in WAC 296-19A-030(4).

(e) Identification and analysis of any barriers preventing completion of the referral; and

(f) Description of the specific actions the vocational rehabilitation provider intends to take to overcome barriers and the expected time frame to complete those actions.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed? When plan development services are completed, the vocational rehabilitation provider must submit one of the following reports:

(1) **Vocational rehabilitation plan.** The vocational rehabilitation provider must address the return to work priorities listed in RCW 51.32.095(~~(+2+)~~) (3) in the plan and explain why each preceding priority would not help the worker return to work. The vocational plan must also include the following information:

(a) An assessment of the worker's skills and abilities considering the worker's:

(i) Physical capacities and mental status;

(ii) Aptitudes;

(iii) Transferable skills gained through prior work experience, education, training, hobbies, volunteer experience or other nonwork related activities;

(iv) Skills gained through skill enhancement training pursuant to RCW 51.32.095(2);

(b) Proposed occupational goal;

(c) The services necessary to enable the worker to become employable in the labor market;

(d) Labor market survey as defined in WAC 296-19A-140, supportive of the worker's employability upon plan completion;

(e) Documentation of the time and costs required for completion of the plan;

(f) A medically approved job analysis for the proposed retraining job goal;

(g) A list of the skills the worker will acquire through retraining;

(h) A description of the services that will be provided prior to completion of the plan that will assist the worker to successfully transition to gainful employment;

(i) Any other information that may significantly affect the plan; and

(j) An accountability agreement signed by the vocational rehabilitation provider and worker that:

(i) Acknowledges that the vocational rehabilitation provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan;

(ii) Sets forth the vocational rehabilitation provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan;

(iii) Details expectations regarding progress, attendance, and other factors influencing completion of the plan; and

(iv) Acknowledges the worker understands that failure to comply with the agreed expectation will result in initiation of the process to suspend benefits in accordance with RCW 51.32.110 and WAC 296-14-410.

The vocational rehabilitation provider must use a statement approved by, or substantially similar to a statement used by, the department in order to document this agreement.

(2) **Closing report.** If the vocational rehabilitation provider has to stop plan development before a rehabilitation plan is approved, the vocational rehabilitation provider must submit a plan development closing report. The report must include:

(a) A list of the reasons the vocational rehabilitation provider cannot proceed with vocational rehabilitation plan development activities;

(b) Supporting documentation, such as: The goals that were researched, the job analyses that were developed, and/or labor market research as defined by WAC 296-19A-140 that was conducted; and

(c) An assessment addressing whether further vocational rehabilitation services may be necessary and likely to enable the worker to become employable.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-130 What are the requirements for a forensic evaluation? (1) A forensic evaluation constitutes an analysis of prior vocational services and the medical conditions of an injured worker, including pre and post injury, to determine whether any further vocational services are necessary and likely to enable the injured worker to become employable at gainful employment. Services that may be conducted in order to make a recommendation to the department may include, but are not limited to:

(a) Reviewing medical and vocational records;
(b) Obtaining, clarifying, and/or evaluating an industrially injured or ill worker's:
(i) Work and/or education history;
(ii) Skills, knowledge and aptitudes;
(iii) Physical capacities information related to the injury or other medical conditions;
(c) Identifying barriers to employment and possibilities for resolving the barriers;
(d) Identifying potential training needs and resources;
(e) Performing recommended services as needed to make a recommendation. These services may include conducting and writing job analyses, conducting labor market surveys, performing transferable skills analysis and performing occupational research.

(2) Recommendations must address the return to work priorities in RCW 51.32.095(~~(+2)~~) (3) and be documented by providing evidence of previous services and/or services performed under this referral.

(3) Development of a vocational rehabilitation plan is specifically precluded during a forensic evaluation.

(4) Any vocational provider that has provided any vocational rehabilitation services to the industrially injured or ill worker may not receive a referral for a forensic evaluation of that industrially injured or ill worker. Any vocational provider who begins a forensic evaluation cannot receive further vocational referrals for that worker.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-190 How much is available for job modification assistance? An amount not to exceed (~~(five thousand dollars)~~) \$10,000 from the department is available per worker per job or job site. If combined with prejob accommodations for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is (~~(five thousand dollars)~~) \$10,000. The employer may add to this amount with its own contribution.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-191 When may the department authorize prejob accommodations? As provided for in RCW 51.32.095(~~(+4)~~) (7), the supervi-

sor or the supervisor's designee, in his or her discretion, may authorize prejob accommodations when the following criteria are met:

- (1) The claim is open or in statutory pension status; and
- (2) The injured worker's attending doctor certifies that the prejob accommodations are medically necessary due to the effects of the accepted industrial condition; and
- (3) The prejob accommodation is medically necessary to enable the industrially injured or ill worker to:
 - (a) Participate in an approved retraining program; or
 - (b) Perform the essential functions of a job or a return to work goal in which the worker is seeking employment consistent with a completed retraining plan or the recommendations of an ability to work assessment; and
- (4) No employer-employee relationship exists.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-192 How much is available for prejob accommodations?

An amount not to exceed (~~five thousand dollars~~) \$10,000 from the department is available per worker per claim. If combined with job modifications for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is (~~five thousand dollars~~) \$10,000.

AMENDATORY SECTION (Amending WSR 09-24-108, filed 12/2/09, effective 1/2/10)

WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers? The department will consider all of the information received from the training provider in its application for a provider number, including documents provided pursuant to WAC 296-19A-560. The department will review this information to ensure that the training provider provides services that are consistent with chapter 296-19A WAC and RCW (~~51.32.099~~) 51.32.096. Furthermore, the department will consider the following factors:

- (1) Whether the training provider adequately supervises its instructors to ensure that they are qualified and provide appropriate training and instruction.
- (2) Whether any students have been injured as a result of the training provider's failure to use adequate safety protocols.
- (3) Whether any complaints have been filed by current or former students against the training provider or any of its instructors, and, if so, whether any of these complaints have merit.
- (4) Whether the training provider or any of its instructors have ever been convicted of a crime, and, if so, the nature of the crime.
- (5) Whether there is any other information indicating the training provider does not provide services to its students in a manner consistent with the objectives of chapter 296-19A WAC or RCW (~~51.32.099~~) 51.32.096.
- (6) In addition training providers preparing students for employment must address the following factors:

(a) Whether any of the training provider's programs allow a student to obtain an educational or occupational credential awarded upon successful completion of program, and, if so, the type of credential(s) awarded;

(b) Whether any of the training provider's programs have clearly identified program objectives, such as information regarding specific job titles the student will qualify for on completion of training, and the projected wages and benefits of those jobs;

(c) Training provider's job placement rate, including job title, wages, and benefits obtained by graduates; and

(d) Whether the program achieved at least a (~~thirty~~) 30 percent completion rate and a (~~fifty~~) 50 percent job placement rate in the three quarters following graduation for the most recent fiscal year.

AMENDATORY SECTION (Amending WSR 17-19-089, filed 9/19/17, effective 10/20/17)

WAC 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1? No. The worker cannot elect Option 1 after the department has issued the order confirming the worker's Option 2 election. Exception: A worker may elect Option 1 when the Option 2 election has been rescinded as provided by RCW 51.32.096 (~~(4)~~) (5)(b).

WSR 24-23-083
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 19, 2024, 9:39 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The department of labor and industries (L&I) is adopting permanent sections implementing RCW 49.17.510, related to the availability of automated external defibrillators (AEDs) for workers working on or near high voltage lines and equipment. L&I added the requirements in WAC 296-32-22515 First aid, and 296-45-125 Medical services and first aid.

The law requires employers who build, maintain, and operate high voltage systems 601 volts and over to have and maintain an AED on site where two or more employees are working in close proximity to high voltage lines and equipment. Employers who perform line clearance tree trimming activities are also included in this change. In WAC 296-45-125, without exceeding the statute, added a reference to existing standards around minimum approachable distances in high voltage work to WAC 296-45-325 regarding close proximity. L&I also connected close proximity in WAC 296-32-22515 by adding references to WAC 296-32-23518 and 296-32-23520.

The law requires AEDs to be available; L&I added references in each section to tie the availability of an AED to the same availability requirement for first aid kits to ensure it is clear when and how many need to be available. The adopted language included a housekeeping update in WAC 296-32-22515, incorporating a note that is further in the section to have information on format of the certificate being next to the requirement.

Citation of Rules Affected by this Order: Amending WAC 296-32-22515 and 296-45-125.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.510.

Adopted under notice filed as WSR 24-18-111 on September 3, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2024.

Joel Sacks
Director

OTS-5658.2

AMENDATORY SECTION (Amending WSR 20-20-109, filed 10/6/20, effective 11/6/20)

WAC 296-32-22515 First aid. This section is designed to ensure that all employees in this state are afforded quick and effective first-aid attention in the event of an on-the-job injury.

(1) For fixed locations, the employer must make sure that first-aid trained personnel are available to provide prompt first aid. Designated first-aid trained personnel must have a valid first-aid certificate.

(2) For field work involving two or more employees at a work location, at least two trained persons holding a valid first-aid and CPR certificate must be available.

(3) Employees working alone must have basic first-aid training and hold a valid first-aid certificate. The first-aid certificate can be in electronic format.

(4) The first-aid kits and supplies requirements of the safety and health core rules, WAC 296-800-15020, apply within the scope of this chapter.

(5) When practical, a poster must be fastened and maintained either on or in the cover of each first-aid kit and at or near all phones plainly stating the worksite address or location, and the phone numbers of emergency medical responders for the worksite.

(6) All vehicles used to transport an employee or work crews must be equipped with first-aid supplies.

((Note: A valid first-aid certificate can be in an electronic form.))

(7) Any employer with employees who operate, maintain, or construct high voltage lines and equipment or who conduct line-clearance tree trimming in close proximity to high voltage lines and equipment must:

(a) Make an automated external defibrillator available, similar to first-aid kits under WAC 296-800-15020(1), and accessible to employees when work is being performed on, or in close proximity to, high voltage lines and equipment by two or more employees;

(b) Conduct regular maintenance, in accordance with the manufacturer instructions, and conduct annual inspections of the automated external defibrillator to ensure operability and availability; and

(c) Provide training or facilitate the provision of training to ensure there are at least two employees proficient on the proper and safe use of the automated external defibrillator at any site involving work on, or in close proximity to, high voltage lines and equipment. To be considered proficient, an employee must have completed initial or updated training within the previous two years.

(8) For the purposes of this section:

(a) "Close proximity" refer to WAC 296-32-23518 and 296-32-23520.

(b) "High voltage lines and equipment" refers to any energized communication line, electric supply line, or equipment with a voltage of 601 or greater.

OTS-5659.2

AMENDATORY SECTION (Amending WSR 19-13-083, filed 6/18/19, effective 8/1/19)

WAC 296-45-125 Medical services and first aid. The employer must provide medical services and first aid as required in WAC 296-800-150. The following requirements also apply:

(1) Cardiopulmonary resuscitation and first-aid training. When employees are performing work on or associated with exposed lines or equipment energized at 50 volts or more, persons trained in first aid including cardiopulmonary resuscitation (CPR) must be available as follows:

(a) For field work involving two or more employees at a work location, at least two trained persons must be available. However, for line-clearance tree trimming operations performed by line-clearance tree trimmers who are not qualified electrical employees, only one trained person need be available if all new employees are trained in first aid, including CPR, within ((3)) three months of their hiring dates.

(b) For fixed work locations such as generating stations, the number of trained persons available must be sufficient to ensure that each employee exposed to electric shock can be reached within ((4)) four minutes by a trained person. However, where the existing number of employees is insufficient to meet this requirement (at a remote substation, for example), all employees at the work location will be trained.

(2) First-aid supplies. First-aid supplies required by WAC 296-800-150 must be placed in weatherproof containers if the supplies could be exposed to the weather.

(3) First-aid kits. The employer must maintain each first-aid kit, ensure that it is readily available for use, and must inspect it frequently enough to ensure that expended items are replaced. The employer also must inspect each first-aid kit at least once per year.

(4) Any employer with employees who operate, maintain, or construct high voltage lines and equipment or who conduct line-clearance tree trimming in close proximity to high voltage lines and equipment must:

(a) Make an automated external defibrillator available, similar to first-aid kits under subsection (3) of this section, and accessible to employees when work is being performed on, or in close proximity to, high voltage lines and equipment by two or more employees;

(b) Conduct regular maintenance, in accordance with the manufacturer instructions, and conduct annual inspections of the automated external defibrillator to ensure operability and availability; and

(c) Provide training or facilitate the provision of training to ensure there are at least two employees proficient on the proper and safe use of the automated external defibrillator at any site involving work on, or in close proximity to, high voltage lines and equipment. To be considered proficient, an employee must have completed initial or updated training within the previous two years.

(5) For the purposes of this section:

(a) "Close proximity" refer to WAC 296-45-325.

(b) "High voltage lines and equipment" refers to any energized communication line, electric supply line, or equipment with a voltage of 601 or greater.

WSR 24-23-085
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD

[Filed November 19, 2024, 10:15 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards, as well as other entities. This rule-making order amends chapter 16-750 WAC by:

Updates to the noxious weed list: WAC 16-750-005 Class A noxious weed changes and additions, addition of round leaf bitterweet, *Celastrus orbiculatus* and addition of marsh thistle, *Cirsium palustre*.

WAC 16-750-011 Class B noxious weed changes and additions, undesignating shiny geranium, *Geranium lucidum*, in Pierce County east of the Narrows Bridge.

Updating pronouns throughout from he/she, him/her to they/them: WAC 16-750-120 (8)(11), 16-750-130 (2)(b), 16-750-135 (11)(15)(c), and 16-750-137(5).

Citation of Rules Affected by this Order: Amending WAC 16-750-005, 16-750-011, 16-750-120 (8)(11), 16-750-130 (2)(b), 16-750-135 (11)(15)(c), and 16-750-137(5).

Statutory Authority for Adoption: Chapter 17.10 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 24-20-110 on October 1, 2024.

Changes Other than Editing from Proposed to Adopted Version: (1) One clerical change was made to correct the spelling of *Celastrus orbiculatus*.

(2) The undesignating of shiny geranium was amended to only undesignating shiny geranium east of the narrows bridge in Pierce County.

(3) The addition of *Ilex Species* as a Class C noxious weed was postponed to a later hearing in March. A new CR-102 will be filed for this extended rule-making process for *Ilex Aquifolium*.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 6, 2024.

Allen D. Evenson
Chairman

OTS-5884.3

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
broom, French	<i>Genista monspessulana</i>
broom, Spanish	<i>Spartium junceum</i>
common crupina	<i>Crupina vulgaris</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense-flowered	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>
dyer's woad	<i>Isatis tinctoria</i>
eggleaf spurge	<i>Euphorbia oblongata</i>
false brome	<i>Brachypodium sylvaticum</i>
floating primrose-willow	<i>Ludwigia peploides</i>
flowering rush	<i>Butomus umbellatus</i>
garlic mustard	<i>Alliaria petiolata</i>
giant hogweed	<i>Heracleum mantegazzianum</i>
goatsrue	<i>Galega officinalis</i>
hydrilla	<i>Hydrilla verticillata</i>
Johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana</i> var. <i>lobata</i>
meadow clary	<i>Salvia pratensis</i>
oriental clematis	<i>Clematis orientalis</i>
Palmer amaranth	<i>Amaranthus palmeri</i>
purple starthistle	<i>Centaurea calcitrapa</i>
reed sweetgrass	<i>Glyceria maxima</i>
ricefield bulrush	<i>Schoenoplectus mucronatus</i>
<u>round leaf bittersweet</u>	<u><i>Celastrus orbiculatus</i></u>
sage, clary	<i>Salvia sclarea</i>
sage, Mediterranean	<i>Salvia aethiopsis</i>
silverleaf nightshade	<i>Solanum elaeagnifolium</i>
small-flowered jewelweed	<i>Impatiens parviflora</i>
South American spongeplant	<i>Limnobium laevigatum</i>
Syrian bean-caper	<i>Zygophyllum fabago</i>
Texas blueweed	<i>Helianthus ciliaris</i>
thistle, Italian	<i>Carduus pycnocephalus</i>
<u>thistle, marsh</u>	<u><i>Cirsium palustre</i></u>
thistle, milk	<i>Silybum marianum</i>
thistle, slenderflower	<i>Carduus tenuiflorus</i>
thistle, Turkish	<i>Carduus cinereus</i>

Common Name	Scientific Name
variable-leaf milfoil and hybrids	<i>Myriophyllum heterophyllum</i> <i>Myriophyllum heterophyllum x Myriophyllum hippuroides</i>
wild four o'clock	<i>Mirabilis nyctaginea</i>

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name	Will be a "Class B designate" in all lands lying within:
(1) blueweed, <i>Echium vulgare</i>	(a) regions 1, 2, 3, 4, 6 (b) region 5, except Spokane County
(2) Brazilian elodea, <i>Egeria densa</i>	(a) region 1, except Grays Harbor County (b) region 2, except Kitsap County and Green Lake in King County (c) King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River (d) region 3, except Wahkiakum County (e) regions 4, 5, and 6
(3) bugloss, annual, <i>Lycopsis arvensis</i>	(a) regions 1, 2, 3, 4, and 6 (b) region 5, except Spokane County
(4) bugloss, common, <i>Anchusa officinalis</i>	(a) regions 1, 2, 3, and 6 (b) All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County (c) region 5, except Spokane County
(5) butterfly bush, <i>Buddleja davidii</i>	(a) Grays Harbor County of region 1 (b) San Juan County of region 2 (c) Cowlitz County of region 3
(6) camelthorn, <i>Alhagi maurorum</i>	(a) regions 1, 2, 3, 4, 5, and 6
(7) common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a) region 1, except Jefferson County (b) region 2, except King and Skagit counties (c) region 3, except Clark County (d) regions 4, 5, and 6
(8) common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a) regions 1, 2, 3, and 4 (b) region 5, except Grant County (c) Asotin, Columbia, and Garfield counties of region 6
(9) common tansy, <i>Tanacetum vulgare</i>	(a) Clallam County of region 1 (b) Kitsap and San Juan counties of region 2 (c) Cowlitz County of region 3 (d) Adams and Lincoln counties of region 5
(10) Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a) regions 1, 2, and 3 (b) Adams, Kittitas, and Lincoln counties of region 5 (c) Benton, Franklin, and Walla Walla counties of region 6

Name		Will be a "Class B designate" in all lands lying within:	
(11)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific County
		(b)	Island, Kitsap, and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(12)	European coltsfoot, <i>Tussilago farfara</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(13)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County
(14)	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
(15)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(16)	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	region 6, except Benton and Franklin counties
(17)	hanging sedge, <i>Carex pendula</i> , <i>Carex pendula subsp. pendula</i> and <i>Carex pendula subsp. agastachys</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(18)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(19)	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(20)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(21)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except King, Skagit, Snohomish, and Whatcom counties
		(c)	region 4, except Stevens County

Name		Will be a "Class B designate" in all lands lying within:	
(22)	herb-Robert, <i>Geranium robertianum</i>	(a)	regions 4, 5, and 6
(23)	hoary alyssum, <i>Berteroa incana</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Pend Oreille and Ferry counties
		(c)	region 5, except Klickitat County
(24)	houndstongue, <i>Cynoglossum officinale</i>	(a)	regions 1, 2, and 3
		(b)	Chelan and Douglas counties of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton and Franklin counties of region 6
(25)	indigobush, <i>Amorpha fruticosa</i>	(a)	regions 1, 2, and 4
		(b)	Lewis County of region 3
		(c)	region 5, except Klickitat County
(26)	knapweed, black, <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(27)	knapweed, brown, <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(28)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a)	region 1
		(b)	region 2
		(c)	region 3, except Cowlitz County
		(d)	Adams County of region 5
(29)	knapweed, meadow, <i>Centaurea x gerstlaueri</i>	(a)	regions 1 and 4
		(b)	region 2, except Whatcom County
		(c)	Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River
		(d)	Lewis and Wahkiakum counties of region 3
		(e)	region 5, except Kittitas and Klickitat counties
		(f)	region 6, except Franklin and Walla Walla counties
(30)	knapweed, Russian, <i>Rhaponticum repens</i>	(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26
		(e)	Asotin and Garfield counties of region 6
(31)	knapweed, spotted, <i>Centaurea stoebe</i>	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	Clark, Lewis, and Wahkiakum counties of region 3
		(d)	Ferry and Douglas counties of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(32)	knotweed, Bohemian, <i>Fallopia x bohemica</i>	(a)	Island and San Juan counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, 5, and 6
(33)	knotweed, giant, <i>Fallopia sachalinensis</i>	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except Cowlitz and Lewis counties
		(c)	regions 4, 5, and 6
(34)	knotweed, Himalayan, <i>Persicaria wallichii</i>	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	region 3, except Wahkiakum County

Name		Will be a "Class B designate" in all lands lying within:	
(35)	knotweed, Japanese, <i>Fallopia japonica</i>	(d)	region 4, 5, and 6
		(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, except Okanogan County
		(d)	region 5, except Spokane County
(36)	kochia, <i>Bassia scoparia</i>	(e)	region 6
		(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
		(c)	Adams County of region 5
		(37)	lesser celandine, <i>Ficaria verna</i>
(38)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(b)	region 2, except King and Whatcom counties
		(a)	regions 1, 2, 3, 4, 5, 6
(39)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(40)	loosestrife, wand, <i>Lythrum virgatum</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(41)	Malta starthistle, <i>Centaurea melitensis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat and Whitman counties
(42)	parrotfeather, <i>Myriophyllum aquaticum</i>	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(43)	perennial pepperweed, <i>Lepidium latifolium</i>	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(44)	poison hemlock, <i>Conium maculatum</i>	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(45)	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
(46)	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties

Name		Will be a "Class B designate" in all lands lying within:	
(47)	Ravenna grass, <i>Tripidium ravennae</i>	(a)	Cowlitz County of region 3
		(b)	region 4
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County
(48)	rough chervil, <i>Chaerophyllum temulum</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(49)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6
(50)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except King and Thurston counties
(51)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(52)	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	region 2, except King, Snohomish, and Thurston counties, <u>and east of the Narrows Bridge in Pierce County</u>
		(c)	region 3, except Clark County
(53)	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
(54)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3
		(d)	regions 4, 5, and 6
(55)	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County
(56)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan County
(57)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(58)	tansy ragwort, <i>Jacobaea vulgaris</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4, 5, and 6
(59)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County

Name		Will be a "Class B designate" in all lands lying within:	
(60)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County
(61)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane and Whitman counties
(62)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Yakima County
(63)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(64)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton and Garfield counties of region 6
(65)	Wild basil/basil savory, <i>Clinopodium vulgare</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except for Skamania County
(66)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, and 6
		(b)	region 2, except Whatcom County
		(c)	region 5, except Whitman County
(67)	yellow archangel, <i>Lamium galeobdolon</i>	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	Cowlitz, Skamania, and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(68)	yellow floating heart, <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Stevens County
		(c)	region 5, except Spokane County
(69)	yellow nutsedge, <i>Cyperus esculentus</i>	(a)	regions 1 and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 3, except Clark County
		(d)	region 5, except Klickitat and Yakima counties
		(e)	region 6, except Franklin and Walla Walla counties
(70)	yellow starthistle, <i>Centaurea solstitialis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-120 State noxious weed control board—Nominations—Elections—Terms of office—Vacancies. (1) Nominations and elections to board positions are conducted by regular mail.

(2) The board calls for nominations to elected positions at least 60 days prior to expiration of position terms.

(3) The board sends ballots to eligible activated county noxious weed control boards or weed district directors by regular mail at least 45 days prior to expiration of each position term.

(4) Ballots must be returned no later than 30 days before expiration of each term. Only official ballots will be accepted. Photocopied ballots will be considered invalid.

(5) The board chairperson appoints a committee to count ballots and certify elections at least 30 days prior to expiration of each term.

(6) Results of elections are announced prior to the next scheduled board meeting.

(7) For the purpose of conducting nominations or elections, the board uses the current list of county noxious weed control board voting members and weed district directors.

(8) Any person who is a resident in and member of an activated county noxious weed control board in the counties represented by positions 1, 2, 3, and 4 may enter (~~his or her~~) their name, or that of any qualified person in nomination for election to the board position by voting members of the above activated county noxious weed control boards.

(9) Any director of an active weed district formed under chapter 17.04 or 17.06 RCW may enter a name in nomination for election to position 5 on the board.

(10) Each candidate or each person nominating such candidate must complete a certificate of nomination, and must return it to the board postmarked by the date specified.

(11) The board creates a ballot listing the names in alphabetical order beginning with the last name first, of the candidates nominated to the position of the board: Provided, That the board shall remove the name of any person nominated who notifies the board in writing that (~~he or she is~~) they are unwilling to serve on the board.

(12) The ballot, along with the statement, if any, of each candidate in the election will be mailed by regular mail to each voting member of an activated county noxious weed control board or director of an active weed district. Only county board members or weed district directors within the established position area are eligible to vote for the board member to represent that area.

(13) Each voting member of an activated county noxious weed control board or director of an activated weed district may cast one vote for the candidates appearing on the appropriate ballot and return it to the board as provided above and as per the dates specified.

(14) The candidate receiving the highest number of votes is elected: Provided, That if the candidate fails to receive more than 50 percent of the votes cast in an election, a second election will be held between such candidate and the candidate receiving the next highest votes and: Provided further, That if there is only one candidate, that candidate will be deemed elected unanimously.

(15) The term of office for all members of the board is four years from the date of election or appointment.

(16) Vacancies among board members appointed by the director will be filled by the director. Vacancies among elected members will be filled by special election by those entities eligible to elect that position for the expired term. Special elections follow the same procedure as regular elections and repeated as needed until position is filled. Board members appointed to fill vacancies will serve out the existing term.

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-130 State noxious weed control board—Organization.

The organization of the board is as follows:

(1) The officers of the board are the chairperson, vice chairperson, and secretary. The title of the chief administrative officer is the executive secretary.

(2) Duties of officers.

(a) The chairperson presides at all meetings of the board, has the power to appoint committees, acts as ex officio member of all committees except the executive committee, serves as chairperson of the executive committee, serves as official signer of agreements between the board and public or private agencies, and performs such other duties as pertain to the office.

(b) The vice chairperson performs the duties of the chairperson in (~~his or her~~) the chairperson's absence, acts as an ex officio member of all committees, and any other duties delegated by the chairperson. The vice chairperson will assume the duties of and serve out the term of the chairperson upon permanent departure of the chairperson.

(c) The secretary is the official keeper of the minutes and, approves them, and presents them to the board for adoption. In the absence of the chairperson and vice chairperson, the secretary performs the duties of the chairperson.

(d) The duties of the executive secretary, in addition to administrative duties assigned elsewhere in this chapter, are to keep a record of the proceedings of the board, notify all board members, county noxious weed control boards, and weed districts of meetings, act as an ex officio nonvoting member of all committees, negotiate agreements with public and private agencies on behalf of the board, and perform other responsibilities as delegated by the chairperson.

(3) Term of office. Term of office for officers of the board is two years following elections held at the first board meeting in January and ending at the January meeting of the second year.

(4) Election of officers. Elections will be held every two years at the January meeting of the first year. Officers are elected by a majority vote of the voting members present.

(5) Vacancies of officers other than chairperson, shall be filled for the remainder of the term, by election of the voting board members present.

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-135 State noxious weed control board—Meetings. (1)

All meetings of the board are open and public and all persons are permitted to attend any meeting of the board, except as otherwise provided in the Open Public Meetings Act, chapter 42.30 RCW.

(2) Members of the public are not required, as a condition to attendance at a board meeting, to register names, other information, or otherwise to fulfill any condition prior to attending.

(3) Interruptions. In the event that any meeting is interrupted by any person as to render the orderly conduct of the meeting unfeasible

ble, and order cannot be restored by the removal of individuals who are interrupting the meeting, the chairperson may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by a majority vote of the board members present. In such a session, the board will follow the procedures set forth in the Open Public Meetings Act (RCW 42.30.050).

(4) Adoption of rules, regulations, resolution, etc. The board shall not adopt any rules, regulations, resolution, etc. except in a meeting open to the public and then only at a meeting, the date of which is fixed by rule, or at a meeting of which notice has been given according to the provisions of the Open Public Meetings Act. Any action taken at meetings failing to comply with this section is null and void.

(5) Regular meetings—Schedule—Publication in State Register—Notice of change. The board will meet at least five times per year and at other times determined by the chairperson or by a majority of the voting members. If any regular meeting falls on a holiday, the meeting will be held on the next business day. The executive secretary files with the code reviser a schedule of the time and place of regular meetings on or before January of each year for publication in the Washington State Register. Notice of any change from this meeting schedule will be published in the State Register for distribution at least 20 days prior to the rescheduled meeting date.

(6) Notice. Each board member, county noxious weed control board, and weed district will be notified of public meetings and provided an agenda within 10 days.

(7) Special meetings. The 10-day notice may be waived for special meetings which may be called at any time by the chairperson, director, or a majority of the voting board members. Special meeting notification shall follow the procedures for special meetings set forth in the Open Public Meetings Act (RCW 42.30.080).

(8) Adjournments. If a meeting is adjourned before the advertised time, a written notice will be posted at the meeting place that specifies when the meeting was adjourned.

(9) Executive sessions.

(a) The board may hold an executive session during a regular meeting which may be called by the chairperson or a majority of voting board members present. No official actions will be taken at executive sessions. Executive sessions may deal only with matters authorized by RCW 42.30.110.

(b) Before convening in executive session, the chairperson shall publicly announce the purpose of excluding the public from the meeting place and the time when the executive session will be concluded. The executive session may be extended to a later time by announcement of the chairperson.

(10) Agenda. The agenda will be prepared by the executive secretary in consultation with the chairperson. Items may be submitted by all board members to the executive secretary at least 15 days prior to the board meeting.

(11) Attendance. Each board member is expected to attend all board and assigned committee meetings. In the event a board member is unable to attend, (~~he or she is~~) they are requested to provide the chairperson or executive secretary with the reasons for the absence prior to the meeting. Any voting member who misses two consecutive board meetings without providing the chairperson or the executive secretary with the reasons for the absences prior to the meeting may be

removed from the board, following due notice and a hearing. Removal procedures may be initiated by a quorum vote of the board.

(12) Voting procedures. Board voting procedures on all matters are as follows:

(a) Five voting members constitute a quorum to conduct the affairs of the board.

(b) The chairperson may vote on all matters coming before the board.

(c) A roll call of all voting board members present may be requested on all motions by any member.

(d) All members have the right to move or second motions.

(e) Proxy voting is not permitted.

(13) Minutes. The minutes of all regular and special meetings, except executive sessions, will be promptly recorded and such records are open to public inspection.

(14) Press releases. All press releases and official information concerning board activities will be released from the board office.

(15) Public participation.

(a) Any person wishing to make a formal presentation at a regularly scheduled meeting of the board must notify the executive secretary of the subject matter at least 15 days before the meeting.

(b) Permission to appear before the board will be granted by the executive secretary in consultation with the chairperson before the meeting. Permission includes the date and time of the meeting and the time set for formal presentation.

(c) The chairperson may, at (~~his or her~~) their discretion, recognize anyone in the audience who indicates at the time of the meeting a desire to speak.

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-137 State noxious weed control board—Conflict of interest. (1) When a member of the board is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the SNWCB, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member shall:

(a) Recuse themselves from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Recuse themselves from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining SNWCB members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) When a board member has an interest, financial or otherwise, direct or indirect, or has engaged in a business or transaction or professional activity, or has incurred an obligation of any nature, that is in conflict with the proper discharge of that board member's official duties, including the adoption of the state noxious weed list, the member shall:

(a) Recuse themselves from the board discussion regarding the decision implicated by the board member's conflict of interest;

(b) Recuse themselves from the board vote on the decision implicated by the board member's conflict of interest; and

(c) Refrain from attempting to influence the remaining SNWCB members in their discussion and vote regarding the decision implicated by the board member's conflict of interest.

(3) Under subsection (2) of this section, a board member has an interest that is in conflict with the proper discharge of their duties when the interest substantially impairs their ability to perform their duties as a board member in an objective and nonbiased manner. For example, a board member has such a conflict of interest where that board member is engaged in, or has a beneficial interest in an entity that is engaged in, the commercial production of a species that is being considered for addition on the state noxious weed list.

(4) The prohibition against discussion set forth in subsections (1)(a) and (c), (2)(a) and (c) of this section shall not prohibit the member of the SNWCB from using their general expertise to educate and provide general information on the subject area to the other members.

(5) If recusal occurs pursuant to subsection (1) or (2) of this section, the member of the SNWCB shall disclose to the public the reasons for (~~his or her~~) their recusal from any board action whenever recusal occurs. The SNWCB staff shall record each recusal and the basis for the recusal.

(6) Under subsection (1) of this section, "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

WSR 24-23-093

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed November 19, 2024, 1:17 p.m., effective December 20, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington State University (university) is updating the rules regarding standards of conduct for students, chapter 504-26 WAC.

The university is modifying, clarifying, and updating the standards of conduct for students to comply with Title IX regulations and improve the university's conduct and academic integrity violation processes.

The federal Department of Education (DOE) promulgated regulations updating the requirements regarding university hearings related to students that went into effect on August 1, 2024. Among the changes, the new rules codified in 34 C.F.R. § 106.46 (f)(3) change how complainants, respondents, and universities are allowed to question all witnesses in cases that involve sexual harassment and discrimination. Specifically, all parties to a case must provide the question to the decision maker who must make a determination regarding its relevance and permissibility under the new regulations before that question is posed to the witness. The university can lose federal funding from DOE if it does not comply with the new regulations.

Citation of Rules Affected by this Order: New WAC 506-26-112 and 504-26-117; and amending WAC 504-26-001, 504-26-010, 504-26-015, 504-26-020, 504-26-025, 504-26-030, 504-26-035, 504-26-045, 504-26-050, 504-26-100, 504-26-105, 504-26-110, 504-26-115, 504-26-120, 504-26-125, 504-26-201, 504-26-202, 504-26-204, 504-26-206, 504-26-207, 504-26-209, 504-26-213, 504-26-219, 504-26-220, 504-26-221, 504-26-222, 504-26-223, 504-26-224, 504-26-227, 504-26-231, 504-26-401, 504-26-402, 504-26-403, 504-26-409, 504-26-415, 504-26-420, 504-26-425, 504-26-504, 504-26-510, and 504-26-530.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 24-18-118 on September 4, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 13, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 27, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 27, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 40, Repealed 0.

Date Adopted: November 15, 2024.

Deborah L. Bartlett, Director
Policies, Records, and Forms
and University Rules Coordinator

OTS-5764.1

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-001 Preamble. Students have the responsibility to read and be familiar with the standards of conduct, to abide by them, and to understand that violations of these standards, if the student is found responsible, will result in educational sanctions and/or remedies for cases in which executive policy 15 is implicated. The dean of students or designee is the person designated by the university president to be responsible for the administration of the standards of conduct.

Washington State University has a long-standing commitment to providing students with a holistic learning experience both in and out of the classroom. Students are expected to uphold and be accountable to our standards of conduct to foster a safe, healthy, and inclusive campus community. The basic philosophy behind the standards of conduct and processes is one of education, centered on student learning through personal development and accountability. Therefore, the student conduct process is designed to support students, guide and correct behaviors, challenge students to make better choices, protect the rights of all students, and support a safe environment for students, the university, and the community at large.

The university strives to provide a fair process for every student without bias or favor regardless of socioeconomic status, personal or social connections, sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity), race, (~~(sex and/or gender, sexual orientation, gender identity or expression)~~) religion, age, color, creed, national or ethnic origin, marital status, genetic information, status as an honorably discharged or protected veteran or member of the military, physical, mental, or sensory disability, including the use of a trained service animal, or immigration or citizenship status, except as authorized by federal or state law, regulation, or government contract. It also has responsibility to inform and educate the university community, parents, and the public at large on these standards, uphold them, and exercise the authority to take educational and/or disciplinary action accordingly.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-010 Definitions. Words and phrases used in the standards of conduct regardless of their associated gender identity include all genders. Words and phrases used in the standards of conduct in the singular or plural encompass both the singular and the plural, unless the context clearly indicates otherwise. For purposes of the standards of conduct, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who are authorized by the university to review an instructor's (~~(determination)~~) decision that a student violated university academic integrity policies and whether or not the (~~(outcome~~

proposed)) academic sanction assigned by the instructor is in keeping with the instructor's published policies.

~~(2) ((Academic integrity violation. A violation of the university's academic integrity expectations, which is defined as:~~

~~(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.~~

~~(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.~~

~~(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.~~

~~(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:~~

~~(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.~~

~~(ii) Counterfeiting a record of internship or practicum experiences.~~

~~(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.~~

~~(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.~~

~~(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by CCS. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.~~

~~(g) Unauthorized collaboration on assignments.~~

~~(h) Intentionally obtaining unauthorized knowledge of examination materials.~~

~~(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.~~

~~(j) Unauthorized multiple submission of the same work.~~

~~(k) Sabotage of others' work.~~

~~(l) Tampering with or falsifying records.~~

~~(m) Violating any other academic rule or standards specified in published course policies.~~

~~(3)~~) Appeals board. The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider appeals from a ~~((university conduct board's or conduct officer's))~~ decision maker's determination as to whether a student or registered student organization has violated the standards of conduct and any sanctions and/or remedies assigned.

~~((4))~~ (3) Brief adjudication.

(a) The process by which a conduct officer or conduct board may adjudicate student conduct matters ~~((that are not resolving allegations))~~. Brief adjudication is not permissible for matters that:

(i) Would constitute ((Title IX sexual)) sex discrimination or sex-based harassment ((within the university's Title IX jurisdiction, and)) as defined in the university's executive policy 15 (EP15); or
 (ii) Where possible sanctions ((do not include suspension for more than 10 instructional days,)) include expulsion, loss of recognition, or revocation of degree.

(b) Also referred to as a "conduct officer hearing," "conduct board hearing," or "brief adjudicative proceeding."

~~((5))~~ (4) CCR. The university's office of compliance and civil rights.

~~((6))~~ (5) CCS. The university's center for community standards.

(6) Community standards boards. University conduct board, university appeals board, academic integrity hearing board, or any other panel of individuals empowered to make community standards decisions on behalf of the university.

(7) Complainant. Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint.

(8) Conduct board. The group or individual authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.

(9) Conduct hearing. The process in which a decision is made regarding a student or registered student organization's responsibility for alleged behavior and assignment of applicable sanctions and/or remedies, where appropriate. (Remedies may be considered for matters implicating executive policy 15 part 15.B.) Conduct hearings include brief adjudications and full adjudications. Also referred to as "student conduct hearing" or "student conduct proceeding."

(10) Conduct officer. A university official authorized by the dean of students or their designee to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.

~~((10))~~ (11) Executive policy 15. The university's policy prohibiting discrimination and harassment. Also referred to as "EP15."

(12) Faculty member. For purposes of this chapter, any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

~~((11))~~ (13) Full adjudication.

(a) The process ~~((by which a conduct board adjudicates))~~ for adjudicating matters involving ((possible suspension of greater than 10 instructional days,)):

(i) Sex discrimination or sex-based harassment, or retaliation stemming from those as underlying complaint, as defined in EP15; and

(ii) Possible sanction including expulsion, loss of recognition, revocation of degree, or ((other matters as determined by the univer-

sity)) otherwise utilized at the discretion of the CCS when deemed appropriate, in accordance with WAC 504-26-401(4).

~~((12))~~ (b) Also referred to as "formal adjudication," "formal ~~((or full))~~ adjudicative proceeding," or ~~((conduct board hearing.))~~ "full adjudicative proceeding."

~~((13))~~ (c) In a full adjudication, the presiding officer is also the decision maker.

~~((12))~~ (14) Gender identity. Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

~~((13))~~ (15) Member of the university community. Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the dean of students or designee.

~~((14))~~ (16) Parties. The parties to a ~~((student))~~ conduct ~~((proceeding))~~ hearing must include the university and the respondent. ~~((The parties in a student conduct matter where the allegations, if true, would constitute Title IX sexual harassment within the university's Title IX jurisdiction must also include the complainant(s).))~~ Where the conduct hearing includes allegations that constitute violations of EP15, the parties may include the university, the respondent, and the complainant. The university may designate other complainants as parties to conduct proceedings including, but not limited to, harmed parties. The dean of students or their designee determines party status ~~((for complainants))~~.

~~((15) Recognized or))~~ (17) Registered student organization. A group of students, collectively, that has complied with the formal requirements for university recognition ~~((or registration))~~.

~~((16))~~ (18) Respondent. A student or ~~((recognized or))~~ registered student organization alleged to have violated these standards of conduct.

~~((17))~~ (19) Staff. Individuals employed by the university of any rank or classification who are not considered faculty members as defined in subsection (12) of this section.

(20) Standards of conduct. The standards of conduct for students outlined in this chapter.

~~((18))~~ (21) Student. For the purposes of this chapter, any person who:

(a) Is enrolled in at least one undergraduate, graduate, or professional studies course at the university;

(b) Has been notified of their acceptance for admission but has not yet registered for their course(s);

(c) Is eligible to reenroll in classes without reapplying.

~~((19))~~ (22) Title IX. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 and its implementing 34 C.F.R. Part 106.

~~((20))~~ (23) University. Washington State University.

~~((21))~~ (24) University official. Any person employed by the university, performing assigned administrative or professional responsibilities.

~~((22))~~ (25) University premises. All land, buildings, facilities, vehicles, websites, and other property in the possession of or owned, used, or controlled by the university (including adjacent

streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

(a) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

(b) Negatively impacted the reputation of the university or its students;

(c) Occurred on the property of (~~recognized or~~) registered student organizations;

(d) Caused physical, mental, or emotional harm to another; or

(e) Was recognized by onlookers, complainants, or witnesses as being carried out by a student (~~or recognized~~) or registered student organization.

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual conferral of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards apply to a student's conduct during that time frame, even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. (~~Recognized or~~) Registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A (~~recognized or~~) registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a number of organization officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

- (a) The laws of the host country and/or state;
- (b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;
- (c) Any other agreements related to the student's study program; and
- (d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a ~~((student))~~ conduct ~~((proceeding))~~ hearing pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any ~~((student))~~ conduct ~~((proceeding))~~ hearing. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice, provided that person agrees to serve as an advisor, to be present during all stages of a conduct process. A list of university employees who are trained advisors is provided upon a party's request. Advisors can provide support at no cost to the party. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. Advisors may not be employed in CCS.

(2) Advisors in conduct ~~((meetings and conduct officer))~~ hearings. During any conduct meeting ~~((or conduct officer hearing))~~, brief adjudicative hearing, or full adjudicative hearing, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties ~~((-~~

~~(3) Advisors in conduct board hearings. As with all other conduct meetings and conduct officer hearings, advisors are not permitted to speak on behalf of parties)), except that in ((conduct board hearings)) full adjudicative proceedings, advisors are permitted to ((ask relevant cross-examination)) direct questions ((as instructed by a party)) for witnesses to the presiding officer.~~

~~((4))~~ (3) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. Representatives are not permitted in ~~((conduct officer hearings))~~ brief adjudications; however, persons currently admitted to practice law may participate as advisors in ~~((conduct officer hearings))~~ brief adjudications.

~~((5))~~ (4) As a condition of participation in the conduct process, CCS may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

~~((6))~~ (5) Questions regarding logistical and administrative issues are to be directed to the ~~((presiding officer or))~~ conduct officer, community standards board chair, or presiding officer, as applicable, who may impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-025 Confidentiality and participation in student conduct hearings. Student conduct meetings and hearings are closed to public observation. The parties and their advisors or representatives may attend the entire hearing, excluding deliberations. Admission of any other person to the hearing is at the discretion of the conduct officer, community standards board chair, or presiding officer, as applicable. For convenience, or to accommodate concerns for the personal safety, well-being, or fears of confrontation of any party or witness, the conduct officer, community standards board chair, or presiding officer may allow participation remotely, in separate rooms, or by other means.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-030 Consolidation. In any student conduct matter in which there are common issues or parties, the conduct officer ~~((or presiding officer))~~, community standards board chair, or presiding officer, as applicable, may decide to consolidate the proceedings. This decision is within the sole discretion of the ~~((or presiding officer))~~, community standards board chair, or presiding officer.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-035 Service and notification. Service of all university notices under this chapter is sent by electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. ~~((Recognized or))~~

Registered student organizations are responsible for updating their mailing address on file with the center for fraternity and sorority life, university recreation, or student ~~((involvement))~~ engagement services. Deadlines described in this chapter begin the date the notification is sent via email, personally delivered, or placed in regular U.S. mail.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-045 Evidence. (1) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence.

(2) ~~((The sexual history of))~~ A complainant's sexual interests or prior sexual conduct is not relevant and not admissible in a ~~((student))~~ conduct ~~((proceeding))~~ hearing unless such evidence ~~((about the complainant's sexual predisposition or prior sexual behavior))~~ is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The fact of prior consensual sexual conduct between a complainant and a respondent does not by itself demonstrate or imply the complainant's consent to the alleged conduct or preclude determination that the conduct occurred.

(3) For matters involving conduct implicating EP15, evidence that was provided to a confidential employee is not admissible, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.

(4) Parties may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No party must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a party's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the ~~((conduct officer or conduct board))~~ decision maker may resolve the matter based on the information available at the time of the hearing.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-050 Supportive measures. (1) While a student conduct matter is pending, the university may take a number of supportive measures on an interim basis to ensure the preservation of the educational experience and the overall university environment of the parties.

(a) These actions may include, but are not limited to:

- (i) A no-contact directive assigned to any party;
 - (ii) University housing room change for one or more involved parties; and/or
 - (iii) Changes in academic schedules or assignments for one or more involved parties.
- (b) These actions for registered (~~or recognized~~) student organizations may include, but are not limited to:
- (i) Loss of recognition;
 - (ii) Restriction of specified operational activities.
- (2) University departments implementing supportive measures must coordinate with CCS or CCR, as applicable, which advises the parties of the supportive measures and the process for challenging them. For matters involving (~~the university's executive policy 15, the departments must also consult with CCR regarding~~) EP15, CCR or its designee facilities supportive measures. For all other alleged standards of conduct violations, CCS facilitates supportive measures. Supportive measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-100 Presiding officers. Full adjudicative proceedings are conducted by (~~the conduct board and are presided over by an individual who is licensed to practice law in the state of Washington and has judicial training~~) a presiding officer/decision maker who is designated by the university in accordance with WAC 504-04-020.

- (1) The presiding officer's role is to:
 - (a) Ensure a fair and impartial process (~~and is limited to making~~);
 - (b) Make procedural and evidentiary rulings (~~and handling~~);
 - (c) Handle logistical and other matters related to facilitating the proceedings (~~to~~);
 - (d) Ensure compliance with legal requirements; and
 - (e) Deliver a decision letter to the parties in accordance with WAC 504-26-403.
- (2) The presiding officer must transmit a full and complete record of the proceedings to CCS (~~and the conduct board~~), including such comments upon demeanor of witnesses as the presiding officer deems relevant, in accordance with RCW 34.05.461. (~~The presiding officer does not vote.~~)

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-105 Recruitment, appointment, and term of (~~conduct and appeals~~) community standards board members. A committee convened by the dean of students and comprised of students, staff, and/or faculty members (~~and convened by the dean of students~~) selects a pool of members of the university community to serve as (~~conduct board members and appeals~~) community standards board members.

- (1) Pool members are (~~approved~~) appointed by the university president or designee and must be in good standing with the universi-

ty. Pool members serve a maximum term of four calendar years but may apply to serve another four-year term after a break of two years. Terms of pool members are staggered. CCS is not involved in the selection processes for board members. CCS may assist in the recruitment process for board members.

(2) If a community standards board member fails to meet established expectations, their appointment may be terminated, in writing, by the university president or designee.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-110 Composition of conduct board. A conduct board may consist of one person or multiple persons selected from the pool of ~~((approved))~~ appointed university community members in accordance with WAC 504-26-105. ~~((The presiding officer is not a member of the conduct board.))~~ No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

NEW SECTION

WAC 504-26-112 Community standards board chairs. (1) The chair is responsible for ensuring:

(a) A fair and impartial process for all parties named in the hearing; and

(b) A written letter representing the decision of the board is provided to CCS for distribution to the parties.

(2) One member of the community standards board is designated as the chair of the board. The chair is a voting member of the community standards board.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-115 Composition of appeals board. (1) An appeals board ~~((must))~~ may consist of:

(a) The director of CCS or designee;

(b) The director of CCR or designee; or

(c) A panel of at least three members. ~~((A quorum of three is needed to review a matter.))~~

(d) The appeals board is the university's reviewing officer as that term is defined under RCW 34.05.464(4).

(2) Where a panel is utilized, a minimum of one appeals board member hearing a matter must be a student. The remaining members may be students, ~~((or full-time or part-time))~~ faculty, or staff ~~((of any rank or classification))~~. No appeals board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent. ~~((One member of the appeals board serves as the chair of the board. The chair is responsible for ensur-~~

ing a fair and impartial process and is a voting member of the appeals board.)

NEW SECTION

WAC 504-26-117 Composition of academic integrity hearing board.

The academic integrity hearing board must consist of a minimum of one member. Where a panel is utilized, a minimum of one academic integrity board member hearing a matter must be a faculty member. The remaining members may be students or faculty. No academic integrity hearing board member may serve on a case if the member previously served on a board in a case involving the same student.

In hearings involving graduate respondents, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-120 Training. (1) Conduct and appeals board members.

Conduct board members and appeals board members must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Diversity, equity, inclusion, and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) Fair and equitable decision making, including:
 - (i) Due process;
 - (ii) Standards of proof;
 - (iii) Relevant and admissible evidence;
 - (iv) Conflict of interest; and
 - (v) Identifying bias;
- (d) Sexual assault and gender-based violence;
- (e) Alcohol and drug prevention;
- (f) Sanctioning principles and guidelines; and
- (g) Title IX regulatory definitions, jurisdiction, and grievance processes.

(2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Alternative dispute resolution;
- (b) Restorative justice; and
- (c) All training required of board members (see subsection (1) of this section).

(3) Presiding and reviewing officers. Presiding and reviewing officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Diversity, equity, inclusion, and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) Title IX regulatory definitions, jurisdiction, and grievance processes.

(4) Academic integrity hearing board members. Academic integrity hearing board members must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Diversity, equity, inclusion, and implicit bias;
 - (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
 - (c) Fair and equitable decision making, including:
 - (i) Due process;
 - (ii) Standards of proof;
 - (iii) Relevant and admissible evidence;
 - (iv) Conflict of interest; and
 - (v) Identifying bias.
- (5) Renewal of training. Training must be renewed on a biennial basis, except for decision makers who hear EP15 matters, who are required to take Title IX regulatory training annually.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-125 Recusal. (1) Notification of names of conduct officers and board members. All parties must be notified of the names of conduct officers (~~(, conduct board members,)~~) and/or (~~(appeals)~~) community standards board members assigned to their case no later than seven calendar days prior to the hearing (~~(or appeals board meeting)~~) date.

(2) Requesting recusal of conduct officers and board members. A party requesting recusal of a conduct officer or (~~(conduct/appeals)~~) community standards board member must demonstrate good cause including, but not limited to, conflict of interest or bias. For (~~(conduct board members, the presiding officer is responsible for granting or denying requests. For conduct officers and appeals board members)~~) brief adjudicative proceedings, the dean of students or designee is responsible for granting or denying requests.

(3) Presiding officer. Requests for recusal of the presiding officer are governed by the model rules of procedure, WAC 10-08-050(2).

(4) Reviewing officer. A party requesting recusal of a reviewing officer must demonstrate good cause including, but not limited to, conflict of interest or bias. The dean of students or designee is responsible for granting or denying requests.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or (~~(recognized or)~~) registered student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in WAC 504-26-425.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty are defined as:

(1) Academic integrity violations.

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Research misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of research misconduct are managed according to the university's policy for responding to allegations of research misconduct, executive policy 33. A finding of research misconduct is subject to sanctions by CCS.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(m) Violating any other academic rule or standards specified in published course policies.

(n) Unauthorized use of artificial intelligence to complete course requirements including, but not limited to, papers, homework assignments, and tests.

(2) Knowingly furnishing false information, knowingly omitting relevant information, or knowingly misrepresenting information to any person, including university officials, faculty members, or administrators. It is not a violation of this section to refuse to give self-incriminating evidence to a university official, faculty member, or administrator. (See WAC 504-26-045.)

(3) Forgery, alteration, or misuse of any university document or record, or instrument of identification whether issued by the university or other state or federal agency.

(4) Fraud.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-204 Physical harm or ((direct)) threat. (1) Physical harm ((, direct threats, and/or other conduct that undermines the safety of the university community or any person.)) includes, but is not limited to, any injury, damage, or impairment to the body caused to another person.

(2) Threat includes, but is not limited to, a statement of an intention to inflict pain, injury, damage, or other hostile action to another person. Threat can come in the form of actions or words. Threat does not include speech that is protected under the first amendment.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-206 Hazing. (1) Hazing includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a ((recognized or)) registered 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 psychological or emotional harm, regardless of the person's willingness to participate.

(2) Hazing activities may include, but are not limited to:

- (a) Use of alcohol during activities targeted towards new members;
- (b) Striking another person whether by use of any object or one's body;
- (c) Creation of excessive fatigue;
- (d) Physical and/or psychological shock;
- (e) Morally degrading or humiliating games or activities;
- (f) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance regardless of the person's willingness to participate;
- (g) Unreasonable or unnatural physical activity.

(3) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intra-

mural or club sports and NCAA athletics, or other similar contests or competitions.

(4) Hazing is prohibited both on and off campus.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-207 Failure to comply with university officials or law enforcement officers. Failure to:

(1) Comply with lawful directions of university officials and/or law enforcement officers acting in performance of their duties; and/or ~~((failure to))~~

(2) Identify oneself to these persons when requested to do so; and/or

(3) Comply with an informal resolution facilitated under EP15.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university website or in hard copy including, but not limited to, the university's alcohol and drug policy, ~~((executive policy 15))~~ EP15, and housing and residence life policy.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-213 ~~((Firearms and dangerous))~~ Weapons. (1) No student may possess or use any firearm ~~((including airsoft guns))~~, explosive (including fireworks), dangerous chemicals (excluding pepper spray), or other dangerous weapons or instrumentalities (including tasers and airsoft guns) on university premises.

(2) This prohibition does not apply to possession of such items for authorized university purposes; possession of such items by authorized law enforcement officers; or individuals who have obtained prior written approval from the university chief of police, president, or designee.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system is defined as:

(1) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.

(2) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(3) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any ~~((university))~~ conduct ~~((board))~~ proceeding.

(4) Harassment (verbal, written, or physical) and/or intimidation of a member of a ~~((university conduct))~~ community standards board, any individual involved in the conduct process, any CCR investigator or CCR informal resolution facilitator during a CCR investigation, or any conduct officer before, during, and/or after any university conduct proceeding.

~~((5) Failure to comply with or failure to complete any sanction(s) assigned under the standards of conduct.~~

~~(6) Violation of probation or any probationary conditions.))~~

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-220 Discriminatory harassment. (1) Unwelcome, intentional conduct on the basis of race; ~~((sex and/or gender; sexual orientation; gender identity or expression;))~~ religion; age; color; creed; national or ethnic origin; marital status; genetic information; status as an honorably discharged veteran, protected veteran, or member of the military; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); or immigration or citizenship status, except as authorized by federal or state law, regulation, or government ~~((practice))~~ contract, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

(a) Interferes with, or has the potential to interfere with, an individual's ability to participate in university employment, education, programs, or activities;

(b) Adversely alters the condition of an individual's university employment, education, or participation status;

(c) Creates an objectively abusive employment, program, or educational environment; or

(d) Results in a material or substantial disruption of the university's operations or the rights of students, staff, faculty, visitors, or program participants.

(2) In determining if conduct is harassing, the totality of the circumstances are assessed including, but not limited to, the following factors:

(a) Severity;

(b) Frequency of the discrimination;

(c) Status of the ~~((reporting and responding))~~ complainant and respondent parties and their relationship to each other;

(d) Physicality, threats, or endangerment; and

(e) Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-221 Sexual ~~((misconduct))~~ assault. (1) Sexual ~~((misconduct))~~ assault is an egregious form of ~~((sex discrimination/sexu-~~

al)) sex-based harassment. Sexual ((misconduct)) assault is defined as((+)) follows. (Note: The following sexual assault definitions are updated in the National Incident-Based Reporting System (NIBRS) User Manual which is available online on the Federal Bureau of Investigation (FBI) UCR Technical Specifications website at <https://le.fbi.gov/informational-tools/ucr/>. Where the definitions are updated in the NIBRS User Manual, the updated definitions apply.)

(a) Sex offense. Any sexual act directed against another person, without the consent of the ((victim)) complainant, including instances where the ((victim)) complainant is incapable of giving consent.

(b) Rape (except statutory rape). ~~((The carnal knowledge of a person))~~ Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, without the consent of the ((vie-tim)) complainant, including instances where the ((victim)) complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(c) ~~((Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.~~

~~(d) Sexual assault with an object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.~~

~~(e)) Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the ((victim)) complainant, including instances where the ((victim)) complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.~~

~~((f)) (d) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.~~

~~((g) Sexual exploitation, which occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:~~

~~(i) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person.~~

~~(ii) Invading another person's sexual privacy.~~

~~(iii) Prostituting another person.~~

~~(iv) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where they have a reasonable expectation of privacy.~~

~~(v) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection.~~

~~(vi) Exposing one's intimate parts in nonconsensual circumstances.~~

~~(h)) (e) Statutory rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.~~

~~((i) Sexually based stalking and/or bullying.))~~

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-222 Harassment (other than ((sexual)) sex-based harassment or discriminatory harassment). Harassment is conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would cause a reasonable person in the ((victim's)) complainant's position substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the university, and/or actually does cause the ((victim)) complainant substantial emotional distress and undermines the ((victim's)) complainant's ability to work, study, or participate in the ((victim's)) complainant's regular life activities or participate in the activities of the university.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-223 Stalking. (1) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (a) Fear for their safety or the safety of others; or
- (b) Suffer substantial emotional distress.

(2) Course of conduct means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(3) Reasonable person means a reasonable person under similar circumstances and with similar identities to the ~~((victim))~~ complainant.

(4) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(5) The use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-224 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property and/or other conduct that undermines the safety of the university community or any person. Reckless endangerment may include ~~((s))~~, but is not limited to ~~((r))~~:

(1) Operating a ~~((motor))~~ vehicle while intoxicated;

(2) Operating a vehicle with blatant disregard for the safety of other people and/or property;

(3) Placing hazards in a public right of way;

(4) Throwing objects at moving vehicles or out of buildings;

(5) Tampering with or removing safety equipment and/or signage.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-227 ~~((Sexual))~~ Hostile environment sex-based harassment. Unwelcome, ~~((intentional))~~ sex-based ~~((, on the basis of sex and/or gender, which))~~ conduct ~~((, including conduct based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity/expression))~~ that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive ~~((, and objectively offensive,))~~ that ~~((it substantially and unreasonably))~~:

~~((1) ((Interferes with, or has the potential to interfere with, an individual's ability to participate in university employment, education, programs, or activities;~~

~~((2) Adversely alters the condition of an individual's university employment, education, or participation status;~~

~~(3) Creates an objectively abusive employment, program, or educational environment; or~~

~~(4) Results in a material or substantial disruption of the university's operations or the rights of students, staff, faculty, visitors, or program participants)) It limits or denies a person's ability to participate in or benefit from WSU's education programs or activities (i.e., creates a hostile environment); or~~

(2) Enduring the offensive conduct becomes a condition of continued employment.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-231 Intimate partner violence. Intimate partner violence is defined as:

(1) Dating violence, which is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the ~~((victim))~~ complainant. The existence of such a relationship is determined based on the:

(a) Length of the relationship;

(b) Type of relationship; and

(c) Frequency of interaction between the persons involved in the relationship.

(2) Domestic violence, which is defined as a felony or misdemeanor crime of violence committed by:

(a) A current or former spouse or intimate partner of the ~~((victim))~~ complainant or a person similarly situated to a spouse of the complainant;

(b) A person with whom the ~~((victim))~~ complainant shares a child in common;

(c) A person who is cohabitating with, or has cohabitated with, the ~~((victim))~~ complainant as a spouse or intimate partner;

(d) A person similarly situated to a spouse of the ~~((victim))~~ complainant under the domestic or family violence laws of Washington; or

(e) Any other person against an adult or youth ~~((victim))~~ complainant who is protected from that person's act under the domestic or family violence laws of Washington.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-401 Initiating conduct proceedings. (1) Complaints. Any member of the university community may submit a complaint that a student or ~~((recognized or))~~ registered student organization violated the standards of conduct. In matters that would constitute a violation of ~~((executive policy 15))~~ EP15, the complaint must be ~~((initiated through))~~ submitted to CCR or initiated by CCR pursuant to EP15. In addition, CCS may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to ~~((initiate the community standards process))~~ refer the matter to a hearing. Except as provided below, ~~((after re-~~

viewing the initial information, if the conduct officer determines that additional action from CCS is not warranted, the conduct officer dismisses the matter.) if the conduct officer decides not to (initiate a conduct proceeding) refer the matter to a hearing, the conduct officer must notify the reporting party in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known. A conduct officer cannot dismiss a matter received from CCR where CCR completed ~~((a formal))~~ an investigation implicating ((Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, regardless of the investigation's outcome)) EP15. In such cases, the ~~((conduct officer must refer the))~~ matter must be referred to a conduct ~~((board))~~ hearing, which must be held within 60 days of the date the CCR ~~((formal))~~ investigation ~~((report was received))~~ is completed, unless good cause exists to extend the date of the hearing or the matter is resolved through agreement or alternative dispute resolution.

(3) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution including, but not limited to, shuttle diplomacy or mediation. Parties involved in matters implicating EP15 also may participate in an informal resolution process outlined in EP15 and the CCR procedural guidelines at any time prior to a determination of responsibility. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.

(4) Referral for adjudication. Except as provided in subsection (2) of this section, if CCS determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a ~~((conduct officer hearing ()))~~ brief adjudication ((in accordance with WAC 504-26-402, or conduct board hearing (full adjudication)) in accordance with WAC 504-26-402 or a full adjudicative proceeding in accordance with WAC 504-26-403. In determining which process is appropriate, CCS considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with CCS, ~~((and))~~ the range of possible sanctions that ((could be assigned)) would be appropriate given the alleged conduct, and whether the alleged conduct constitutes sex discrimination or sex-based harassment. A student may request ~~((that a conduct board hear the case))~~ a full adjudicative proceeding, but the final decision regarding whether to refer the matter to ~~((the conduct board for hearing))~~ a full adjudicative proceeding for resolution is made by CCS and is not subject to appeal.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-402 ((Conduct officer hearings -)) Brief adjudications ((-)). (1) ~~((The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than 10 instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.~~

~~(2-))~~ Notice of hearing. The ~~((conduct officer must provide the))~~ parties must be provided with written notice no later than seven calendar days prior to ~~((the conduct officer hearing))~~ a brief adjudication. The notice must include:

(a) A brief description of the factual allegations or issues involved;

(b) The specific standard of conduct provision(s) the respondent is alleged to have violated;

(c) The time, date, and place of the hearing or process by which a respondent may schedule the hearing;

(d) Information regarding what to expect during the student conduct process and student rights including, but not limited to:

(i) A statement that the parties have the right to have an advisor present at the hearing;

(ii) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045;

(iii) Information regarding the right to request recusal of a conduct officer or community standards board member under WAC 504-26-125;

(e) Available resources, including how to access an information session ~~((and legal resources in the community))~~;

(f) A statement that any request to modify the time or date of the ~~((conduct officer))~~ hearing should be addressed to CCS;

(g) A statement that indicates that respondents are presumed "not responsible" for the pending allegations;

(h) A statement that violations are determined by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred.

~~((3-))~~ (2) Hearing and possible outcomes. ~~((Conduct officer hearings are))~~

(a) Brief adjudications are conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows ~~((the conduct officer to))~~ for an objective evaluation and review of available information, ~~((hear the parties' view of the matter, render))~~ the rendering of a decision regarding responsibility, and ~~((assign))~~ assigned sanctions, as appropriate. The conduct officer may engage in further questioning of parties and witnesses as needed to evaluate the allegations and assess credibility.

~~((a-))~~ (b) Upon conclusion of the hearing, ~~((the conduct officer may take any of))~~ the following actions may be taken:

(i) Find the respondent responsible for any or all of the alleged violations and assign sanctions as provided in WAC 504-26-425 ~~((within the limitations described in subsection (1) of this section))~~;

(ii) Find the respondent not responsible for any or all of the alleged violations;

(iii) Dismiss the matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information becomes known (~~(; or~~

~~(iv) Refer the matter to the conduct board)).~~

~~((4))~~ (3) Notice of decision and right to appeal. The ~~((conduct officer notifies the))~~ parties are notified in writing of the decision within 10 calendar days of the ~~((conduct officer hearing))~~ brief adjudication. This is the initial order of the university and must include:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the ~~((university conduct board hearing))~~ outcome of the brief adjudication, as well as a rationale for such determinations;

(c) Appropriately numbered findings of fact and conclusions;

(d) The sanction(s) ~~((and/or remedy(ies)))~~ to be assigned, if any, and the rationale for the sanction(s) ~~((and/or remedy(ies)))~~;

(e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-403 ((Conduct board hearings (-)) Full adjudications ((-)). (1) ~~((Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than 10 instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board at the discretion of CCS.~~

~~((2))~~ Adoption of model rules of procedure. ~~((Conduct board hearings are))~~ Full adjudications are governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

~~((3))~~ (2) Notice of hearing. Notice to the parties of a ~~((conduct board hearing))~~ full adjudicative proceeding must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-401 must be provided.

~~((4))~~ (3) Time for ~~((conduct board))~~ hearings. The ~~((conduct board hearing))~~ full adjudicative proceeding is scheduled ~~((not))~~ no less than seven calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A

request for an extension of time is granted only upon a showing of good cause.

~~((5))~~ (4) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

~~((6))~~ (5) Discovery. Depositions ~~((7))~~ and interrogatories ~~((7~~ and physical or medical examinations of parties)) are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

~~((7))~~ (6) Direct questioning and cross-examination. As required by RCW 34.05.449, direct and cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues.

(a) For hearings involving allegations where EP15 is implicated, parties and/or their advisors or representatives may submit direct and cross-examination (is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or party may answer a) questions to the presiding officer who asks relevant, permissible, clear, and nonharassing questions. Prior to asking any direct and cross-examination question, the presiding officer must first determine whether the question is relevant, permissible, clear, and nonharassing. If a presiding officer excludes a question, the presiding officer must explain the rationale for exclusion and provide the party and/or advisor an opportunity to clarify or revise their question.

(b) For hearings involving allegations where EP15 is not implicated, cross-examination is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer must instruct parties or witnesses not to answer cross-examination questions that are irrelevant, immaterial, or unduly repetitious.

~~((8))~~ (7) Decision requirements. Decisions regarding responsibility and sanctions are made by ~~((a majority of the conduct board hearing the matter))~~ the presiding officer.

~~((9))~~ (8) Notice of decision and right to appeal. Within 10 calendar days of the completion of the hearing, the ~~((conduct board))~~ presiding officer must issue ~~((a decision))~~ the initial order simultaneously to all parties, ~~((which is the))~~ unless the presiding officer

notifies the parties in writing that additional time (up to 30 calendar days) is needed. The initial order of the university ((and)) must contain the following:

- (a) Description of the allegations that initiated the community standards process;
- (b) Description of procedural steps taken from the receipt of the formal complaint up to and including the ~~((university conduct board hearing))~~ outcome of the full adjudicative proceeding;
- (c) Appropriately numbered findings of fact and conclusions;
- (d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);
- (e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and
- (f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or ~~((student))~~ conduct ~~((proceeding))~~ hearing relating to alleged standards of conduct violations. An emergency suspension may be assigned at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension. ~~((a) For matters which would not constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15,))~~ Emergency suspension may be assigned only in situations when the dean of students or a vice chancellor for student affairs (in consultation with CCS), or their designee, has ((cause to believe that)) engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:

~~((i))~~ (a) Allegedly has violated any provision of the standards of conduct; and

~~((ii) Presents an immediate danger))~~ (b) If the allegations in (a) of this subsection are true, the student is an imminent and serious threat to the health((,)) or safety((, or welfare)) of any ((part of the university community or the public at large)) student, employee, or other individual. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

~~((b) For matters which would constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in a situation where the dean of students or a vice chancellor for student affairs (in consultation with CCS), or their designee, has engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:~~

~~(i) Has violated any provision of the standards of conduct; and~~

~~(ii) Is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment.)~~

(3) Procedure. The dean of students or a vice chancellor for student affairs, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), the policy reasons for the emergency suspension, and the process to challenge the decision. The emergency suspension does not replace the ~~((regular hearing))~~ community standards process, which must proceed to a conduct ~~((officer hearing or conduct board))~~ hearing, as applicable, as quickly as feasible unless the emergency suspension is lifted earlier by the individual who issued the original emergency suspension or the individual who reviewed the student's challenge to an emergency suspension. If an emergency suspension is lifted prior to the hearing, the conduct officer determines whether to refer the matter to a hearing. Once a final order or agreement is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order or agreement is assigned.

(4) Challenge of the decision. The student can challenge the emergency suspension decision within 10 calendar days of the date of notice. Challenges are reviewed by the vice president for student affairs or their designee, provided the designee is not the same person who made the original emergency suspension decision. The vice president for student affairs or designee has 10 calendar days to respond to the ~~((review))~~ challenge and can uphold, reverse, or modify the emergency suspension. If the challenge is not reviewed within 10 calendar days, it is automatically deemed upheld. The submission of a challenge does not stay the emergency suspension decision.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor believes that an academic integrity violation has occurred, the instructor must ~~((assemble the evidence and, upon reasonable notice to the respondent of the date, time, and nature of the allegations,))~~ make reasonable attempts to meet with the ~~((respondent))~~ student suspected of committing an academic integrity violation to allow the student to respond to the allegations.

(b) ~~((If the respondent admits that they committed an academic integrity violation, the instructor assigns an outcome in keeping with published course policies and notifies CCS in writing, including the allegations, the respondent's admission, and the sanctions assigned.~~

~~((c) If the instructor is unable to meet with the respondent or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor,))~~ After the meeting or reasonable attempts to meet occur, the instructor must make a ~~((determination))~~ decision as to whether it is more likely than not that the respondent ~~((did or did not commit))~~ is responsible for an academic integrity violation ~~((based on a preponderance of the evidence standard, meaning that it is more likely than not that the violation occurred))~~ as defined in

WAC 504-26-202. If the instructor finds that the respondent ~~((was in))~~ is responsible for an academic integrity violation, the instructor must provide the respondent and CCS with a written ~~((determination))~~ decision, the evidence relied upon, and the academic sanctions assigned.

~~((d) The respondent has 21 calendar days from))~~ (c) Decisions made by the instructor become final 21 calendar days after the date ~~((of))~~ the decision ~~((letter to request review of the instructor's determination and/or sanction(s) assigned to the academic integrity hearing board))~~ is sent to the respondent, unless an appeal is submitted.

(2) ~~((Review))~~ Appeal.

(a) The respondent can appeal the instructor's decision by submitting an appeal to CCS within 20 calendar days of the date of decision. Upon timely ~~((request for review by a respondent who has been found by their instructor to have committed an academic integrity violation))~~ submission of appeal, the academic integrity hearing board ~~((must make a separate and independent determination of whether or not the respondent is responsible for committing an academic integrity violation and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies))~~ conducts a limited review.

(b) ~~((The academic integrity hearing board must consist of a minimum of one member. No academic integrity hearing board member may serve on a case if the member previously served on a board in a case involving the same student.))~~ Scope of review. Appeal of an instructor's academic integrity decision is limited to a review of the record to determine whether:

(i) The instructor meeting was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless procedural error affected the outcome of the matter.

(ii) The decision reached was based on substantial information, i.e., whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) The academic sanction assigned by the instructor was in alignment with the published course policies and/or syllabus statement(s).

(c) Actions. After reviewing the record and any information provided by the parties, the academic integrity hearing board may take the following actions:

(i) Affirm, reverse, or modify the initial decision, or any part of the decision;

(ii) Affirm, reverse, or modify the academic sanctions and/or remedies assigned by the decision maker, or any part of the sanctions and/or remedies; or

(iii) Set aside the findings, sanctions, remedies, or any part of the findings, sanctions, or remedies and remand the matter back to the decision maker with instructions for further proceedings.

(d) The academic integrity hearing board is empowered to provide an appropriate remedy for a respondent including arranging a withdrawal from the course, having the respondent's work evaluated, or changing a grade where it finds that:

(i) The respondent is not responsible for violating academic integrity policies; or

(ii) The outcome assigned by the instructor violates the instructor's published policies.

~~((d) Academic integrity hearing board proceedings.~~

~~(i) Any respondent appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:~~

~~(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;~~

~~(B) The approximate time and place of the alleged act that forms the factual basis for the violation;~~

~~(C) The time, date, and place of the hearing;~~

~~(D) A list of the witnesses who may be called to testify, to the extent known; and~~

~~(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the respondent must have the right to inspect the documentation.~~

~~(ii) Time for hearings.~~

~~(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the respondent has been sent notice of the hearing.~~

~~(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to CCS. A request for extension of time is granted only upon a showing of good cause.~~

~~(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by (d) (iv) of this subsection:~~

~~(A) Academic integrity hearing board hearings are conducted in private.~~

~~(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.~~

~~(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.~~

~~(D) In hearings involving graduate respondents, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.~~

~~(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weekdays before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may submit written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of~~

~~the academic integrity hearing board chair, who has the discretion to determine admissibility of information.~~

~~(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.~~

~~(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.~~

~~(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is more likely than not responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.~~

~~(I) The respondent is notified of the academic integrity hearing board's decision within 20 calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.~~

~~(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.~~

~~(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.~~

~~(vi)) (e) Content of decision. The decision includes the outcome, any sanction or remedy, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. The written decision of the academic integrity hearing board is the university's final order. There is no additional appeal ~~((from))~~ of the findings of responsibility or ~~((outcomes))~~ academic sanctions assigned by academic integrity hearing board.~~

~~(3) ((If the reported violation is the respondent's first offense, CCS ordinarily requires the respondent to attend a workshop)) After a finding of responsibility, either upon expiration of the appeal period or the academic integrity hearing board decision, the matter is referred to CCS for educational sanctioning separate from, and in addition to, any academic ((outcomes)) sanctions assigned by the instructor.~~

~~(4) ((If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, to determine appropriate sanctions, which may include expulsion from the university.~~

~~(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred to the conduct board with a recommendation for expulsion from the university even if it is the respondent's first offense.~~

~~(6))~~ Because instructors and departments have ~~((a legitimate))~~ an educational ((interest in)) need to know the outcome((s, reports)) of an academic integrity hearing board ((and/or conduct board hearings must be reported to)) decision, academic integrity hearing board decisions are shared with the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-420 Appeals. (1) Time for appeals. ~~((Decisions made by a conduct officer or conduct board))~~ Conduct hearing decisions become final on the 21st calendar day after the date the decision is sent to the parties, unless an appeal is submitted within 20 calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the ~~((conduct officer's or conduct board's))~~ decision maker's initial order, the implementation of an initial order assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals ~~((of conduct officer decisions))~~. Upon receipt of a timely appeal, CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond within 10 calendar days. ~~((The appeals board then conducts a limited review as described below.))~~

(a) Brief adjudication scope of review. Except as required to explain the basis of new information, appeal of a ~~((conduct officer))~~ brief adjudication decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless procedural error affected the outcome of the matter;

(ii) To determine whether the decision reached was based on substantial information, ~~((that is))~~ i.e., whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed;

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original ~~((conduct officer hearing))~~ brief adjudication, because such information and/or facts were not known to the person appealing at the time of the original ~~((conduct officer hearing))~~ brief adjudication;

(v) To consider whether or not the university had jurisdiction per WAC 504-26-015 to address the situation through the community standards process ~~((In cases implicating the university's executive policy 15, the appeals board must consult with the university's Title IX coordinator))~~; or

(vi) To consider whether the ~~((Title IX coordinator,))~~ investigator(s) ~~((r))~~ or decision maker(s) had a conflict of interest or bias

for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

~~(b) ((Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.~~

~~(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond within 10 calendar days.))~~
Full adjudicative proceeding scope of review. In addition to the criteria listed in (a) of this subsection, the appeals board members for full adjudicative proceeding appeals must make a separate and independent decision in the matter and personally consider the whole record.

The appeals board must have and exercise all the decision-making power that the ~~((conduct board))~~ decision maker had, except that the appeals board must give due regard to the ~~((conduct board's))~~ decision maker's opportunity to observe the witnesses, if applicable. ~~((The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.~~

~~(5))~~

(4) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. ~~((Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.~~

~~(6))~~

(5) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the ~~((conduct board's or conduct officer's))~~ initial decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions and/or remedies assigned by the ~~((conduct board or conduct officer))~~ decision maker, or any part of the sanctions and/or remedies; or

(iii) Set aside the findings ~~((or))~~ sanctions, remedies, or any part of the findings ~~((or))~~ sanctions, remedies and remand the matter back to the ~~((conduct board or conduct officer))~~ decision maker with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction and/or remedy, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of ~~((conduct board hearings))~~ full adjudicative proceedings, the decision includes, or incorporates by reference to the ~~((conduct board's))~~ presiding officer's decision, all matters as set forth in WAC 504-26-403(8).

(c) Service and effective date of decision. For appeals of ~~((conduct officer decisions))~~ brief adjudicative proceedings, the appeals board's decision must be sent simultaneously to the parties within 20 calendar days of receipt of the appeal. For appeals of ~~((conduct board decisions))~~ full adjudicative proceedings, the appeals board's decision must be sent simultaneously to the parties within 30 calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to 90 calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

~~((7))~~ (6) Reconsideration of final orders. Within 10 calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or 21 calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within 21 calendar days, the request is deemed to have been denied.

~~((8))~~ (7) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within 10 calendar days of the date the order was served.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the university website. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) assigned for a particular violation.

(2) Factors for sanctioning must include, but not be limited to, the following:

- (a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;
- (b) Malicious intent. If a respondent is found to have intentionally selected a ~~((victim))~~ complainant based upon the respondent's perception of the ~~((victim's))~~ complainant's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct;
- (c) Impact on ~~((victim))~~ complainant and/or university community;
- (d) Applicable local, state, or federal laws that define sanctioning.

(3) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(4) Types of sanctions. The following sanctions may be assigned to any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be assigned for any single violation:

- (a) Warning. A notice in writing to the respondent that the respondent is violating or has violated the standards of conduct.
- (b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the

respondent that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be assigned if the respondent is found to have violated the standards of conduct or any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A respondent on probation is not eligible to run for or hold an office in any (~~recognized or~~) registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. Assignment of service hours (not to exceed 80 hours per respondent or per member of a (~~recognized or~~) registered student organization).

(g) University housing suspension. Separation of the respondent from a residence hall or halls for a definite period of time, after which the respondent may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the respondent from a residence hall or halls.

(i) University suspension. Separation of the respondent from the university for a definite period of time. The respondent may be required to request readmission after completing a suspension per other university policy.

(j) University expulsion. Permanent separation of the respondent from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree or admission, or for other serious violations committed by a respondent before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions assigned, if any.

(m) Trespass. A respondent may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A (~~recognized or~~) registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a (~~recognized or~~) registered student organization. Services, privileges, and approval to be withdrawn may include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student (~~involvement~~) engagement office organizational activities, and their liaison relationship with the center for fraternity and sorority life.

(o) Hold on transcript and/or registration. A hold restricts release of a respondent's transcript or access to registration until satisfactory completion of conditions or sanctions assigned by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact directive. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be assigned. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a respondent who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902. Any (~~recognized or~~) registered student organization that is found responsible for hazing must lose recognition for a specified period of time.

(s) Remedies. Sanctions designed to restore or preserve a complainant's equal access to the university's educational programs or activities.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The dean of students or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the university website. A link to the website must be provided to parties during their initial contact from CCS.

(2) Definitions from these standards are incorporated into (~~the university's executive policy 15~~) EP15.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-510 Good Samaritan policy. CCS may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student or (~~recognized or~~) registered student organization who, while in the course of helping another person seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk. In addition, CCS may elect not to initiate a conduct proceeding against a complainant who admits to the possession or use of alcohol or drugs in connection with a report under this policy.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-530 Recordkeeping and confidentiality. (1) Removal of conduct record. A student may request removal of a single disciplinary violation from their record. Granting such a request is discretionary, and the student must make such a request in accordance with university policies and procedures.

(2) Conduct records are maintained in accordance with the university's records retention schedule.

(3) The conduct record is confidential and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 504-21 WAC, University policy on student education records. Situations where CCS may release records include, but are not limited to, releases:

(a) To another educational institution, upon request, where the student seeks or intends to enroll;

(b) To a parent or legal guardian, if a student under the age of 21 is found responsible for a drug or alcohol violation;

(c) To comply with legally served search warrants and subpoenas;

(d) To other university employees, if there is an educational need for the employee to know the information;

(e) To inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA;

(f) To inform the complainant of the outcome of any conduct proceeding alleging dating violence, domestic violence, sexual assault, or stalking as defined by the Clery Act (34 C.F.R. 668.46

(k) (2) (v) (A)).

(4) A student may request a copy of their own conduct record at their own reasonable expense by making a written request to CCS.

(5) Personally identifiable student information is redacted to protect other students' privacy, except as otherwise required by law or permitted by policy.

(6) A student may authorize release of their own conduct record to a third party in compliance with FERPA by making a written request to CCS.

**WSR 24-23-096
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed November 19, 2024, 4:57 p.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: In WAC 182-501-0070, the health care authority (HCA) removed naturopathy from the noncovered services list. In WAC 182-502-0002, HCA added birth doula as an eligible provider type. This is necessary to support a separate rule making filed under WSR 24-10-016, on April 19, 2024. HCA also added behavior health support specialist as an eligible provider type. This is necessary to support a separate rule making filed under WSR 24-16-024, on July 26, 2024.

As a result of a recent office of financial management (OFM) directive, HCA is pausing implementation of coverage for adult chiropractic and acupuncture services planned for January 1, 2025.

The following proposed rule sections filed under WSR 24-19-096 will not be adopted at this time: WAC 182-502-0003 Noneligible provider types, 182-531-0150 Noncovered physician-related and health care professional services—General and administrative, 182-556-0200 Chiropractic services, and 182-556-0250 Acupuncture services (new).

Citation of Rules Affected by this Order: Amending WAC 182-501-0070 and 182-502-0002.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-19-096 on September 17, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-501-0070(b)		
Proposed	(b) ((Acupuncture,)) Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, ((naturopathy,)) and sanipractice;	As a result of a recent OFM directive, HCA is pausing implementation of coverage for adult chiropractic and acupuncture services planned for January 1, 2025.
Adopted	(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, ((naturopathy,)) and sanipractice;	
WAC 182-501-0070(c)		
Proposed	(c) ((Chiropractic care for adults;	As a result of a recent OFM directive, HCA is pausing implementation of coverage for adult chiropractic and acupuncture services planned for January 1, 2025.
Adopted	(c) Chiropractic care for adults;	
WAC 182-502-0002 (1)(a)		
Proposed	(a) Acupuncturists;	As a result of a recent OFM directive, HCA is pausing implementation of coverage for adult chiropractic and acupuncture services planned for January 1, 2025.
Adopted	(a) Acupuncturists;	
WAC 182-502-0003, 182-531-0150, 182-556-0200, 182-556-0250		
As a result of a recent OFM directive, HCA is pausing implementation of coverage for adult chiropractic and acupuncture services planned for January 1, 2025. The rule-making changes, as proposed during the public hearing, will not be adopt WAC 182-502-0003 Noneligible provider types, 182-531-0150 Noncovered physician-related and health care professional services—General and administrative, 182-556-0200 Chiropractic services, and 182-556-0250 Acupuncture services (new).		

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 19, 2024.

Wendy Barcus
Rules Coordinator

OTS-5757.2

AMENDATORY SECTION (Amending WSR 22-07-105, filed 3/23/22, effective 4/23/22)

WAC 182-501-0070 Health care coverage—Noncovered services. (1)

The medicaid agency or ((its)) the agency's designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or ((its)) the agency's designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, ((naturopathy)) and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4) or 182-531-1675;

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including, but not limited to:

(i) Artificial insemination;

- (ii) Donor ovum, donor sperm, or gestational carrier;
- (iii) In vitro fertilization;
- (iv) Penile implants;
- (v) Reversal of sterilization; and
- (vi) Sex therapy.
- (i) Hair transplants;
- (j) Epilation (hair removal) and electrolysis not specifically allowed under WAC 182-531-1675;
- (k) Marital counseling;
- (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;
- (m) Nonmedical equipment;
- (n) Penile implants;
- (o) Prosthetic testicles not specifically allowed under WAC 182-531-1675;
- (p) Psychiatric sleep therapy;
- (q) Subcutaneous injection filling;
- (r) Tattoo removal;
- (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;
- (t) Upright magnetic resonance imaging (MRI); and
- (u) Vehicle purchase - New or used vehicle.
- (5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:
 - (a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;
 - (b) Dental services as described in chapter 182-535 WAC;
 - (c) Durable medical equipment as described in chapter 182-543 WAC;
 - (d) Hearing care services as described in chapter 182-547 WAC;
 - (e) Home health services as described in WAC 182-551-2130;
 - (f) Hospital services as described in WAC 182-550-1600;
 - (g) Health care professional services as described in WAC 182-531-0150;
 - (h) Prescription drugs as described in chapter 182-530 WAC;
 - (i) Vision care hardware for clients 20 years of age and younger as described in chapter 182-544 WAC; and
 - (j) Vision care exams as described in WAC 182-531-1000.
- (6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within 10 business days of the date the decision is made, that includes:
 - (a) A statement of the action the agency or its designee intends to take;
 - (b) Reference to the specific WAC provision upon which the denial is based;
 - (c) Sufficient detail to enable the recipient to:
 - (i) Learn why the agency's or its designee's action was taken; and
 - (ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.
 - (d) The specific factual basis for the intended action; and
 - (e) The following information:

- (i) Administrative hearing rights;
 - (ii) Instructions on how to request the hearing;
 - (iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;
 - (iv) Instructions on how to request an exception to rule (ETR);
 - (v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and
 - (vi) Upon the client's request, the name and address of the nearest legal services office.
- (7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

OTS-5760.2

AMENDATORY SECTION (Amending WSR 24-12-036, filed 5/30/24, effective 7/1/24)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
 - (a) Advanced registered nurse practitioners;
 - (b) Advanced social workers;
 - (c) Advanced social worker associates;
 - (d) Anesthesiologists;
 - (e) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531A-0800:
 - (i) Licensed behavior analyst;
 - (ii) Licensed assistant behavior analyst; and
 - (iii) Certified behavior technician;
 - (f) Audiologists;
 - (g) Behavioral health support specialists (BHSS);
 - (h) Birth doulas;
 - (i) Chiropractors;
 - (~~(h)~~) (j) Dentists;
 - (~~(i)~~) (k) Dental health aide therapists, as provided in chapter 70.350 RCW;
 - (~~(j)~~) (l) Dental hygienists;
 - (~~(k)~~) (m) Denturists;
 - (~~(l)~~) (n) Dietitians or nutritionists;
 - (~~(m)~~) (o) Hearing aid fitters/dispensers;
 - (~~(n)~~) (p) Home health aide credentialed with DOH as nursing assistant certified or nursing assistant registered;
 - (~~(o)~~) (q) Independent clinical social workers;
 - (~~(p)~~) (r) Independent clinical social worker associates;
 - (~~(q)~~) (s) Licensed practical nurse;
 - (~~(r)~~) (t) Marriage and family therapists;
 - (~~(s)~~) (u) Mental health counselors;
 - (~~(t)~~) (v) Mental health counselor associates;

- ((u)) (w) Mental health care providers;
- ((v)) (x) Midwives;
- ((w)) (y) Naturopathic physicians;
- ((x)) (z) Nurse anesthetist;
- ((y)) (aa) Ocularists;
- ((z)) (bb) Occupational therapists;
- ((aa)) (cc) Ophthalmologists;
- ((bb)) (dd) Opticians;
- ((cc)) (ee) Optometrists;
- ((dd)) (ff) Orthodontists;
- ((ee)) (gg) Orthotist;
- ((ff)) (hh) Osteopathic physicians;
- ((gg)) (ii) Osteopathic physician assistants;
- ((hh)) (jj) Peer counselors;
- ((ii)) (kk) Podiatric physicians;
- ((jj)) (ll) Pharmacists;
- ((kk)) (mm) Physicians;
- ((ll)) (nn) Physician assistants;
- ((mm)) (oo) Physical therapists;
- ((nn)) (pp) Prosthetist;
- ((oo)) (qq) Psychiatrists;
- ((pp)) (rr) Psychologists;
- ((qq)) (ss) Radiologists;
- ((rr)) (tt) Registered nurse;
- ((ss)) (uu) Registered nurse delegators;
- ((tt)) (vv) Registered nurse first assistants;
- ((uu)) (ww) Respiratory therapists;
- ((vv)) (xx) Speech/language pathologists; and
- ((ww)) (yy) Substance use disorder professionals:
 - (i) Mental health providers; and
 - (ii) Peer counselors.
- (2) Agencies, centers and facilities:
 - (a) Adult day health centers;
 - (b) Ambulance services (ground and air);
 - (c) Ambulatory surgery centers (medicare-certified);
 - (d) Birthing centers (licensed by the department of health);
 - (e) Cardiac diagnostic centers;
 - (f) Case management agencies;
 - (g) Substance use disorder treatment facilities certified by the department of health (DOH);
 - (h) Withdrawal management treatment facilities certified by DOH;
 - (i) Community AIDS services alternative agencies;
 - (j) Community behavioral health support services provider facilities;
 - (k) Community mental health centers;
 - (l) Diagnostic centers;
 - (m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
 - (n) Family planning clinics;
 - (o) Federally qualified health centers (designated by the federal department of health and human services);
 - (p) Genetic counseling agencies;
 - (q) Health departments;
 - (r) Health maintenance organization (HMO)/managed care organization (MCO);
 - (s) HIV/AIDS case management;
 - (t) Home health agencies;

- (u) Hospice agencies;
 - (v) Hospitals;
 - (w) Indian health service facilities/tribal 638 facilities;
 - (x) Tribal or urban Indian clinics;
 - (y) Inpatient psychiatric facilities;
 - (z) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
 - (aa) Kidney centers;
 - (bb) Laboratories (CLIA certified);
 - (cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
 - (dd) Neuromuscular and neurodevelopmental centers;
 - (ee) Nurse services/delegation;
 - (ff) Nursing facilities (approved by the DSHS aging and long-term support administration);
 - (gg) Pathology laboratories;
 - (hh) Pharmacies;
 - (ii) Private duty nursing agencies;
 - (jj) Radiology - Stand-alone clinics;
 - (kk) Rural health clinics (medicare-certified);
 - (ll) School districts and educational service districts; and
 - (mm) Sleep study centers.
- (3) Suppliers of:
- (a) Blood, blood products, and related services;
 - (b) Durable and nondurable medical equipment and supplies;
 - (c) Complex rehabilitation technologies;
 - (d) Infusion therapy equipment and supplies;
 - (e) Prosthetics/orthotics;
 - (f) Hearing aids; and
 - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
- (a) Transportation brokers;
 - (b) Spoken language interpreter services agencies;
 - (c) Independent sign language interpreters; and
 - (d) Eyeglass and contact lens providers.

WSR 24-23-099
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 20, 2024, 8:39 a.m., effective December 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services is adopting chapter 388-487 WAC, Sun bucks, to include WAC 388-487-0010 What is the sun bucks program?, 388-487-0020 Is my child eligible for sun bucks?, and 388-487-0030 General information about sun bucks benefits.

Adoption of these rules supports implementation of the summer electronic benefits transfer program, also known as sun bucks. Sun bucks is a new program authorized under the Consolidated Appropriations Act, 2023 (H.R. 2617) to provide additional food benefits to certain eligible children for designated summer periods (effective June 2024). Once effective, this filing supersedes the emergency rule filed under WSR 24-20-016.

Citation of Rules Affected by this Order: New WAC 388-487-0010, 388-487-0020, and 388-487-0030.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: Consolidated Appropriations Act, 2023 (H.R. 2617).

Adopted under notice filed as WSR 24-20-083 on September 27, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: November 20, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5033.3

NEW SECTION

WAC 388-487-0010 What is the sun bucks program? The sun bucks program is the summer electronic benefits transfer (summer EBT) program that provides a one-time food benefit to eligible children during designated summer periods following the academic school year. Sun bucks is administered by the department of social and health services

and is not bound by the same state or federal rules, regulations, or procedures governing basic food as described in WAC 388-400-0040.

The following definitions apply to this program:

- (1) "Compulsory age" means the age children are required by law to attend school; in Washington this is between the ages of eight and 18.
- (2) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:
 - (a) Receiving a benefit from a federal means tested assistance program, including supplemental nutrition assistance program, temporary assistance for needy families, food distribution program on Indian reservations, some medicaid programs; or
 - (b) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program.
- (3) "Expungement" means removal of benefits due to nonuse after 122 days from the date sun bucks benefits were deposited into the EBT account.
- (4) "Free or reduced-price meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act.
- (5) "Income eligibility guidelines" means income limits to determine eligibility for free and reduced-price meals adjusted annually by the US department of agriculture food and nutrition service as required by the national school lunch act.
- (6) "Sun bucks application" means an application available to households with potentially eligible children who do not automatically meet streamline certification criteria.
- (7) "Sun bucks card" means the unique EBT card that accesses sun bucks food benefits issued to individual eligible children.
- (8) "Streamline certified" means a child automatically approved for sun bucks because they meet the following criteria:
 - (a) A child, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program and school breakfast program during the school year, who:
 - (i) Is determined by the school to be eligible for free or reduced-priced school meals; or
 - (ii) Attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program and identified as eligible for free or reduced-price school meals using direct certification or a free or reduced-price school meals application.
 - (b) A child who meets compulsory age requirements and resides in a household receiving one of the following public assistance benefits:
 - (i) Temporary assistance for needy families as described in WAC 388-400-0005;
 - (ii) State funded assistance as described in WAC 388-400-0010;
 - (iii) Basic food as described in WAC 388-400-0040; or
 - (iv) The state funded food assistance program as described in WAC 388-400-0050.
- (10) "Summer operational period" means the period between the end of the current school year and the start of the next school year, as determined by the state.

NEW SECTION

- WAC 388-487-0020 Is my child eligible for sun bucks?** (1) To be streamline certified for sun bucks benefits, a child must:
- (a) Attend a school that participates in the national school lunch program or school breakfast program; and
 - (i) Is determined by the school to be eligible for free or reduced-price school meals; or
 - (ii) Who attends a school that operates the community eligibility provision or provision 2 lunch and breakfast program and identified as eligible for free or reduced-price meals using direct certification or a free or reduced-price school meals application.
 - (b) Meet compulsory age requirements and reside in a household receiving one of the following public assistance benefits:
 - (i) Temporary assistance for needy families as described in WAC 388-400-0005;
 - (ii) State funded assistance as described in WAC 388-400-0010;
 - (iii) Basic food as described in WAC 388-400-0040; or
 - (iv) The state funded food assistance program as described in WAC 388-400-0050.
- (2) Children who are not streamline certified must submit a sun bucks application during the summer operational period and must meet the following criteria:
- (a) Attend a school that participates in the national school lunch program or school breakfast program; and
 - (b) Meet income eligibility guidelines for free or reduced-price school meals.
 - (i) Income eligibility guidelines change annually on July 1.
 - (ii) The income eligibility guidelines in effect on the date of application are used to determine eligibility.
- (3) Applications received after the end of the summer operational period will be considered for sun bucks in the following year.
- (4) If information on an application is questionable, verification may be requested and must be provided within 30 days of the date of application.
- (5) Children approved for sun bucks receive a notice of approval describing their eligibility and other information related to the program.

NEW SECTION

- WAC 388-487-0030 General information about sun bucks benefits.**
- (1) The amount of sun bucks each eligible child will receive is \$120 for the summer of 2024 and will be adjusted annually for inflation.
 - (2) Sun bucks benefits are deposited into an account accessible with a designated sun bucks card. Each sun bucks card is:
 - (a) Linked to a sun bucks account for each eligible child; and
 - (b) Mailed to the last known address as reported by the parent or caregiver to either:
 - (i) The child's school if directly certified for free or reduced-price meals; or
 - (ii) The department for the eligible child's cash or food assistance household.
 - (c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the child's school and to

the department. The department or school is not responsible for the expungement of benefits due to unreceived sun bucks notices or cards sent through the mail.

(3) To use a sun bucks account:

(a) The sun bucks EBT card can be used by the eligible child or responsible household member, such as a parent or caregiver on behalf of the eligible child, to purchase eligible food items.

(b) A personal identification number (PIN) must be created to use the sun bucks card. Families are responsible for keeping the sun bucks card and PIN of an eligible child in a safe and secure place.

(c) Sun bucks benefits are only accessed from the sun bucks card and cannot be transferred to a bank account or issued as a check.

(4) The purpose of sun bucks benefits is to help low-income families have a more nutritious diet by providing food benefits to eligible children during the summer months between academic school years.

(a) Any remaining sun bucks benefits not used within 122 days from the date of deposit into each eligible child's account are expunged.

(b) Sun bucks benefits cannot be replaced, redeemed, expunged, lost, or stolen due to fraudulent activity or use.

(c) Sun bucks benefits are used to buy food items for an eligible child from a food retailer authorized to accept supplemental nutrition assistance program benefits.

(d) Intentional misuse of sun bucks benefits may be subject to fines or legal action including criminal prosecution.

(5) The household must request a hearing within 90 days of the end of the summer operational period when disagreeing with a decision explained in the notice.

(6) Children cannot receive sun bucks from more than one state at a time for the same summer operational period.

WSR 24-23-102

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed November 20, 2024, 9:55 a.m., effective December 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The building code council was petitioned to amend items 5 and 7 of Section C403.1.4 in the 2021 Washington State Energy Code, commercial provisions, to include options other than electric resistance heaters as supplemental heating for air-to-air heat pumps and ground-source heat pumps.

Citation of Rules Affected by this Order: Amending WAC 51-11C-40314.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025.

Other Authority: RCW 19.27A.020, 19.27A.025.

Adopted under notice filed as WSR 24-16-146 on August 7, 2024.

Changes Other than Editing from Proposed to Adopted Version: Two options had been presented in the CR-102. Option 1 was no change to the WAC and option 2 was the changes as presented in the petition. Option 2 was selected.

A final cost-benefit analysis is available by contacting Dustin Curb, 1500 Jefferson Street S.E., Olympia, WA 98504-1449, email sbcc@des.wa.gov, website sbcc.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 15, 2024.

Daimon Doyle
Council Chair

OTS-5623.2

AMENDATORY SECTION (Amending WSR 24-03-085, filed 1/16/24, effective 3/15/24)

WAC 51-11C-40314 Section C403.1.4—HVAC heating equipment.

C403.1.4 Use of electric resistance and fossil fuel-fired HVAC heating equipment. HVAC heating energy shall not be provided by electric resistance or fossil fuel combustion appliances. For the purposes of this section, electric resistance HVAC heating appliances include, but are not limited to, electric baseboard, electric resistance fan coil and VAV electric resistance terminal reheat units and electric resist-

ance boilers. For the purposes of this section, fossil fuel combustion HVAC heating appliances include, but are not limited to, appliances burning natural gas, heating oil, propane, or other fossil fuels.

EXCEPTIONS:

1. **Low heating capacity.** Buildings or areas of buildings, other than *dwelling units* or sleeping units, that meet the interior temperature requirements of Chapter 12 of the *International Building Code* with a total installed HVAC heating capacity no greater than 8.5 Btu/h (2.5 watts) per square foot of *conditioned space* are permitted to be heated using electric resistance appliances.
2. **Dwelling and sleeping units.** Dwelling or sleeping units are permitted to be heated using electric resistance appliances as long as the installed HVAC heating capacity in any separate space is not greater than:
 - 2.1. Seven hundred fifty (750) watts in Climate Zone 4, and 1000 watts in Climate Zone 5 in each habitable space with fenestration.
 - 2.2. One thousand (1,000) watts in Climate Zone 4, and 1300 watts in Climate Zone 5 for each habitable space that has two primary walls facing different cardinal directions, each with exterior fenestration. Bay windows and other minor offsets are not considered primary walls.
 - 2.3. Two hundred fifty (250) watts in spaces adjoining the *building thermal envelope* but without fenestration.
 For the purposes of this section, habitable space is as defined in the *International Building Code*. For buildings in locations with exterior design conditions below 4°F (-16°C), an additional 250 watts above that allowed for Climate Zone 5 is permitted in each space with fenestration.
3. **Small buildings.** Buildings with less than 2,500 square feet (232 m²) of *conditioned floor area* are permitted to be heated using electric resistance appliances.
4. **Defrost.** Heat pumps are permitted to utilize electric resistance heating when a heat pump defrost cycle is required and is in operation.
5. **Air-to-air heat pumps.** Buildings are permitted to utilize (~~electric resistance~~) supplemental heating for air-to-air heat pumps that meet all of the following conditions:
 - 5.1. Internal electric resistance heaters have controls that prevent supplemental heater operation when the heating load can be met by the heat pump alone during both steady-state operation and setback recovery.
 - 5.2. The heat pump controls are configured to use the compressor as the first stage of heating down to an outdoor air temperature of 17°F (-8°C) or lower except when in defrost.
 EXCEPTIONS TO 5.2:
 1. Packaged terminal heat pumps (PTHPs) that comply with the minimum heating efficiency requirements in Table C403.3.2(4) are exempt from heating pump controls capable of operating the compressor as the first stage of heating down to an outdoor air temperature of 17°F (-8°C) or lower.
 2. Heat pumps whose minimum efficiency is regulated by NAECA and whose ratings meet the requirements shown in Table C403.3.2(2) and include all usage of internal electric resistance heating are exempt from heat pump controls capable of operating the compressor as the first state of heating down to an outdoor air temperature of 17°F (-8°C) or lower.
- 5.3. The heat pump complies with one of the following:
 - 5.3.1. Controlled by a digital or electronic thermostat designed for heat pump use that energizes the supplemental heat only when the heat pump has insufficient capacity to maintain set point or to warm up the space at a sufficient rate.
 - 5.3.2. Controlled by a multistage space thermostat and an outdoor air thermostat wired to energize supplemental heat only on the last stage of the space thermostat and when outdoor air temperature is less than 32°F (0°C) except when in defrost.
 - 5.3.3. The minimum efficiency of the heat pump is regulated by NAECA, its rating meets the requirements shown in Table C403.3.2(2), and its rating includes all usage of internal electric resistance heating.
- 5.4. The heat pump rated heating capacity is sized to meet the heating load at an outdoor air temperature of 32°F (0°C) or lower and has a rated heating capacity at 47°F (8°C) no less than 2 times greater than supplemental heating capacity in Climate Zone 4 and no less than the supplemental heating capacity in Climate Zone 5, or utilizes the smallest available factory-available internal electric resistance heater.
6. **Air-to-water heat pumps.** Buildings are permitted to utilize electric resistance (for Climate Zone 4 or 5) or fossil fuel-fired (for Climate Zone 5) auxiliary heating to supplement heat pump heating for hydronic heating systems that meet all of the following conditions:
 - 6.1. Controls for the auxiliary heating sources are configured to lock out the supplemental heat when the outside air temperature is above 36°F (2°C), unless the hot water supply temperature setpoint to the building heat coils cannot be maintained for 20 minutes.
 - 6.2. The heat pump controls are configured to use the compressor as the first stage of heating down to the lowest exterior design temperature for which the equipment is rated except during startup or defrost operation.
 - 6.3. The heat pump rated heating capacity at 47°F (8°C) is no less than 75 percent of the design heating load at 29°F (-2°C).
7. **Ground source heat pumps.** Buildings are permitted to utilize (~~electric resistance~~) supplemental heating for heat pump heating for hydronic heating systems with ground source heat pump equipment that meets all of the following conditions:
 - 7.1. Controls for the auxiliary heating sources are configured to lock out the supplemental heat when the equipment source-side entering water temperature is above 42°F (6°C), unless the hot water supply temperature setpoint to the building heat coils cannot be maintained for 20 minutes.
 - 7.2. The heat pump controls are configured to use the compressor as the first stage of heating.
 - 7.3. The ground source heat exchanger shall be sized so that the heat pump annual heating output is no less than 70 percent of the total annual heating output in the final year of a 30-year simulation using IGSHPA listed simulation software.
8. **Small systems.** Buildings in which electric resistance or fossil fuel appliances, including decorative appliances, either provide less than 5 percent of the total building HVAC system heating capacity or serve less than 5 percent of the *conditioned floor area*.
9. **Specific conditions.** Portions of buildings that require fossil fuel or electric resistance space heating for specific conditions *approved* by the *code official* for research, health care, process or other specific needs that cannot practically be served by heat pump or other space heating systems. This does not constitute a blanket exception for any occupancy type.
10. **Kitchen make-up air.** Make-up air for commercial kitchen exhaust systems required to be tempered by Section 508.1.1 of the *International Mechanical Code* is permitted to be heated by using fossil fuel in Climate Zone 5 or electric resistance in Climate Zone 4 or 5.
11. **District energy.** Steam or hot water district energy systems that utilize fossil fuels as their primary source of heat energy, that serve multiple buildings, and that were already in existence prior to the effective date of this code, including more energy-efficient upgrades to such existing systems, are permitted to serve as the primary heating energy source.
12. **Heat tape.** Heat tape is permitted where it protects water-filled equipment and piping located outside of the *building thermal envelope*, provided that it is configured and controlled to be automatically turned off when the outside air temperature is above 40°F (4°C).
13. **Temporary systems.** Temporary electric resistance heating systems are permitted where serving future tenant spaces that are unfinished and unoccupied, provided that the heating equipment is sized and controlled to achieve interior space temperatures no higher than 40°F (4°C).
14. **Pasteurization.** Electric resistance heat controls are permitted to reset the supply water temperature of hydronic heating systems that serve service water heating heat exchangers during pasteurization cycles of the service hot water storage volume. The hydronic heating system supply water temperature shall be configured to be 145°F (63°C) or lower during the pasteurization cycle.
15. **Freeze protection.** Heating systems sized for spaces with indoor design conditions of 45°F (7°C) and intended for freeze protection are permitted to use electric resistance. The building envelope of any such space shall be insulated in compliance with Section C402.1.
16. **DOAS ERV auxiliary heat.** Dedicated outdoor air systems with energy recovery ventilation are permitted to utilize fossil fuel for Climate Zone 5 or electric resistance in Climate Zone 4 or 5 for auxiliary heating to preheat outdoor air for defrost or as auxiliary supplemental heat to temper supply air to 55°F (13°C) or lower for buildings or portions of buildings that do not have hydronic heating systems.

17. **Low-carbon district energy systems.** Low-carbon district energy systems that meet the definitions of *low-carbon district energy exchange system* or *low-carbon district heating and cooling or heating only systems*.
18. **Essential facilities.** Groups 1-2 and 1-3 occupancies that by regulation are required to have in place redundant emergency backup systems.

WSR 24-23-104

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 20, 2024, 11:07 a.m., effective December 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-516-003, 16-516-010, 16-516-020, 16-516-040, and 16-516-205.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060.

Other Authority: RCW 43.01.160, 43.23.025.

Adopted under notice filed as WSR 24-19-065 on September 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 5, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2024.

Derek I. Sandison
Director

OTS-5816.1

AMENDATORY SECTION (Amending Order and Findings, effective 7/23/56)

WAC 16-516-003 Director's order making marketing order effective and creating a potato commission. (1) Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in ~~((him))~~ the director by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on June 6, 1956, that certain marketing order entitled, "Marketing Order for Washington Potatoes Providing for the Creation of a Washington Potato Commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090; and ~~((7))~~

(2) Whereas, the director of agriculture has found that more than ~~((fifty-one))~~ 51 percent of the affected producers have replied to the written referendum within the time specified by the director and that said marketing order for Washington potatoes has been assented to in writing by more than ~~((sixty-five))~~ 65 percent of the producers who

produced more than (~~fifty-one~~) 51 percent by volume of the said potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of potato producers established by the director pursuant to the provisions of RCW 15.66.060, which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said marketing order for Washington potatoes providing for the creation of a Washington potato commission, said order to be effective at 12:01 a.m. July 23, 1956.

AMENDATORY SECTION (Amending WSR 17-05-033, filed 2/8/17, effective 3/11/17)

WAC 16-516-010 Definitions. The following terms shall have the meanings given in RCW 15.66.010, supplemented by the following additional definitions:

"Act" means the Washington state agricultural commodity commissions statute, chapter 15.66 RCW;

"Affected area" or "area of production" are synonymous and mean all of the state of Washington;

"Affected commodity" means potatoes as defined in this section;

"Affected handler" means any handler of potatoes;

"Affected producer" means any producer who is subject to this marketing order;

"Agricultural development" means activities intended to increase the efficiency, productivity, or fair market access of Washington potatoes and potato products;

"Commercial quantities" shall mean and include five hundredweight or more per growing season;

"Disclosure" means inspection or copying;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act (~~for him or her~~) on the director's behalf concerning some matter under this chapter;

"District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, packing, shipping, selling, marketing, or distributing of potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

"Hundredweight" or "affected unit" are synonymous and mean and include each (~~one hundred~~) 100 pound unit or any combination of packages making a (~~one hundred~~) 100 pound unit of potatoes;

"Marketing season" or "fiscal year" are synonymous and mean the (~~twelve~~) 12-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state government;

"Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

"Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

"Producer" means any person engaged in the production of potatoes grown in Washington for market in commercial quantities, and it includes a landowner, landlord, tenant or other person that participates in the growing or producing of the affected commodity and who has a proprietary interest in the potatoes so produced. "To produce" means to act as a producer;

"Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics;

"Research" means scientific research conducted by a university or other accredited researcher on pest and disease surveys; pest and disease control tools or techniques; planting, harvesting, handling and other production or processing tools or techniques; health or nutritional qualities or benefits of potatoes or potato products; and environmental issues including, but not limited to, water use, water quality, water quantity, and erosion control related to production of potatoes or potato products. Results of agricultural research conducted under the provisions of this marketing order shall be public information;

"Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration.

"Sale" shall also include an agreement to acquire such property for a consideration;

"Unfair trade practice" means any practice that is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16, and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the Federal Trade Commission Act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or the violation of or failure to accurately label as to grades and standards in accordance with any lawfully established grades or standards or labels.

AMENDATORY SECTION (Amending WSR 06-03-003, filed 1/4/06, effective 2/4/06)

WAC 16-516-020 Potato commission. (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsections (2) and (3) of this section and five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall appoint one member to the commission to represent the director as a voting member of the commission.

(2) Representative districts. For the purpose of nomination and selection of producer members of the commission, the affected area of the state of Washington shall be divided into three representative districts as follows:

(a) "District No. 1" shall be and include the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) "District No. 2" shall be and include the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) "District No. 3" shall be and include the counties of Skagit and all other counties in the state of Washington.

(3) Elected membership. Producer members shall be elected from the districts as follows:

(a) Positions 1, 2, 3, and 4 shall be elected from District No. 1.

(b) Positions 5, 6, 7, and 8 shall be elected from District No. 2.

(c) Position 9 shall be elected from District No. 3.

(4) Appointed membership.

(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the elected producers as provided in subsections (1) and (5)(b) of this section.

(b) Position 15 shall be appointed by the director as provided in subsection (1) of this section.

(5) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of (~~eighteen~~) 18 years.

(a) Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The producer members shall be and have been actively engaged in producing potatoes for a period of at least three years, and shall derive a substantial proportion of their incomes from the sale of potatoes. A producer member of the commission must have paid an assessment to the commission on potatoes in each of the preceding three calendar years. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(b) Members of the commission appointed by the elected producers to positions 10, 11, 12, 13, and 14 shall be potato producers or handlers or others active in matters directly relating to Washington state potatoes and have a demonstrated record of service in the potato industry in Washington state.

(6) Term of office. The term of office of the elected and appointed producer members of the commission shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified. Commencing on July 1, 2005, the term of office for members of the commission shall be as follows: Positions 1, 5 and 7 shall terminate June 30, 2008; positions 3, 4 and 6 shall terminate June 30, 2006; positions 2, 8 and 9 shall terminate June 30, 2007; positions 10 and 11 shall terminate June 30, 2008; positions 12 and 14 shall terminate June 30, 2006; and position 13 shall terminate June 30, 2007.

(7) Nomination and election of commission members. Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(a) Not earlier than March 18th and not later than April 2nd of each year, the director shall give notice by mail to all producers in each district in which one or more open positions will occur in the commission and call for nominations. Nominating petitions shall be signed by five persons qualified to vote for such candidates. Such notice shall state the final date for filing said petitions which shall

be not earlier than April 7th and not later than April 12th of each year.

(b) Not earlier than April 17th and not later than May 2nd of each year, the director shall mail ballots to all affected producers in each district in which one or more open positions will occur. Ballots must be received by the director not later than June 1st of such year. Such mailed ballot shall be conducted in a manner so that it shall be a secret ballot in accordance with rules adopted by the director. An affected producer is entitled to one vote.

(c) Each appointed producer member of the commission shall be elected by majority vote of the elected commissioners in a public vote at a public meeting held within (~~ninety~~) 90 days prior to the expiration of the appointed member's term.

(8) Vacancies. In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant. Any member so appointed shall serve until the normal expiration of (~~his or her~~) their term.

(9) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(c) To adopt, rescind, and amend rules reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;

(h) To borrow money and incur indebtedness;

(i) To make necessary disbursements for routine operating expenses;

(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

(k) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least (~~forty-five~~) 45 days prior to the beginning of its fiscal year, shall prepare and submit to the director its budget, research plan, and its commodity-related education and training plan;

(l) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(m) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order;

(n) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(o) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, use, distribution and trade barriers impacting potatoes and potato products;

(p) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(q) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale or use of potatoes as requested by any elected official or officer or employee of any agency and as authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(r) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity;

(s) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity;

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order;

(u) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140(18);

(w) To maintain a list of the names and addresses of persons who handle potatoes within the affected area and data on the amount and value of the potatoes handled by each person pursuant to RCW 15.66.140(19) for a minimum three-year period;

(x) To maintain a list of names and addresses of all affected persons who produce potatoes and the amount, by unit, of potatoes produced during the past three years pursuant to RCW 15.66.143(1);

(y) To maintain a list of all persons who handle potatoes and the amount of potatoes handled by each person during the past three years pursuant to RCW 15.66.143(2);

(z) To check records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid; and

(aa) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

(10) Procedure for commission.

(a) The commission shall by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. Notice of the meetings shall be published in the potato commission newsletter and sent to the appropriate general and agricultural media outlets.

(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice as required in RCW 42.30.080.

(d) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(e) A quorum of the commission shall consist of at least nine members.

(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which shall not exceed the compensation rate set by RCW 43.03.230 or state travel expense rates in accordance with RCW 43.03.050 and 43.03.060 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, except the commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

(11) Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in (~~his~~) their individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 06-03-003, filed 1/4/06, effective 2/4/06)

WAC 16-516-040 Assessments and assessment funds. (1) Assessments levied.

(a) On and after the effective date of this order, there is hereby levied and there shall be collected by the commission, as provided

in the act, upon all potatoes grown in the state an annual assessment of four cents per hundredweight which shall be paid by the producer thereof upon each and every hundredweight of potatoes sold, processed, delivered for sale or processing by (~~him or her~~) the producer or stored or delivered for storage when storage or delivery for storage shall be outside the boundaries of this state: Provided, that no assessment shall be collected on the following:

(i) Potatoes grown and sold for seed under an established seed certification program;

(ii) Potatoes sold for livestock feed, regardless of grade;

(iii) Potatoes sold for nonfood products, such as industrial starch;

(iv) Potatoes of a producer's own production used by (~~him or her on his or her~~) the producer on their own premises for seed, feed or personal consumption;

(v) Potatoes donated or shipped for relief or charitable purposes; or

(vi) Sales on a producer's premises by a producer direct to a consumer of (~~five hundred~~) 500 pounds or less of potatoes from a producer's own production.

(b) The commission may provide by rule for an assessment discount not to exceed (~~twenty-five~~) 25 percent of the total hundredweight on field run or ungraded potatoes to allow for cull potatoes not used or intended for use for human consumption.

(c) No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all potatoes sold, processed or delivered for sale or processing by all producers of potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore.

(b) Handlers receiving potatoes from the producer, including warehousemen and processors shall collect producer assessments from producers whose production they handle, and all moneys so collected shall be paid to the commission on or before the (~~twentieth~~) 20th day of the succeeding month for the previous month's collections. Each handler shall at times required by rule file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(c) Producer assessments may be paid before the potatoes are shipped off the farm or at different or later times. If assessments are paid after the potatoes are shipped off the farm, any person subject to the assessment shall give adequate assurance or security for its payments as the commission shall require by rule.

(d) The commission may adopt rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season and of the assessment discount, if any, allowable on field run or ungraded potatoes.

(e) No affected units of potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the

receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemptions.

(f) Any producer or handler who fails to comply with the provisions of this subsection as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by the producer in excess of three percent of the total market value of all potatoes sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer, which may include bills of lading, bills of sale, or receipts.

AMENDATORY SECTION (Amending WSR 17-05-033, filed 2/8/17, effective 3/11/17)

WAC 16-516-205 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at 108 Interlake Road, Moses Lake, WA 98837, or by email at publicrecords@potatoes.com. The written request should include:

(a) The name of the person requesting the record and (~~his or her~~) their contact information;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify the records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the department's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

WSR 24-23-105

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 20, 2024, 11:08 a.m., effective December 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-501-525.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060.

Other Authority: RCW 43.01.160, 43.23.025.

Adopted under notice filed as WSR 24-19-067 on September 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2024.

Derek I. Sandison
Director

OTS-5815.1

AMENDATORY SECTION (Amending WSR 18-21-181, filed 10/24/18, effective 11/24/18)

WAC 16-501-525 Unsigned ballot envelopes: Advisory votes, referenda, and board member elections. The director of the department of agriculture is responsible for administering marketing order referenda under chapters 15.65 and 15.66 RCW and for administering elections for advisory votes and board member selection as authorized in RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

(1) The department will mail ballots to those eligible to vote in each election according to the terms of the applicable statute and marketing order. Each voter will be provided an official ballot, instructions for voting, a security envelope and return ballot-mailing envelope with a "Certificate of Eligibility" (certification) printed on the reverse side of the envelope.

(2) After casting a vote in the election, an eligible voter must place the ballot in the security envelope, which is then placed in the ballot-mailing return envelope with the certification on the reverse side. To validate (~~his or her~~) their ballot, the voter is required to complete, sign and date the certification.

(3) In the event a ballot is submitted to the department and the certification is not signed and dated in accordance with the instructions contained on the outside of the ballot-mailing return envelope or the ballot is returned in a different envelope without a certification, the ballot-mailing envelope will not be opened nor will the ballot it contains be counted. The unopened ballot-mailing envelope will be set aside and retained in accordance with the appropriate records retention schedule.

(4) Only validated ballots will be included in a ballot count.

(5) This rule applies to referenda, advisory votes, elections, and runoffs required by statute.

WSR 24-23-106

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 20, 2024, 11:09 a.m., effective December 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-520-003, 16-520-010, 16-520-035, and 16-520-040.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060.

Other Authority: RCW 43.01.160, 43.23.025.

Adopted under notice filed as WSR 24-19-068 on September 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2024.

Derek I. Sandison
Director

OTS-5817.1

AMENDATORY SECTION (Amending Order and Findings, issued 9/18/56)

WAC 16-520-003 Director's order creating seed potato commission and making marketing order effective. (1) Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in ~~((him))~~ the director by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on August 17, 1956, that certain marketing order entitled, "Marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090; and ~~((τ))~~

(2) Whereas, the director of agriculture has found that more than ~~((fifty-one))~~ 51 percent of the affected producers have replied to the written referendum within the time specified by the director and that said marketing order for Washington seed potatoes has been assented to

in writing by more than (~~sixty-five~~) 65 percent of the producers who produced more than (~~fifty-one~~) 51 percent by volume of the said seed potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of seed potato producers established by the director pursuant to the provisions of RCW 15.66.060, which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said act, do hereby make effective the said marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission, said order to be effective at 12:01 a.m. October 1, 1956.

AMENDATORY SECTION (Amending WSR 17-09-074, filed 4/19/17, effective 5/20/17)

WAC 16-520-010 Definitions. Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the seed potato marketing order, the following definitions shall apply:

"Act" means the Washington State Agricultural Commodity Commissions Act, chapter 15.66 RCW;

"Affected area" means and includes all of the state of Washington;

"Affected producer" means any producer who is subject to this marketing order;

"Commercial quantities" means (~~five thousand~~) 5,000 hundred-weight or more;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act (~~for him or her~~) on the director's behalf concerning some matter under this marketing order or chapter 15.66 RCW;

"Disclosure" means inspection or copying;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

"Hundredweight" and "affected unit" are synonymous and mean and include each (~~one hundred~~) 100 pound unit or any combination of packages making a (~~one hundred~~) 100 pound unit of seed potatoes;

"Marketing season" and "fiscal year" are synonymous and mean the (~~twelve~~) 12-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government;

"Producer" means any person engaged in the business of producing or causing to be produced for market in the state of Washington seed

potatoes in commercial quantities. "To produce" means to act as a producer;

"Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the commission regardless of physical form or characteristics;

"Sale" means a transaction wherein the property in or to seed potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

"Seed potato commission" and "commission" are synonymous and mean the commission established under WAC 16-520-020 consistent with chapter 15.66 RCW;

"Seed potatoes" means and includes all kinds and varieties of Irish seed potatoes grown in the state of Washington and marketed, sold or intended for use for seed purposes.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

WAC 16-520-035 Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in (~~his or her~~) their individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for (~~his or her~~) their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 18-01-053, filed 12/13/17, effective 1/13/18)

WAC 16-520-040 Assessments and assessment funds. (1) **Assessments levied.** There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by (~~him or her~~) the producer or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to

become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than one cent or more than ~~((ten))~~ 10 cents per hundredweight. No assessment may be collected on the following:

(a) Seed potatoes of a producer's own production used by ~~((him or her on his or her))~~ the producer on their own premises for seed, feed or personal consumption;

(b) Seed potatoes donated or shipped for relief or charitable purposes; or

(c) Sales on a producer's premises by a producer direct to a consumer of ~~((five hundred))~~ 500 pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect the assessments, the commission may require:

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Handlers receiving seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the ~~((twentieth))~~ 20th day of the succeeding month for the previous month's collections. Each handler shall at the times as required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or occur at different or later times, such person subject to the assessment shall give adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment has been paid and the receipt issued or stamp canceled, but no liability or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section, are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemption(s).

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) **Funds.**

(a) Moneys collected by the seed potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer which may include, bills of lading, bills of sale or receipts.