

WSR 23-07-004

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed March 1, 2023, 2:52 p.m., effective April 1, 2023]

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

Purpose: This rule making makes inflationary adjustments to the monetary limits and reporting values of the campaign finance category, based on the economic changes since the time of enactment, as reflected in the inflationary index recommended by the office of financial management. The adjusted values are rounded to be most accessible to the public.

Citation of Rules Affected by this Order: Amending WAC 390-05-400 and 390-16-034.

Statutory Authority for Adoption: RCW 42.17A.110 and [42.17A.]125.

Adopted under notice filed as WSR 23-01-125 on December 20, 2022.

Changes Other than Editing from Proposed to Adopted Version: Inflationary adjustment values are rounded to be most accessible for public understanding. Categories were added for volunteer expenses exempted from independent expenditures (RCW 42.17A.005(30)) and thresholds for sources of funding on contributions by political committees (RCW 42.17A.405(12)). The threshold for reporting a contributor's employer information was amended to clarify reporting of the employer's "location," and the threshold amount was adjusted to \$250.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: February 23, 2023.

Sean Flynn
General Counsel

OTS-4258.5

AMENDATORY SECTION (Amending WSR 22-14-030, filed 6/24/22, effective 6/30/22)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the authority in RCW 42.17A.125 that the commission may revise the monetary contribution limits and reporting thresholds and code values of the act to reflect changes in economic conditions, the previous and current amounts are:

((Code Section	Subject Matter	Previous	Current
.005	Reporting threshold for "Independent Expenditure" for political advertising	\$950	\$1,000
.255	Reporting threshold for "Independent Expenditure" not otherwise reported	\$100	\$100
.265	Reporting threshold for late contributions (last minute contributions)	\$1,000	\$1,500
.445(3)	Reimbursement of candidate for loan to own campaign	\$5,500	\$6,000
.630(1)	Report—		
	Applicability of provisions to persons who made contributions	\$19,000	\$20,000
	Persons who made independent expenditures	\$950	\$1,000
.405(2)	Contribution Limits—		
	Candidates for state leg. office	\$950	\$1,000
	Candidates for county office	\$950	\$1,000
	Candidates for other state office	\$1,900	\$2,000
	Candidates for special purpose districts	\$1,900	\$2,000
	Candidates for city council office	\$950	\$1,000
	Candidates for mayoral office	\$950	\$1,000
	Candidates for school board office	\$950	\$1,000
	Candidates for hospital district	\$950	\$1,000
.405(3)	Contribution Limits—		
	State official up for recall or pol comm. supporting recall—		
	State Legislative Office	\$950	\$1,000
	Other State Office	\$1,900	\$2,000
.405(4)	Contribution Limits—		
	Contributions made by political parties and caucus committees		
	State parties and caucus committees	.95 per voter	\$1.00 per registered voter
	County and leg. district parties	.50 per voter	.50 per registered voter
	Limit for all county and leg. district parties to a candidate	.50 per voter	.50 per registered voter
.405(5)	Contribution Limits—		
	Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	.95 per voter	\$1.00 per registered voter
	County and leg. district parties	.50 per voter	.50 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.50 per voter	.50 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$950	\$1,000
	To political party	\$5,000	\$5,500
.410(1)	Candidates for judicial office	\$1,900	\$2,000
.475	Contribution must be made by written instrument	\$95	\$100
.710	Code values for statement of personal financial affairs – See WAC 390-24-301))		

<u>Code Section</u>	<u>Subject</u>	<u>Value Set in Statute (year last changed)</u>	<u>Previous Adjusted Value in Rule (last set in 2016)</u>	<u>Current Adjusted Value (last set in 2023)</u>
<u>Campaign Finance Reporting</u>				

<u>Code Section</u>	<u>Subject</u>	<u>Value Set in Statute (year last changed)</u>	<u>Previous Adjusted Value in Rule (last set in 2016)</u>	<u>Current Adjusted Value (last set in 2023)</u>
<u>.005(15)</u>	<u>Limit for the value of volunteer services excluded from the definition of "Contribution"</u>	<u>\$50 (1989)</u>	<u>n/a</u>	<u>\$200</u>
<u>.005(21)</u>	<u>Reporting threshold for "Electioneering Communication"</u>	<u>\$1,000 (2011)</u>	<u>n/a</u>	<u>\$2,000</u>
<u>.005(30)</u>	<u>Reporting threshold for "Independent Expenditure"</u>	<u>\$1,000 (2019)</u>	<u>n/a</u>	<u>\$2,000</u>
<u>.005(30)</u>	<u>Limit for the value of volunteer campaign worker expenses exempted from threshold for "Independent Expenditure"</u>	<u>\$250 (2018)</u>	<u>n/a</u>	<u>\$350</u>
<u>.005(46)(a)</u>	<u>Maximum limit for qualification as a "Remediable Violation" where no contribution limit applies</u>	<u>\$1,000 (2018)</u>	<u>n/a</u>	<u>\$1,500</u>
<u>.110(8) .135(7)</u>	<u>Limit on eligibility for reporting exceptions by small campaigns ("mini reporting" pursuant to WAC 390-16-105 et seq.)</u>	<u>\$5,000 (2010)</u>	<u>n/a</u>	<u>\$7,000</u>
<u>.207(1)(a)(i)</u>	<u>Incidental committee - Threshold of expenditures for registration</u>	<u>\$25,000 (2018)</u>	<u>n/a</u>	<u>\$35,000</u>
<u>.235(1)</u>	<u>Incidental committee - Threshold for reporting top 10 contributors</u>	<u>\$10,000 (2018)</u>	<u>n/a</u>	<u>\$15,000</u>
<u>.235(3)(b)</u>	<u>Incidental committee - Threshold for regular monthly reporting of contributions or expenditures</u>	<u>\$200 (2018)</u>	<u>n/a</u>	<u>\$500</u>
<u>.220(4)</u>	<u>Limit for retaining accumulated unidentified contributions</u>	<u>\$300 (1973)</u>	<u>n/a</u>	<u>\$500</u>
<u>.225(2)</u>	<u>Regular monthly campaign reports - Threshold for regular monthly reporting of contributions or expenditures - continuing PAC</u>	<u>\$200 (1982)</u>	<u>n/a</u>	<u>\$750</u>
<u>.235(3)(a)</u>	<u>Regular monthly campaign reports - Threshold for regular monthly reporting of contributions or expenditures - PAC</u>	<u>\$200 (1982)</u>	<u>n/a</u>	<u>\$750</u>

<u>Code Section</u>	<u>Subject</u>	<u>Value Set in Statute (year last changed)</u>	<u>Previous Adjusted Value in Rule (last set in 2016)</u>	<u>Current Adjusted Value (last set in 2023)</u>
<u>.230(2)</u>	<u>Contributions fund-raising - Limit on amounts eligible for special reporting of fund-raising activities</u>	<u>\$25 - event \$50 - auction (1989)</u>	<u>n/a</u>	<u>\$100 (event) \$150 (auction)</u>
<u>.230(4)</u>	<u>Contributions fund-raising - Threshold for reporting identity of contributions</u>	<u>\$50 (1989)</u>	<u>n/a</u>	<u>\$150</u>
<u>.235(5) & .240(2)</u>	<u>Contributions - Threshold for required reporting identity of contributors</u>	<u>\$25 (1982)</u>	<u>n/a</u>	<u>\$100</u>
<u>.240(2)</u>	<u>Threshold for reporting pledges</u>	<u>\$100 (2019)</u>	<u>n/a</u>	<u>\$150</u>
<u>.240(7)</u>	<u>Threshold for reporting expenditure activity</u>	<u>\$50 (1982)</u>	<u>n/a</u>	<u>\$200</u>
<u>.240(9)</u>	<u>Threshold for reporting source of debt</u>	<u>\$750 (2018)</u>	<u>n/a</u>	<u>\$1,000</u>
<u>.250</u>	<u>Out-of-state PAC - Threshold for reporting contributions</u>	<u>\$25 - In-state (1983) \$2,550 - Out-of-state (2010)</u>	<u>\$2,680 (2016)</u>	<u>\$100 (In-state) \$4,000 (Out-of-state)</u>
<u>.265</u>	<u>"Last-minute contribution" - Reporting threshold</u>	<u>\$1,000 (2001)</u>	<u>n/a</u>	<u>\$1,500</u>
<u>.255(1)</u>	<u>Independent expenditure ("not otherwise reported") - Threshold for including incidental volunteer expenses</u>	<u>\$50 (1995)</u>	<u>n/a</u>	<u>\$200</u>
<u>.255(2)</u>	<u>Independent expenditure ("not otherwise reported") - Threshold for reporting</u>	<u>\$100 (1973)</u>	<u>n/a</u>	<u>\$1,000</u>
<u>.255(5)</u>	<u>Independent expenditure ("not otherwise reported") - Threshold for itemized expenditures</u>	<u>\$50 (1989)</u>	<u>n/a</u>	<u>\$200</u>
<u>.260</u>	<u>Independent expenditure (political advertising) - Threshold for reporting</u>	<u>\$1,000 (2001)</u>	<u>n/a</u>	<u>\$2,000</u>
<u>.305</u>	<u>Independent expenditure (electioneering communication) - Threshold for detailed reporting of expenditure</u>	<u>\$100 (2005)</u>	<u>n/a</u>	<u>\$200</u>
<u>.630(1)</u>	<u>Applicability of provisions to persons who made contributions</u>	<u>\$16,000 (2010)</u>	<u>\$20,000</u>	<u>\$20,000 *not adjusted in 2023</u>
<u>.630(1)</u>	<u>Persons who made independent expenditures</u>	<u>\$800 (2010)</u>	<u>\$1,000</u>	<u>\$1,000 *not adjusted in 2023</u>
<u>Campaign Contribution Limits</u>				
<u>.405(2)</u>	<u>Limits on contributions to candidates:</u>			

<u>Code Section</u>	<u>Subject</u>	<u>Value Set in Statute (year last changed)</u>	<u>Previous Adjusted Value in Rule (last set in 2016)</u>	<u>Current Adjusted Value (last set in 2023)</u>
	- Candidates for state legislative office	\$800 (2010)	\$1,000	\$1,200
	- Candidates for county office	\$800 (2010)	\$1,000	\$1,200
	- Candidates for other state office	\$1,600 (2010)	\$2,000	\$2,400
	- Candidates for special purpose districts	\$1,600 (2010)	\$2,000	\$2,400
	- Candidates for city council office	\$800 (2010)	\$1,000	\$1,200
	- Candidates for mayoral office	\$800 (2010)	\$1,000	\$1,200
	- Candidates for school board office	\$800 (2010)	\$1,000	\$1,200
	- Candidates for hospital district	\$800 (2010)	\$1,000	\$1,200
.410(1)	- Candidates for judicial office	\$1,600 (2010)	\$2,000	\$2,400
.405(4)	State and local party and caucus committee limits on contributions to a candidate:			
	- State parties and caucus committee	\$0.80 × per registered voter (2010)	\$1.00 per registered voter	\$1.20 per registered voter
	- County and legislative district parties	\$0.40 × per registered voter (2010)	\$0.50 per registered voter	\$0.60 per registered voter
	- Limit on aggregate of all county and legislative district parties to a candidate	\$0.40 × per registered voter (2010)	\$0.50 per registered voter	\$0.60 per registered voter
.405(7)	Limits to political parties and caucus committees:			
	- To caucus committee	\$800 (2010)	\$1,000	\$1,200
	- To political party	\$4,000 (2010)	\$5,500	\$6,000
.405(3)	Recall - Limits to state or local official or to PAC supporting recall:			
	- State legislative office and local office	\$800 (2010)	\$1,000	\$1,200
	- Other (nonlegislative) state office and port district	\$1,600 (2010)	\$2,000	\$2,400
.405(5)	Recall - Limits for political parties and caucus committees to state or local officials or to PACs supporting recall:			
	- State parties and caucuses	\$0.80 × per registered voter (2010)	\$1.00 per registered voter	\$1.20 per registered voter
	- County and legislative district parties	\$0.40 × per registered voter (2010)	\$0.50 per registered voter	\$0.60 per registered voter
	- Limit for all county and legislative district parties to state official up for recall or political committee supporting recall	\$0.40 × per registered voter (2010)	\$0.50 per registered voter	\$0.60 per registered voter
.405(12)	Threshold for contributions by political committees to be eligible to make a contribution	\$10 (from 10 persons) (1993)	n/a	\$25 (from 10 persons)

<u>Code Section</u>	<u>Subject</u>	<u>Value Set in Statute (year last changed)</u>	<u>Previous Adjusted Value in Rule (last set in 2016)</u>	<u>Current Adjusted Value (last set in 2023)</u>
<u>.420</u>	<u>Limits on large contributions:</u>			
	<u>- Statewide office</u>	<u>\$50,000 - (2010)</u>	<u>n/a</u>	<u>\$75,000</u>
	<u>- Other (nonstatewide) office</u>	<u>\$5,000 - other (2010)</u>	<u>n/a</u>	<u>\$7,500</u>
<u>.445(3)</u>	<u>Maximum limit for reimbursement of candidate loan to own campaign</u>	<u>\$4,700 (2010)</u>	<u>\$6,000</u>	<u>\$7,500</u>
<u>.475</u>	<u>Contribution must be made by written instrument</u>	<u>\$100 (2019)</u>	<u>n/a</u>	<u>\$100</u>
<u>.600 - .640</u>	<u>Lobbying disclosure and restrictions - See WAC 390-20-150</u>			
<u>.710</u>	<u>Code values for statement of personal financial affairs - See WAC 390-24-301</u>			

[Statutory Authority: RCW 42.17A.125. WSR 22-14-030, § 390-05-400, filed 6/24/22, effective 6/30/22. Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-05-400, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-05-400, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110, 42.17A.125(1), and 42.17A.250 [(1)](g). WSR 16-04-080, § 390-05-400, filed 1/29/16, effective 2/29/16; WSR 14-01-010, § 390-05-400, filed 12/5/13, effective 1/5/14. Statutory Authority: RCW 42.17A.110 and 42.17A.125. WSR 13-05-012, § 390-05-400, filed 2/7/13, effective 3/10/13. Statutory Authority: RCW 42.17.110 and 42.17.125. WSR 12-10-041, § 390-05-400, filed 4/27/12, effective 5/28/12. Statutory Authority: RCW 42.17.370(1) and 42.17.690. WSR 12-01-032, § 390-05-400, filed 12/13/11, effective 1/13/12. Statutory Authority: RCW 42.17.370(1), 42.17.690, and 42.17.645. WSR 08-04-022, § 390-05-400, filed 1/28/08, effective 2/28/08. Statutory Authority: RCW 42.17.370. WSR 07-07-005, § 390-05-400, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370 and 42.17.690. WSR 06-07-001, § 390-05-400, filed 3/1/06, effective 4/1/06. Statutory Authority: RCW 42.17.690. WSR 03-22-064, § 390-05-400, filed 11/4/03, effective 1/1/04. Statutory Authority: RCW 42.17.370 and 42.17.690. WSR 01-22-050, § 390-05-400, filed 10/31/01, effective 1/1/02. Statutory Authority: RCW 42.17.370(1). WSR 00-04-058, § 390-05-400, filed 1/28/00, effective 3/1/00. Statutory Authority: RCW 42.17.690. WSR 98-08-069, § 390-05-400, filed 3/30/98, effective 5/1/98; WSR 96-04-021, § 390-05-400, filed 1/30/96, effective 3/1/96.]

OTS-4394.3

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-034 Additional contribution reporting requirements.

Pursuant to RCW 42.17A.240, each report required under RCW 42.17A.235

shall disclose, in addition to the name and address of each person who has made one or more contributions in the aggregate amount of more than (~~one hundred dollars~~) \$250, their occupation, and the name and (~~address~~) location (city and state) of their employer.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-034, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-034, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 02-01-014, § 390-16-034, filed 12/7/01, effective 1/7/02; WSR 96-05-001, § 390-16-034, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.370. WSR 93-24-003, § 390-16-034, filed 11/18/93, effective 12/19/93.]

WSR 23-07-014

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 21-08—Filed March 3, 2023, 8:29 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department of ecology (ecology) is adopting amendments to chapter 173-455 WAC, Air quality fee rule, in WAC 173-455-038, 173-455-050, 173-455-100, 173-455-120, 173-455-130, and 173-455-140. Ecology is also adopting new WAC 173-455-031.

The adopted rule:

- Adds:
 - WAC 173-455-031 to establish a new process to update fees more frequently.
- Updates the hourly fee rate to reflect the new ecology rate:
 - WAC 173-455-050 Carbon dioxide mitigation fee.
 - WAC 173-455-100 Fee related to reasonably available control technology (RACT).
 - WAC 173-455-120 New source review (NSR) fees.
 - WAC 173-455-130 Air pollution standards variance fee.
 - WAC 173-455-140 Nonroad engine permit fee.
- Updates:
 - WAC 173-455-038 to specify that greenhouse gas (GHG) reporting fees are found in chapter 173-441 WAC, Reporting of emissions of greenhouse gases.
- Relocates:
 - WAC 173-455-100 hourly fees pursuant to RCW 70A.15.2220 for replacement or substantial alteration of control technology to the permit fee; WAC 173-455-120 to improve usability.
 - WAC 173-455-130 Air pollution standards variance fee, to the permit fee; WAC 173-455-120 to improve usability.
 - WAC 173-455-140 Nonroad engine permit fee, to the permit fee; WAC 173-455-120 to improve usability.
- Removes fees from the text of the rule language and places them in a fee table for improved readability and to facilitate regular fee updates.
- Updates the rule language to improve the readability and clarity.
- Updates outdated references to chapter 70.94 RCW throughout the rule to chapter 70A.15 RCW.

Updates are needed to recover program costs for permit issuance and to establish a new streamlined process for future fee revisions.

There is a widening gap between ecology's air quality permit fees and permit program costs. The current fees were established based on program costs in 2012. A workload analysis of air quality permitting hours billed between 2017 and 2021 across all job classes was performed to determine a new hourly rate that reflects current program costs. The cost calculated by the workload analysis was then rounded down to the nearest dollar to ensure permit fees do not exceed program costs.

New WAC 173-455-031 establishes a consistent and predictable process for streamlined future fee adjustment. Ecology will create a program budget and workload analysis each year after 2023. If fee adjustments are needed, ecology may set new fees for a two-year period following a public comment period. Industry has communicated with ecology that they prefer more frequent incremental increases, rather than infrequent significant fee increases, and they use frequent (of-

ten annual) incremental increases for their customers as well. The new fee adjustment process will allow ecology to charge fees that cover program costs and give permittees small cost adjustments that occur predictably.

Citation of Rules Affected by this Order: New WAC 173-455-031; repealing WAC 173-455-130 and 173-455-140; and amending WAC 173-455-038, 173-455-050, 173-455-100, 173-455-120, 173-455-130, and 173-455-140.

Statutory Authority for Adoption: RCW 70A.15.2210, 70A.15.2230, and 70A.15.6270, Washington Clean Air Act.

Adopted under notice filed as WSR 22-18-100 on September 7, 2022.

Changes Other than Editing from Proposed to Adopted Version: 1. A new subsection (3) was added to WAC 173-455-031 to clarify that, in years where a fee adjustment is not needed, ecology will post notice that fee changes are not needed instead of posting a draft fee schedule to the ecology website.

2. The rule's effective date of July 1, 2023, was inserted into WAC 173-455-120 in place of the words "rule effective date" for the sake of clarity.

A final cost-benefit analysis is available by contacting Caitlin Cannon, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-489-4046, Washington relay service or TTY call 711 or 877-833-6341, email Caitlin.Cannon@ECY.WA.GOV, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-455>, final regulatory analysis, publication 23-02-013, <https://apps.ecology.wa.gov/publications/SummaryPages/2302013.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 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 4, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: March 3, 2023.

Laura Watson
Director

OTS-3904.3

NEW SECTION

WAC 173-455-031 Process to update fees. (1) New source review and other air permitting fees for year 2024 and beyond.

(a) Fee schedule:

- (i) Starting in 2023, ecology must prepare an annual budget that reflects the cost of the program;
 - (ii) Ecology will base the budget on the program costs per RCW 70A.15.2210(2);
 - (iii) Ecology may choose to establish fees to cover program costs for a two-year period;
 - (iv) If increases of permitting fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.
- (b) Public notice. Except as provided by subsection (3) of this section, ecology must:
- (i) Post the draft budget and draft new source review and other air quality permitting fee schedule on ecology's website by August 1st of the year before the fee schedule goes into effect.
 - (ii) Provide a 30-day public comment period on the draft budget and draft fee schedule.
 - (iii) Post the final budget and fee schedule on ecology's website by December 1st of the year before the fee schedule goes into effect.
- (2) Carbon dioxide mitigation fees for year 2024 and beyond.
- (a) Fee schedule:
- (i) Starting in 2023, ecology must prepare an annual budget that reflects the cost of the program;
 - (ii) Ecology will base the budget on the program costs per RCW 70A.15.6270(3);
 - (iii) Ecology may choose to establish fees to cover program costs for a two-year period;
 - (iv) If increases of carbon dioxide mitigation fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.
- (b) Public notice. Except as provided by subsection (3) of this section, ecology must:
- (i) Post the draft budget and draft carbon dioxide mitigation fee schedule on ecology's website by August 1st of the year before the fee schedule goes into effect.
 - (ii) Provide a 30-day public comment period on the draft budget and draft fee schedule.
 - (iii) Post the final budget and fee schedule on ecology's website by December 1st of the year before the fee schedule goes into effect.
- (3) If a change of permitting fees and/or carbon dioxide mitigation fees is not necessary, ecology may post notice of its determination that a fee change is not necessary in lieu of posting the draft fee schedule as required by subsections (1)(b) and (2)(b) of this section.

[]

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

WAC 173-455-038 Fees not included. This chapter contains all fees required by the air quality program except the following:

- (1) Air operating permit - Fees can be found in chapter 173-401 WAC.

(2) Agricultural burning - Fees can be found in chapter 173-430 WAC.

(3) (~~(Motor vehicle emission inspection)~~) Reporting of emissions of greenhouse gases - Fees can be found in chapter (~~(173-422A)~~) 173-441 WAC.

[Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-038, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-038, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-455-050 Carbon dioxide mitigation program fees. (1) **Statutory authorization.** RCW (~~(70.94.892)~~) 70A.15.6270 authorizes ecology to determine, assess, and collect fees sufficient to cover costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval for a facility. (~~(The order of approval must specify)~~) Ecology may also collect fees sufficient to cover the additional costs (necessary) to monitor the source's conformance to the carbon dioxide mitigation plan.

(2) **Fees.** (~~(The)~~) Table 1 in this subsection lists the fees for the carbon dioxide mitigation program for 2023. These fees are (~~(add-~~) additional to the fees established in WAC 173-455-120, when the carbon dioxide mitigation plan requirements are triggered.

(Activity	Fee
a. Application review	\$95.00/hr. ¹ not to exceed \$500.00
b. Mitigation plan approval	
i. Payment to third party	\$100.00 ²
ii. Purchase of CO ₂ credits	\$95.00/hr. ³
iii. Direct investment	\$95.00/hr. ⁴
c. Routine compliance monitoring	
i. Payment to third party	\$100.00 ⁵ annually until full amount paid
ii. Purchase of CO ₂ credits	\$95.00/hr. ⁶
iii. Applicant controlled project	\$95.00/hr. ⁶

¹ Estimated using an EE3 per hour rate with a cap.

² Small fee primarily to check math and that the source is using an EFSEC approved qualified organization.

³ Estimated EE3 per hour rate to check that the credits purchased will be verifiable and from a reputable trading or marketing organization.

⁴ Estimated using an EE3 per hour rate.

⁵ Same as rationale for ² above.

⁶ Verify and confirm credits with the trading or marketing organization.))

Table 1 Carbon Dioxide Mitigation Program 2023 Fee Schedule

<u>Activity</u>	<u>Fee</u>
<u>Application review</u>	<u>\$119.00/hr. not to exceed \$595.00</u>
<u>Mitigation plan approval</u> <u>Payment to third party</u>	<u>\$125.00¹</u>
<u>Mitigation plan approval</u> <u>Purchase of CO₂ credits</u>	<u>\$119.00/hr.²</u>
<u>Mitigation plan approval</u> <u>Direct investment</u>	<u>\$119.00/hr.</u>
<u>Routine compliance monitoring</u> <u>Payment to third party</u>	<u>\$125.00 annually until full amount paid</u>
<u>Routine compliance monitoring</u> <u>Purchase of CO₂ credits</u>	<u>\$119.00/hr.³</u>
<u>Routine compliance monitoring</u> <u>Applicant controlled project</u>	<u>\$119.00/hr.³</u>

¹ Fee to cover the cost of checking the accuracy of calculations and that the source is using an independent qualified organization approved by the energy facility site evaluation council per RCW 80.70.050.

² Fee to cover cost of checking that the credits will be purchased from a reputable trading or marketing organization and will be derived from mitigation that is real, verified, permanent, enforceable, and additional per RCW 80.70.030.

³ Fee to cover the cost of verifying and confirming with the trading or marketing organization that the purchased credits derive from mitigation that is real, verified, permanent, enforceable, and additional per RCW 80.70.030.

(3) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031(2).

(4) The department or authority may use RCW ((70.94.085)) 70A.15.1570 to structure a cost-reimbursement agreement with the applicant.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-455-050, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-050, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-455-100 Fees related to reasonably available control technology (RACT). (1) General. Ecology ((may)) will assess and collect ((a)) fees as authorized in RCW ((70.94.153 or 70.94.154)) 70A.15.2230(7) and described in subsections (2) through ((+5)) (4) of this section.

(2) ((Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application for replacement or substantial alteration of control technology - ~~Ninety-five dollars per hour.~~

~~(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - Ninety five dollars per hour.~~

~~(3))~~ Fee schedule for source-specific determinations where ecology performs RACT analysis and determination.

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology will require a fee for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - Two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - One thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - Two thousand dollars.

~~((4))~~ (3) Fee schedule for source-specific determinations where the source performs the RACT analysis and ecology conducts review and issues a determination.

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology will require a fee for a RACT analysis and determination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit ~~((one hundred))~~ 100 tons per year or more of any criteria pollutant - One thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - Five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ~~((ten))~~ 10 tons per year of any toxic air pollutant - One thousand dollars.

~~((5))~~ (4) Fee schedule for categorical RACT determinations. Ecology shall assess fees for categorical RACT determinations (for categories with more than three sources) as shown below. Ecology shall base the fees described in (a) of this subsection on the most complex source within a category. When determining complexity level for the most complex source in the category, the emission rate or number of types of emission units that results in the highest complexity level will determine the fee for the source category. Except as provided in (b) and (d) of this subsection, ecology will determine fees for individual sources in the category by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than ~~((twenty))~~ 20 tons per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - Twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than ~~((twenty))~~ 20 tons per year and less than ~~((one hundred))~~ 100 tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ~~((ten))~~ 10 tons per year, or the analysis addresses two to five types of emissions units) - Fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed ~~((one hundred))~~ 100 tons per year, average source emissions of one or more individual toxic air pollutants exceed ~~((ten))~~ 10 tons per year, or the analysis addresses more than five types of emission units) - One hundred thousand dollars.

(b) If ecology is evaluating an emission unit for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

~~((6) Small business))~~ (5) RACT fee reductions for small businesses. Ecology may reduce the RACT analysis/review and determination fees identified in subsections (2) through ~~((5))~~ (4) of this section for a small business as provided in this subsection.

(a) Small business reduction.

(i) To qualify for ~~((the))~~ a small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020.

~~((b))~~ (ii) To receive a small business fee reduction, the owner or operator of a small business must include sufficient information in an application submitted in accordance with (c) of this subsection demonstrating that the business meets the ~~((conditions of (a)))~~ requirements of a small business as required under (a) (i) of this subsection. ~~((One of the following must sign the application:~~

~~(i) An authorized corporate officer in the case of a corporation;~~

~~(ii) An authorized partner in the case of a limited or general partnership; or~~

~~(iii) The proprietor in the case of a sole proprietorship.~~

~~(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.~~

~~(d)) (iii) For small businesses ((determined to be)) that ecology determines are eligible for a small business fee reduction under (a)(i) of this subsection, ecology shall reduce the RACT analysis/review and determination fee to the greater of:~~

~~((i)) (A) Fifty percent of the RACT analysis/review and determination fee; or~~

~~((ii) Two hundred fifty dollars.~~

~~(e) If due to special economic circumstances,) (B) Three hundred twelve dollars.~~

~~(b) Extreme hardship reduction.~~

~~(i) If the fee assessed after a reduction ((determined)) granted under ((d)) (a)(iii) of this subsection imposes an extreme hardship on a small business due to special economic circumstances, the small business may request an extreme hardship fee reduction.~~

~~(ii) To receive an extreme hardship reduction, the owner or operator of a small business must provide sufficient evidence to support a claim of ((an)) special economic circumstances and extreme hardship in an application submitted in accordance with (c) of this subsection.~~

~~((The factors which)) (iii) Ecology may consider the following factors in determining whether an owner or operator has demonstrated special economic circumstances and ((in setting the)) extreme hardship, and in determining the amount of the fee ((include)) reduction:~~

~~((i)) (A) Annual sales;~~

~~((ii)) (B) Labor force size;~~

~~((iii)) (C) Market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and~~

~~((iv)) (D) Average annual profits.~~

~~(c) Application for fee reduction.~~

~~(i) One of the following representatives of the small business must sign the application:~~

~~(A) An authorized corporate officer in the case of a corporation;~~

~~(B) An authorized partner in the case of a limited or general partnership; or~~

~~(C) The proprietor in the case of a sole proprietorship.~~

~~(ii) Ecology may request additional information as needed to verify the application information. If ecology determines the owner or operator has made false statements in the application, ecology may deny the fee reduction request and revoke any previously granted fee reductions for that business.~~

~~(d) In no case will ecology reduce a RACT analysis/review and determination fee to an amount below ((one hundred dollars)) \$125.~~

~~((7)) (6) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.~~

~~((8)) (7) Fee payments. A source shall pay fees specified in subsection ((4)) (3)(a) of this section when the source submits a notice of construction application to ecology. Sources shall pay other fees specified in subsections (2) through ((7)) (6) of this section no later than ((thirty)) 30 days after receipt of an ecology billing statement. For fees specified in subsection ((5)) (4) of this section, ecology will mail a billing statement for one-half of the payment from each source when the source category rule-making effort is~~

commenced as noted by publication of the CR-101 form in the *Washington State Register*. Ecology will mail a billing statement for the second half of the payment when the proposed rule is published in the *Washington State Register*. Ecology will not issue an order of approval or other action approving or identifying a source to be at RACT until the source has paid all fees. A source shall make all fees collected under this regulation payable to the Washington department of ecology.

~~((9))~~ (8) Dedicated account. Ecology shall deposit all control technology fees it collects from air operating permit program sources in the air operating permit account created under RCW 70.94.015. Ecology shall deposit all control technology fees collected from nonair chapter 173-401 WAC program sources in the air pollution control account.

~~((10))~~ (9) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of source-specific determinations under subsections (2) through ~~((4))~~ (3) of this section, ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection ~~((5))~~ (4) of this section, ecology shall track time and expenditures on a source-category basis.

~~((11))~~ (10) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-455-100, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-100, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-100, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

WAC 173-455-120 New source review and other air permitting fees.

(1) General requirements.

(a) The fees in this section apply to:

(i) Permit applications received on or after July 1, ~~((2011))~~ 2023.

(ii) Requests for ecology review of other actions covered by this section received by ecology on or after July 1, ~~((2011))~~ 2023.

(b) Components of permitting fees. Permit fees include initial fees and may include an additional hourly fee. The initial fee covers up to the number of review hours specified ~~((in))~~ for each fee in this section.

(c) A project may be subject to multiple fees set forth in this section. For example, a project may be subject to both minor and major new source review permit fees and second or third tier review. In addition a project may be subject to fees under WAC 173-455-050 and 173-455-100.

(d) An applicant must submit initial fees with ~~((an))~~ the associated permit application, notice, or request. An application, notice or request is incomplete until initial fees have been paid.

(i) For purposes of WAC 173-400-111 (1)(e), ~~((initial))~~ application fees are considered ((application)) initial fees under this section.

(ii) If ecology determines a project is complex after an applicant ~~((submitted))~~ paid the basic project initial fee, then the application is incomplete until the applicant ~~((pays))~~ has paid the initial complex project fee.

(iii) If ecology determines that a higher initial fee is due after an applicant submitted an application or request, the application or request is considered incomplete until the applicant ~~((pays))~~ has paid the ~~((new))~~ higher initial fee.

(e) If the initial fee paid by an applicant does not cover the cost of processing the application, notice, or request, then ecology ~~((shall))~~ must assess ~~((a))~~ an additional fee based on the actual costs for review in excess of the hours specified ~~((in each))~~ for the initial fee. The ~~((assessed))~~ additional fee must be assessed at a rate of ~~((ninety-five dollars))~~ \$119 per hour of ecology staff time expended, or the rate established under WAC 173-455-031.

(f) Ecology cannot finalize an action covered under this section until all fees ~~((are))~~ have been paid. (WAC 173-400-111 (3)(i).)

(g) ~~((An applicant must pay fees that are due))~~ For fees assessed by invoice from ecology, the applicant must pay fees that are due within ((thirty)) 30 days from the date of the invoice. Ecology will cease processing all applications for which the required fees have not been received within ~~((thirty))~~ 30 days of an invoice.

(h) At the time of filing a permit application, notice, or request, an applicant must pay all delinquent air quality fees associated with the facility ~~((This is))~~ in addition to the fees required by this section. Delinquent fees may include, but are not limited to, registration fees, civil penalties ~~((awarded to))~~ issued by ecology, or other outstanding fees due under this section.

(i) All fees collected under this ~~((rule))~~ section must be made payable to the department of ecology.

(j) Fees assessed under this section apply without regard to whether ecology approves or denies ~~((a))~~ the underlying permit application, notice, or request.

Permit fees.

Minor new source review.

(2) Fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase. (WAC ~~((173-400-110 and))~~ 173-400-110(3).)

~~((a))~~ ~~((Basic project: One thousand five hundred dollars plus an hourly rate of ninety-five dollars after sixteen hours.~~

~~This fee covers up to sixteen hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above sixteen hours.~~

~~((b))~~ ~~((Complex project: Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

~~((i))~~ ~~This fee covers up to one hundred six hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred six hours.~~

~~((ii))~~ ~~An application))~~ Table 1 lists the 2023 fees for review of an application for a new source or for the modification of an existing source with an emissions increase.

Table 1: 2023 Fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase (WAC 173-400-110(3))

<u>Action</u>	<u>Initial Fee</u>	<u>Hourly Rate</u>
<u>Basic Project</u>	\$1,904.00 for up to 16 hours of review	\$119.00 per hour starting at 17 hours
<u>Complex Project</u>	\$12,614.00 for up to 106 hours of review	\$119.00 per hour starting at 107 hours

(b) A project is considered complex if the emissions associated with the application include at least one pollutant for which emissions increases are greater than the levels in ~~((the following table:))~~ Table 2.

Table 2: Emission Threshold Table (WAC 173-400-030)

<u>(Air Contaminant) Pollutant</u>	<u>Annual Emission Rate</u>
Carbon monoxide	100 tons per year
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Particulate matter (PM)	25 tons per year of PM emissions
	15 tons per year of PM ₁₀ emissions
	10 tons per year of PM _{2.5} emissions
Volatile organic compounds	40 tons per year
Fluorides	3 tons per year
Lead	0.6 tons per year
Sulfuric acid mist	7 tons per year
Hydrogen sulfide (H ₂ S)	10 tons per year
Total reduced sulfur (including H ₂ S)	10 tons per year
Reduced sulfur compounds (including H ₂ S)	10 tons per year

~~((iii))~~ (c) Ecology may also determine that a project is complex based on consideration of factors that include, but are not limited to:

- ~~((A))~~ (i) Number and complexity of emission units;
- ~~((B))~~ (ii) Volume of emissions, including toxicity of emissions;
- ~~((C))~~ (iii) Amount and complexity of modeling; or
- ~~((D))~~ (iv) Number and kind of applicable state and federal requirements.

(d) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(3) Fees for review of a requested change to an existing order of approval. (WAC 173-400-111 (7) and (8).)

(a) Ecology will not charge a fee for correcting a mistake by ecology in a permit.

(b) "Administrative or simple change" ~~((: Two hundred dollars plus an hourly rate of ninety-five dollars after three hours.~~

~~(i) This fee covers up to three hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety five dollars per hour for each additional hour spent on the request above three hours.~~

~~(ii) An administrative or simple change means:~~

~~(A)) means:~~

~~(i) An action not subject to a mandatory public comment period ((in)) under WAC 173-400-171; and~~

~~((B)) (ii) The ((reissued)) modified approval order requires one hour or less of engineering evaluation by ecology and ((no)) does not authorize physical modification of equipment; and~~

~~((C)) (iii) Changes in permit conditions are based on actual operating conditions and review of the operating conditions requires one hour or less of engineering evaluation by ecology and the ((change)) modification does not cause a change in allowable emissions.~~

~~(c) Complex changes: ((Eight hundred seventy five dollars plus an hourly rate of ninety five dollars after ten hours.~~

~~(i) This fee covers up to ten hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety five dollars per hour for each additional hour spent on the request above ten hours.~~

~~(ii)) (i) This fee ((excludes)) does not apply to an administrative or simple change ((and changes to)) or to the modification of an existing permit that results in an emissions increase.~~

~~((iii)) (ii) Examples of complex changes include, but are not limited to:~~

~~(A) Changes requiring more than one hour of engineering review by ecology;~~

~~(B) Consolidation of permits not allowed under simple change;~~

~~(C) Request for review of ((a permit)) whether a proposed action ((that)) is exempt from new source review under WAC 173-400-110(5) (Table 110(5) emission-based exemption levels); or~~

~~(D) Changes requiring mandatory public comment under WAC 173-400-171(3).~~

~~(d) ((The fee for a permit modification (as defined in WAC 173-400-030) is located in subsection (2)(a) or (b) of this section.~~

~~(4) Request to extend approval to construct or modify a stationary source issued under minor new source review that is set to expire (WAC 173-400-111(7)): One hundred dollars.~~

~~An applicant may request an eighteen-month extension of an approval to construct.~~

~~(5)) Table 3 lists the 2023 fees for review of a requested change to an existing order of approval.~~

Table 3: 2023 Fees for review of a requested change to an existing order of approval (WAC 173-400-111 (7) and (8))

<u>Action</u>	<u>Initial Fee</u>	<u>Hourly Rate</u>
<u>Correcting a mistake by ecology in a permit</u>	<u>No fee</u>	<u>No fee</u>
<u>Administrative or simple change</u>	<u>\$357.00 for up to 3 hours of review</u>	<u>\$119.00 per hour starting at 4 hours</u>
<u>Complex change</u>	<u>\$1,190.00 for up to 10 hours of review</u>	<u>\$119.00 per hour starting at 11 hours</u>
<u>Permit extension request (WAC 173-400-111(7))</u>	<u>\$119.00</u>	<u>Not applicable</u>

(e) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(4) Fees for review of an application for coverage under a general order of approval (WAC 173-400-560).

~~(a) ((Category A general order.~~

~~(i) SEPA review complete: Five hundred dollars.~~

~~(ii) SEPA review required: Seven hundred eighty-five dollars.~~

~~(iii)) Category A consists of the following general order of approval, including any subsequent updating or replacement:~~

~~((A)) (i) Concrete batch plants (No. 08-AQG-002);~~

~~((B) Rich burn, spark ignition, gaseous fossil fuel-powered emergency electrical generators (No. 06-AQG-005);~~

~~(C)) (ii) Perchloroethylene dry cleaners using less than 2100 gallons per year (No. 06-AQG-003);~~

~~((D)) (iii) Stationary and portable rock crushers (No. 11AQ-GO-001);~~

~~((E)) (iv) Small water heaters and steam generating boilers (No. 08-AQ-G003); and~~

~~((F)) (v) Automobile body repair and refinishing shops (No. 08-AQG-001).~~

~~(b) ((Category B general order.~~

~~(i) SEPA review complete: Eight hundred seventy-five dollars.~~

~~(ii) SEPA review required: One thousand one hundred sixty dollars.~~

~~(iii)) Category B includes a general order of approval developed on or after January 1, 2011. Category B covers, but is not limited to, the following general order of approval, including any subsequent updating or replacement:~~

~~((A)) (i) Portable and stationary asphalt plants (No. ((10AQ-GO-01 [10AQ-GO-01])) 10AQ-GO-01); and~~

~~((B)) (ii) Dairy manure anaerobic digesters (No. 12AQ-GO-01).~~

((6)) (c) Table 4 lists the 2023 fees for Category A and B reviews of applications for coverage under a general order of approval.

Table 4: 2023 Fees for review of an application for coverage under a general order of approval (WAC 173-400-560)

<u>Type of source seeking coverage under a general order of approval</u>	<u>SEPA review complete</u>	<u>SEPA review required</u>
<u>Portable and stationary concrete batch plants (No. 08-AQG-002)</u>	<u>\$625.00</u>	<u>\$981.00</u>
<u>Perchloroethylene dry cleaners using less than 2,100 gallons per year (No. 06-AQG-003)</u>	<u>\$625.00</u>	<u>\$981.00</u>
<u>Stationary and portable rock crushers (No. 11AQ-GO-001)</u>	<u>\$625.00</u>	<u>\$981.00</u>
<u>Small water heaters and steam generating boilers (No. 08-AQ-G003)</u>	<u>\$625.00</u>	<u>\$981.00</u>
<u>Automobile body repair and refinishing shops (No. 08-AQG-001)</u>	<u>\$625.00</u>	<u>\$981.00</u>
<u>Portable and stationary asphalt plants (No. 10AQ-GO-01)</u>	<u>\$1,093.00</u>	<u>\$1,450.00</u>
<u>Dairy manure anaerobic digesters (No. 12AQ-GO-01)</u>	<u>\$1,093.00</u>	<u>\$1,450.00</u>
<u>Any other source seeking coverage under a general order of approval</u>	<u>\$1,093.00</u>	<u>\$1,450.00</u>

(d) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(5) Fees for review of a relocation ((of)) notice for a portable source in ecology's jurisdiction under WAC 173-400-036 ((, 173-400-110 or 173-400-560.

~~(a) This fee applies to a portable source who intends to relocate in ecology's jurisdiction with an approval order from another permitting authority.~~

~~(i) SEPA review complete: One hundred fifty dollars.~~

~~(ii) SEPA review required: Four hundred thirty five dollars.~~

~~(b) This fee applies to a portable source who intends to relocate in ecology's jurisdiction and has operated under an ecology issued approval order or is approved for coverage under an ecology issued general order of approval.~~

~~(i) SEPA review complete: No fee.~~

~~(ii) SEPA review required: Two hundred eighty five dollars.~~

~~(7)) (a) Table 5 lists the 2023 fees for review of a relocation notice for a portable source.~~

Table 5: 2023 Fees for review of a relocation notice for a portable source (WAC 173-400-036)

<u>Action</u>	<u>SEPA Review Complete</u>	<u>SEPA Review Required</u>
<u>Portable source has approval order issued by a clean air agency</u>	<u>\$187.00</u>	<u>\$543.00</u>
<u>Portable source has approval order issued by ecology</u>	<u>No fee</u>	<u>\$365.00</u>

~~(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.~~

~~(6) Fees for review of a request to establish a voluntary emission limit (WAC 173-400-091) (: Five hundred dollars plus an hourly rate of ninety five dollars after six hours.~~

~~(a) This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety five dollars per hour for each additional hour spent on the request above six hours).~~

~~((b)) (a) This fee applies to a regulatory order issued under WAC 173-400-091 that places a limit on emissions.~~

~~(i) This fee applies to the review of a request to establish the emission limit in a stand-alone regulatory order.~~

~~(ii) This fee does not apply when an emission limit is included as a condition in an approval order for a notice of construction application.~~

~~((8)) (b) Table 6 lists the 2023 fees to establish a voluntary emission limit.~~

Table 6: 2023 Fees for review of a request to establish a voluntary emission limit (WAC 173-400-091)

<u>Action</u>	<u>Initial Fee</u>	<u>Hourly Rate</u>
<u>Review of request to establish a voluntary emission limit (WAC 173-400-091)</u>	<u>\$714.00 for up to 6 hours of review</u>	<u>\$119.00 per hour starting at 7 hours</u>

~~(c) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.~~

~~(7) Fees for review of a request to replace or substantially alter control technology (: Refer to WAC 173-455-100(4) for fee schedule)) without an increase in emissions (RCW 70A.15.2220).~~

(a) Table 7 lists the 2023 fees for review of a request to replace or substantially alter control technology without an increase in emissions.

Table 7: 2023 Fees for review of a request to replace or substantially alter control technology without an increase in emissions (RCW 70A.15.2220)

<u>Action</u>	<u>Initial Fee</u>	<u>Hourly Rate</u>
<u>Review notice of construction application</u>	<u>No initial fee</u>	<u>\$119.00 per hour</u>
<u>Review RACT analysis and determination for affected emission unit</u>	<u>No initial fee</u>	<u>\$119.00 per hour</u>

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

Major new source review preapplication and permit fees.

~~((9) Request for a written prevention of significant deterioration applicability determination (WAC 173-400-720) or preapplication assistance: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.~~

~~This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.~~

~~(10)) (8) Fees for review of a prevention of significant deterioration (PSD) determination (WAC 173-400-720 ((and)), 173-400-730, and 173-400-750).~~

~~((a) PSD permit application: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.~~

~~This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.~~

~~(b) PSD permit application where greenhouse gases are the sole PSD pollutant being reviewed: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.~~

~~(11) Revision to a prevention of significant deterioration permit (WAC 173-400-750).~~

~~(a) Administrative revision as defined in WAC 173-400-750(3): One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.~~

~~This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.~~

~~(b) All other revisions (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.~~

~~(c) The fee for a major modification of a PSD permit (as defined in WAC 173-400-720) is located in subsection (10)(a) of this section.~~
~~(12) Request to extend the following major source approvals that are set to expire: Five hundred dollars. This provision applies to each of the following:~~
~~(a) PSD permit, including a major modification;~~
~~(b) PSD permit revision;~~
~~(c) Approval order for major source nonattainment area permitting; and~~
~~(d) A change to an approval order for major source nonattainment area permitting.~~
~~(13)) (a) Table 8 lists the 2023 fees for the review of a request for prevention of significant deterioration (PSD) determination.~~

Table 8: 2023 Fees for review of a request for prevention of significant deterioration (PSD) determination

Action	Initial Fee	Hourly Rate
<u>Written PSD applicability determination (WAC 173-400-720)</u>	<u>\$4,760.00 for up to 40 hours of review</u>	<u>\$119.00 per hour starting at 41 hours</u>
<u>Preapplication assistance beyond the application assistance meeting ecology provides</u>	<u>\$714.00 for up to 6 hours of review</u>	<u>\$119.00 per hour starting at 7 hours</u>
<u>PSD permit application - New (WAC 173-400-720 and 173-400-730)</u>	<u>\$18,802.00 for up to 158 hours of review</u>	<u>\$119.00 per hour starting at 159 hours</u>
<u>PSD permit application - Limited to greenhouse gases</u>	<u>\$9,401.00 for up to 79 hours of review</u>	<u>\$119.00 per hour starting at 80 hours</u>
<u>PSD permit revision - Administrative (as defined in WAC 173-400-750(3))</u>	<u>\$2,380.00 for up to 20 hours of review</u>	<u>\$119.00 per hour starting at 21 hours</u>
<u>PSD permit revisions - Revision not administrative or major modification</u>	<u>\$4,760.00 for up to 40 hours of review</u>	<u>\$119.00 per hour starting at 41 hours</u>
<u>PSD permit revision - Major modification (WAC 173-400-720)</u>	<u>\$18,802.00 for up to 158 hours of review</u>	<u>\$119.00 per hour starting at 159 hours</u>
<u>Permit extension request (WAC 173-400-730(5))</u>	<u>\$625.00</u>	<u>No hourly fee</u>

~~(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.~~

~~(9) Fees for nonattainment area major new source review.~~

~~((a) A notice of construction application subject to WAC 173-400-830: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.~~

~~This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.~~

~~(b) Change to an approval order issued under WAC 173-400-830:~~

~~(i) Request to change permit conditions under WAC 173-400-111(8) that is not subject to mandatory public comment in WAC 173-400-171: One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.~~

~~This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.~~

~~(ii) All other permit changes (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.~~

~~(iii) The fee for a major modification (as defined in WAC 173-400-810) of an approval order is located in subsection (13)(a) of this section.~~

~~(14)) (a) Table 9 lists the 2023 fees for nonattainment area major new source review.~~

Table 9: 2023 Fees for nonattainment area major new source review

Action	Initial Fee	Hourly Rate
<u>Notice of construction application (WAC 173-400-830)</u>	<u>\$18,802.00 for up to 158 hours of review</u>	<u>\$119.00 per hour starting at 159 hours</u>
<u>Change in permit conditions - Major modifications for an order issued under WAC 173-400-830</u>	<u>\$18,802.00 for up to 158 hours of review</u>	<u>\$119.00 per hour starting at 159 hours</u>
<u>Change in permit conditions under WAC 173-400-111(8) - Action not subject to mandatory public comment under WAC 173-400-171(3)</u>	<u>\$2,380.00 for up to 20 hours of review</u>	<u>\$119.00 per hour starting at 21 hours</u>
<u>Changes in permit conditions - All other changes</u>	<u>\$9,401.00 for up to 79 hours of review</u>	<u>\$119.00 per hour starting at 80 hours</u>
<u>Permit extension request (WAC 173-400-111(7))</u>	<u>\$625.00</u>	<u>No hourly fee</u>

~~(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.~~

~~(10) Fees for review of plant-wide applicability limits (WAC 173-400-720).~~

~~((a) Request to establish new plant-wide applicability limits: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.~~

~~This fee covers up to one hundred fifty-eight hours of staff time to review the request and establish a plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above one hundred fifty-eight hours.~~

~~(b) All other requests, such as increase or renew plant-wide applicability limits; or process an expired plant-wide applicability limit: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.~~

~~This fee covers up to seventy-nine hours of staff time to increase, renew or process a retired plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above seventy-nine hours.)) (a) Table 10 lists the 2023 fees for review of requests to establish plant-wide applicability limits.~~

Table 10: 2023 Fees for review of plant-wide applicability limits (WAC 173-400-720)

Action	Initial Fee	Hourly Rate
<u>Plant-wide applicability limits - Establish new limits</u>	<u>\$18,802.00 for up to 158 hours of review</u>	<u>\$119.00 per hour starting at 159 hours</u>
<u>Plant-wide applicability limits - All other requests</u>	<u>\$9,401.00 for up to 79 hours of review</u>	<u>\$119.00 per hour starting at 80 hours</u>

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

Other fees.

~~((15) Second tier review (WAC 173-460-090): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

~~(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.~~

~~(b) A second tier petition that becomes subject to third tier review during the course of evaluation continues as a second tier petition for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed one hundred six hours.~~

~~(16) Third tier review (WAC 173-460-100): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

~~(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and third tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.~~

~~(b) This fee does not apply to a second tier petition that becomes a third tier petition.~~

~~(17) Ecology may enter into a written cost reimbursement agreement with an applicant as provided in RCW 70.94.085. Ecology will be reimbursed at a rate of ninety-five dollars per hour.~~

~~(18) Small business)) (11) Table 11 lists the 2023 fees for all other permitting actions, including second and third tier reviews.~~

(a) A second tier petition (WAC 173-460-090) that becomes subject to third tier review during the course of evaluation continues as a second tier petition for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed 85 hours.

(b) The fee listed in Table 11 for third tier review (WAC 173-460-100) does not apply to a second tier petition that becomes a third tier petition under (a) of this subsection.

Table 11: Other fees for 2023

Action	Initial Fee	Hourly Rate
<u>Second tier review (WAC 173-460-090)</u>	<u>\$9,996.00 for up to 84 hours of review</u>	<u>\$119.00 per hour starting at 85 hours</u>
<u>Third tier review (WAC 173-460-100)</u>	<u>\$9,996.00 for up to 84 hours of review</u>	<u>\$119.00 per hour starting at 85 hours</u>
<u>Cost reimbursement agreement as provided in RCW 70A.15.1570</u>	<u>No initial fee</u>	<u>\$119.00 per hour</u>
<u>Review of a request for a variance under WAC 173-400-180</u>	<u>No initial fee</u>	<u>\$119.00 per hour</u>
<u>Review of a notification of intent to operate under WAC 173-400-035</u>	<u>No initial fee</u>	<u>\$119.00 per hour</u>
<u>Hourly rate for other permitting actions</u>	<u>No initial fee</u>	<u>\$119.00 per hour</u>

(c) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

~~(12) Fee reductions for small businesses. ((The new source review)) Ecology may reduce the permitting fees identified in subsections (2) through ((+7)) (6) of this section ((may be reduced)) for a small business as provided in this subsection.~~

~~(a) Small business reduction.~~

~~(i) To qualify for ((the)) a small business ((new source review)) permitting fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020.~~

~~((In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.~~

~~(b)) (ii) To receive a small business fee reduction, the owner or operator of a small business must include sufficient information in ((the)) an application submitted in accordance with (c) of this section, demonstrating that the ((conditions of)) business meets the requirements of a small business as required under subsection (1)(a) of this ((subsection have been met. The application must be signed:~~

~~(i) By an authorized corporate officer in the case of a corporation;~~

~~(ii) By an authorized partner in the case of a limited or general partnership; or~~

~~(iii) By the proprietor in the case of a sole proprietorship.~~

~~(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.~~

~~(d)) section.~~

~~(iii) For small businesses ((determined to be)) that ecology determines are eligible for a small business fee reduction under (a)(ii) of this subsection, ((the new source review fee)) ecology shall ((be reduced)) reduce the permitting fee to the greater of:~~

~~((i)) (A) Fifty percent of the ((new source review)) permitting fee; or~~

~~((ii) Two hundred fifty)) (B) Three hundred twelve dollars.~~

~~((e) If, due to special economic circumstances,) (b) Extreme hardship reduction.~~

~~(i) If the fee assessed after a reduction ((determined)) granted under ((+d)) (a)(iii) of this subsection imposes an extreme hardship on a small business due to special economic circumstances, the small business may request an extreme hardship fee reduction.~~

~~(ii) To receive an extreme hardship reduction, the owner or operator of a small business must provide sufficient evidence to support a claim of ((an)) special economic circumstances and extreme hardship in an application submitted in accordance with (c) of this subsection.~~

~~((The factors which)) (iii) Ecology may consider the following factors in determining whether an owner or operator has demonstrated special economic circumstances and ((in setting the)) extreme hardship, and in determining the amount of the fee ((include)) reduction:~~

~~(A) Annual sales;~~

~~(B) Labor force size;~~

~~(C) Market conditions which affect the owner's or operator's ability to pass the cost of the ((new source review)) permitting fees through to customers; and~~

~~(D) Average annual profits. ((In no case will a new source review fee be reduced below one hundred dollars))~~

~~(c) Application for fee reduction.~~

(i) One of the following representatives of the small business must sign the application:

(A) An authorized corporate officer in the case of a corporation;

(B) An authorized partner in the case of a limited or general partnership; or

(C) The proprietor in the case of a sole proprietorship.

(ii) Ecology may request additional information as needed to verify the application information. If ecology determines the owner or operator has made false statements in the application, ecology may deny the fee reduction request and revoke any previously granted fee reductions for that business.

(d) In no case will ecology reduce a permitting fee below \$125.

~~((19))~~ (13) Fee reductions for pollution prevention initiatives. Ecology may reduce the permitting fees (~~(defined)~~) identified in subsections (2) through ~~((7))~~ (6) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

~~((20))~~ (14) Tracking revenues, time, and expenditures. Ecology must track revenues from the fees collected under this subsection on a source-specific basis.

~~((21) Periodic review. To ensure that fees cover the cost of processing the actions in this section, ecology shall review and update this section as necessary.)~~

[Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-120, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.152 and 2011 c 5 § 301(28). WSR 11-12-077 (Order 10-04), § 173-455-120, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-120, filed 5/3/07, effective 6/3/07.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-455-130 Air pollution standards variance fee.

WAC 173-455-140 Nonroad engine permit fee.

WSR 23-07-028
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed March 6, 2023, 12:54 p.m., effective June 6, 2023]

Effective Date of Rule: June 6, 2023.

Purpose:

- Put in place an administrative process for campus exclusion (prohibiting someone from coming onto the campus), including an appeal process.
- Establish the consequences for not complying with a notice of exclusion from the campus constitutes criminal trespass under chapter 9A.52 RCW, Burglary and trespass.
- Clarify the department of enterprise services (DES) has delegated authority to the Washington state patrol for enforcement on the campus and that a complaint by DES is not a prerequisite for enforcement by agencies with enforcement authority.

Citation of Rules Affected by this Order: New WAC 200-220-600, 200-220-610 and 200-220-620; and amending WAC 200-220-030.

Statutory Authority for Adoption: RCW 43.19.125, 46.08.150.

Adopted under notice filed as WSR 22-17-170 on August 24, 2022.

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 3, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, 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 0, Repealed 0.

Date Adopted: March 6, 2023.

Jack Zeigler
Policy and Rules Manager

OTS-4057.1

AMENDATORY SECTION (Amending WSR 15-23-062, filed 11/13/15, effective 12/14/15)

WAC 200-220-030 Definitions. For purposes of these rules, these words or phrases have the following meaning:

(1) "Activity" means one or more people gathering for a common purpose or cause.

(2) "Applicant," "I," "you" or "your" refers to any person(s) or organization(s) seeking permission to use the public areas of the capitol buildings and grounds.

(3) "Banners and signs" means pieces of material presented publicly to display a message, slogan, advertisement, or other similar information. Government-recognized flags are not considered banners or signs for purposes of these rules.

(4) "Capitol buildings and grounds" means those buildings and grounds over which the department of enterprise services exercises custody and control under RCW 43.19.125.

(a) "Buildings" means enclosed buildings and adjoining structures. Buildings include, but are not limited to, the Legislative Building, the Temple of Justice, the Old Capitol Building, and the Natural Resources Building.

(b) "Grounds" means exterior spaces including, but not limited to, walkways, plazas, lawns, plantings and parks.

The grounds include such locations as the capitol campus, Heritage Park, Marathon Park, Centennial Park, Sylvester Park, the surface and shores of Capitol Lake, and Deschutes Parkway.

(5) "Commercial activity" means an activity that promotes, creates, or exchanges commercial products or services. Commercial activities include, but are not limited to, advertising, fund-raising, buying or selling any product or service, encouraging paid membership in any group, association or organization, or the marketing of commercial activities. Commercial activities do not include such activities by or for government entities.

(6) "Director" means the director of the department of enterprise services.

(7) "Enterprise services," "department," "us," or "we" refers to the department of enterprise services.

(8) "Exhibit" or "display" means an object or collection of objects presented publicly with the intention to communicate facts, a particular impression, a viewpoint or an opinion. Exhibits or displays include, but are not limited to, paintings, sculpture, ceramics, photographs, video or computer screens, informational booths and tables, or other similar objects and arrangements. Exhibits and displays do not include equipment used in the performance of medical or therapeutic services during a permitted activity, such as a blood drive, delivering flu shots, or administering a therapeutic massage.

~~((8))~~ (9) "Free speech and assembly activity" means an activity for the purpose of communicating information or ideas to others that will draw the attention, attendance, or participation of others. Free speech and assembly activities include, but are not limited to, assemblies, marches, rallies, performances, community events, press conferences, demonstrations, celebrations, ceremonies, speeches and other similar expressive activities.

~~((9) "Enterprise services," "department," "us," or "we" refers to the department of enterprise services.)~~

(10) "Permit" means a written permit issued by the department of enterprise services authorizing the use of public areas of the capitol buildings and grounds as required by these rules.

(11) "Private activity" means an activity sponsored by a private individual, business or organization that is not open to the general public. Private activities include, but are not limited to, banquets, receptions, award ceremonies, weddings, concerts, dances, and seminars.

(12) "Public area" means those areas of the capitol buildings and grounds that are generally open to the public, such as a building's primary public entrance lobby; rotundas and adjoining public mezzanines; and exterior plazas and lawns. Public areas do not include of-

fices, meeting rooms, and other work areas that are ordinarily reserved for or primarily devoted to conducting the business and operations of state government; the governor's mansion; and any area which is identified by a sign pursuant to WAC 200-200-450 indicating that the area is not open to the public.

(13) "Service animal" means an animal, including guide dogs, trained to do work or perform tasks for the benefit of a person with a disability, as defined by applicable state and/or federal laws.

[Statutory Authority: RCW 43.19.011, 43.19.620, 43.19.985, 43.19.742, 43.19.769, 39.26.080, 39.26.090, 39.26.251, 39.26.255, and 39.26.271. WSR 15-23-062, § 200-220-030, filed 11/13/15, effective 12/14/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-220-030, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 43.19.125 and 46.08.150. WSR 09-22-059, § 236-17-030, filed 10/30/09, effective 11/30/09.]

ENFORCEMENT, EXCLUSION, AND APPEAL

NEW SECTION

WAC 200-220-600 Authority to enforce. Statutes, rules, and policies regulating the use of the capitol campus may be enforced by enterprise services, the Washington state patrol, and by any law enforcement agency with appropriate jurisdiction. Prior coordination with or complaint by enterprise services is not a prerequisite for enforcement actions by agencies with enforcement authority.

[]

NEW SECTION

WAC 200-220-610 Warning of potential exclusion from capitol campus or areas thereof. (1) An officer of the Washington state patrol or a designated enterprise services employee may issue a warning of potential exclusion from the capitol campus or a designated area thereof under the authority of this section, if the issuer has a reasonable belief based upon the facts and circumstances to believe that the person through acts or omissions has violated one or more of the rules applicable to the capitol campus under chapters 200-200 through 200-299 WAC, or an applicable statute, regulation, or policy while on the capitol campus.

(2) A warning of potential exclusion shall:

(a) Be in writing, signed by the person issuing it, identify the issuer's name and title, and identify the person subject to the warning, if known.

(b) Contain the date of issuance and effective date, the violation(s) that the person is alleged to have committed, and a citation to any rule or statute violated.

(c) Warn that a future violation of one or more of the rule or statute violated under the warning of potential exclusion may be grounds for the issuance of a notice of exclusion from the capitol campus or a designated area, in addition to any other legal citation, liability, or remedy provided under the law.

(d) Set out the method of appealing the warning, which shall also include the address where the appeal should be sent.

(3) A person subject to a warning need not be charged, tried, or convicted of any crime or be issued an infraction or have an infraction found committed in order for a warning of potential exclusion to be issued or effective. The issuing person need only establish that probable cause existed to support the issuance of the warning.

(4) A person subject to a warning of potential exclusion may appeal the warning to the director as provided on the notice by submitting an appeal together with a copy of the warning within 10 days of receipt of the warning. The director or a designee shall decide the appeal as a brief adjudicative appeal under RCW 34.05.482 through 34.05.494. The deciding officer shall base the final order on a "more probable than not" standard whether the violation identified in the warning did or did not occur. In the event the director denies the appeal, the decision is appealable under the provisions of chapter 34.05 RCW.

[]

NEW SECTION

WAC 200-220-620 Exclusion from capitol campus or areas thereof.

(1) An officer of the Washington state patrol or a designated enterprise services employee may exclude a person from the capitol campus or a designated area thereof under the authority of this section, if the issuer has reasonable belief based upon the facts and circumstances to believe that the person through acts or omissions has violated one or more of the rules applicable to the capitol campus under chapters 200-200 through 200-599 WAC or an applicable statute, regulation, or policy while on the capitol campus.

(2) A notice of exclusion shall not be issued unless:

(a) The alleged violator who engaged in the conduct in question was informed that the conduct is a violation of an applicable statute, rule, or policy, was requested to cease or correct that conduct, and the person did not upon request and information promptly cease or correct the conduct, including, if applicable, removing any objects or materials that are in violation; or

(b) The alleged violator has been given a warning of potential exclusion for the conduct in question; or

(c) The alleged violation has resulted in or creates a substantial risk of damage to property or injury to a person.

(3) A notice of exclusion shall:

(a) Be in writing, signed by the person issuing it, identify the issuer's name and title, and identify the person subject to the order, if known.

(b) Reasonably identify the ground or grounds for the exclusion. To the extent practicable, if ground in subsection (2)(b) of this section is relied upon, identify the date of a prior warning, and if ground in subsection (2)(c) of this section is relied upon, describe the basis for finding damage or a substantial risk of damage to state property or injury or a substantial risk of injury to a person.

(c) Contain the date of issuance and a citation to the rule(s) and/or statute(s) the person is alleged to have violated.

(d) Contain the date the exclusion begins and ends. If the exclusion duration is longer than the standard period of exclusion, the notice shall provide a description of the nature of the violation warranting a deviation from the standard.

(e) Specify the locations from which the individual will be excluded, which the issuer may, if appropriate, limit to areas of the capitol campus where similar conduct might occur. Exclusions do not apply to public rights-of-way and public sidewalks along such rights-of-way that are not closed to the public. Further, exclusions do not apply to direct transit along a direct route through the capitol campus for the sole purpose of attending a public hearing, a legislative session, or a prearranged meeting with a state official unless the notice of exclusion specifically states that such areas are subject to the exclusion and provides the reasons therefore.

(f) Set out the method of appealing the notice, which shall also include the address where an appeal should be sent.

(g) Prominently display a warning of the consequences for failure to comply with the notice and state that a violation of the terms of the notice will constitute criminal trespass under chapter 9A.52 RCW.

(4) The person subject to exclusion need not be charged, tried, or convicted of any crime or be issued an infraction or have an infraction found committed in order for a notice of exclusion to be issued or effective. The issuing person need only establish that probable cause exists that a violation occurred and that one or more of the conditions in subsection (2) of this section are satisfied.

(5) The standard period of exclusion shall be as follows and shall apply unless the issuing person deems a longer period of exclusion is warranted based on the nature of the violation:

(a) First violation: Forty-eight hour exclusion.

(b) Second violation: Thirty day exclusion.

(c) Third violation: One year exclusion.

(6) A person subject to exclusion pursuant to this section may appeal the exclusion to the director as provided on the notice by submitting the appeal together with a copy of the exclusion within 10 days of receipt of the notice of exclusion. The director or a designee shall decide the appeal as a brief adjudicative appeal under RCW 34.05.482 through 34.05.494. The presiding officer shall base the final order on a "more probable than not" standard whether (a) a condition in subsection (2) of this section was or was not present and (b) the violation did or did not occur. The presiding officer may modify the terms of the exclusion to reduce the period and/or area of exclusion. The decision of the presiding officer may be appealed under the provisions of chapter 34.05 RCW.

(7) Unless the appellant requests and obtains a stay from the presiding officer or the exclusion is otherwise invalidated, removed, or modified, the exclusion will remain in effect until its expiration date. A stay request must be accompanied by a statement of the grounds for the stay and identify the evidence setting forth the factual basis for the request. A stay will not be granted unless the deciding pre-

siding officer finds that the appellant is likely to prevail on the appeal or that the appellant has raised a substantial question whether the exclusion should be reversed and has shown a likelihood that the appellant will suffer irreparable harm due to the exclusion.

(8) An individual who has received an exclusion notice may petition the director of enterprise services (of its designee) for an exemption from the exclusion notice to allow entry on specific days and times for specific purposes. A request for an exemption must:

(a) Be made in writing, provide the individual's current address, enclose a copy of the exclusion notice from which the individual is requesting an exemption, and be mailed to the department of enterprise services at (address);

(b) Be received by the department of enterprise services within 25 days after the individual has been served with an exclusion notice or not later than five business days prior to the requested period of exemption; and

(c) Identify: (i) The specific location the individual wants to visit; (ii) the date and time when the individual wants to visit; (iii) the purpose of the visit and whether the individual asserts that the exemption is for the purpose of exercising rights under the first amendment of the U.S. Constitution.

After receiving a request for an exemption, the director of the department of enterprise services or a designee must review the request and issue a decision on the request within three business days. The decision must specify the reasons why the presiding officer granted or denied the request.

In the event the presiding officer grants the request, the decision must specify the location, date, and time of the exemption to the exclusion notice. The department of enterprise services must immediately transmit a copy of the decision to the Washington state patrol's special operations division by email, and regular mail, or other shared systems.

In the event the presiding officer denies the request, the decision is appealable under the provisions of chapter 34.05 RCW.

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WSR 23-07-043
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 8, 2023, 11:48 a.m., effective April 8, 2023]

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

Purpose: To clarify when the department can correct a member's record in cases where the member has been underpaid or overpaid.

Citation of Rules Affected by this Order: New WAC 415-02-075.

Statutory Authority for Adoption: RCW 41.50.130.

Adopted under notice filed as WSR 23-03-036 on January 9, 2023.

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 1, 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: March 8, 2023.

Tracy Guerin
Director

OTS-4203.2

NEW SECTION

WAC 415-02-075 Is my retirement account subject to correction after retirement or separation from service? (1) When can the department correct a member's record? The department can correct your retirement account at any time when an error has been discovered.

(2) What will happen if I have been underpaid?

(a) If the underpayment is related to an on-going monthly benefit, the department will correct all future payments and compute the additional amount due from prior payments and pay you in a lump sum.

Example 1:

Chris retired September 1st and Chris' monthly retirement benefit was initially determined to be \$2,500. In November, Chris' former employer reported additional earnings. The department used that additional reporting to recalculate Chris' benefit, which is now set at \$2,525 per month. Chris will receive the new amount for the November and future monthly benefits. Chris will also receive a payment of \$50 to cover the additional \$25 amount for September and October.

(b) If the underpayment is related to a one-time payment, the additional amount will be paid once identified.

Example 2:

When separating from employment, Sandy chose to withdraw all retirement contributions instead of receiving an on-going benefit at retirement age. After the withdrawal, Sandy's employer submitted \$130 of additional retirement contributions that had been deducted from Sandy's paycheck. The department will pay that \$130 to Sandy.

(3) What will happen I have been overpaid?

(a) If the overpayment is related to an on-going monthly benefit, the department will correct the payment amount for all future months. An invoice will be created for the amount of the overpayment and you will normally have at least 90 days to return the amount of the overpayment to the department. If you cannot make payment in full within those 90 days, you can contact the department to discuss a payment plan which would allow deductions from your monthly benefit. Or you may choose to have your benefit permanently, actuarially reduced to pay the overpayment. Repayment options will be provided on the invoice you receive. If you do not establish a payment plan (which will include interest) or make payment in full by the invoice due date, the department will apply the actuarial reduction and permanently reduce your monthly benefit.

If you or the department identify that your full monthly benefit payment was in error (for example you were not eligible to retire), the department may ask your bank to reverse the payment (depending on the timing and banking rules) and return the funds to pay your invoice.

Example 3:

Pat retired July 1st, with a calculated retirement benefit of \$3,000 per month. However, Pat used vacation leave until August 15th, and so, Pat was not separated from employment and eligible to retire until September 1st. Once Pat's employer provided the department with their final reporting on Pat, the department invoiced Pat for \$6,000 representing the July and August pension payments (2 x \$3,000).

(b) If the overpayment is not related to an on-going monthly benefit payment, the department will invoice you and expect payment in full within 90 days and will apply interest to any balance outstanding after those 90 days have elapsed.

(4) What will happen if an overpayment is received by someone other than a member or beneficiary? The overpayment will be a debt from the person or entity to the department and the department will invoice accordingly.

Example 4:

J. Smith passed on June 3rd, but with no knowledge of the death, the department deposited the on-going benefit into J. Smith's bank account on the last business day of June. When notified of the death during July, the department requested J. Smith's bank return the June deposit. Banking rules require the department request the deposit amount in full regardless of how much may be ultimately due to an estate.

The department will invoice J. Smith's estate for the June payment and any deductions taken from that payment (such as medical payments) but will apply any amounts received back from the bank or deduction vendors against that invoice. The department will calculate the amount owed to the estate for the month of death and pay J. Smith's estate for those days (three days of 30 for the month of June). Since J. Smith's June payment was \$5,000, the estate will be

entitled to \$500 after all other amounts have been collected back by the department. Any amounts the department cannot collect will be a debt of the estate.

(5) Is there any limit on how much of an overpayment the department may collect?

(a) The department will calculate the total overpayment amount but may only collect three years back from the point of discovery of an error.

(b) In cases of fraud, the department may collect the entire overpayment amount.

Example 5:

Jordan retired April 1, 2018. In October 2021, the department discovered their former employer removed erroneous earnings from Jordan's account, causing the department to recalculate Jordan's monthly benefit. After adjusting Jordan's benefit to the correct amount, the monthly overpayment amount was determined to be \$57 per month for 42 months for a total of \$2,394. The department will only invoice Jordan for three years back from the date of discovery in October 2021 for a total of \$2,052 (36 months x \$57).

(6) How much can the department reduce my benefit to collect an overpayment?

(a) Your monthly benefit cannot be reduced by more than half of the corrected benefit.

(b) If half of your corrected monthly benefit is less than the full actuarial reduction necessary to recover the overpayment you received, the department will reduce your benefit by half, and may put a claim against your estate.

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WSR 23-07-044
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 8, 2023, 11:54 a.m., effective April 8, 2023]

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

Purpose: Occasionally, a beneficiary decides that they do not want to receive a benefit when a retired member passes away. This rule clarifies how any disclaimed benefit will pass to other beneficiaries and/or the estate of the deceased.

Citation of Rules Affected by this Order: New WAC 415-02-261.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 23-03-035 on January 9, 2023.

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 1, 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: March 8, 2023.

Tracy Guerin
Director

OTS-4204.2

NEW SECTION

WAC 415-02-261 What happens if a beneficiary disclaims a lump sum benefit? (1) A beneficiary may disclaim a payment in writing with the department as prescribed by the department. If the beneficiary was a primary beneficiary and there are other living primary beneficiaries, the disclaimed benefit will be split among the other primary beneficiaries in the same proportion (rounded) awarded by the member or retiree.

(2) General formula: A member has n beneficiaries, with each beneficiary receiving a percentage and the total percentage equal to 100. When one beneficiary disclaims their benefit, there are then $n-1$ beneficiaries. The sum of these percentages is now less than 100. To determine the new percentages, divide the original percentage for each beneficiary by the new total of the remaining percentages.

Example: Chris has listed three people as primary beneficiaries: Tom at 34 percent, Carl at 33 percent, and Wilma at 33 percent. Chris passed away. Tom disclaims the benefit with the department. Carl and Wilma each receive 50 percent of the contributions.

Example: Chris has listed three people as primary beneficiaries: Tom at 50 percent, Carl at 25 percent, and Wilma at 25 percent. Chris passed away. Carl disclaims the benefit with the department. Tom receives 67 percent and Wilma 33 percent of the contributions.

Example: Chris has listed four people as primary beneficiaries: Tom at 40 percent, Carl at 30 percent, Wilma at 20 percent, and Liam at 10 percent. Chris passed away. Carl disclaims their 30 percent of the benefit with the department. Tom receives 57 percent (40 divided by 70), Wilma receives 29 percent (20 divided by 70) and Liam receives 14 percent (10 divided by 70) of the contributions.

Example: Chris has listed four people as primary beneficiaries with the following percentages: Person A with "a" percent, person B with "b" percent, person C with "c" percent, and person D with "d" percent.

Chris passed away. Person B disclaims the benefit with the department. Person A receives $a/(a+c+d)$, person C receives $c/(a+c+d)$, and person D receives $d/(a+c+d)$.

(3) If the primary beneficiary disclaims the benefit and there are no other primary beneficiaries, the benefit will pass to the contingent beneficiary designation made by the member or retiree. If there are no contingents, it will pass to the estate of the retiree or per the succession in law for the retirement system and plan of the member.

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WSR 23-07-050

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed March 9, 2023, 8:48 a.m., effective April 9, 2023]

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

Purpose: This rule-making order implements the new and updated appliance standards as required by ESHB 1619 (Laws of 2022). This law adds energy efficiency standards to three new product categories, updates the efficiency standard for three existing product categories, and repeals two standards from rule which have been federally pre-empted.

Citation of Rules Affected by this Order: New WAC 194-24-127, 194-24-151, 194-24-187 and 194-24-200; repealing WAC 194-24-100 and 194-24-195; and amending WAC 194-24-030, 194-24-105, 194-24-115, and 194-24-150.

Statutory Authority for Adoption: RCW 19.260.070, 19.260.040, 19.260.080.

Adopted under notice filed as WSR 22-23-029 on November 7, 2022.

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 4, Amended 4, Repealed 2.

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: March 9, 2023.

Amanda Hathaway
Rules Coordinator

OTS-4141.1

AMENDATORY SECTION (Amending WSR 22-09-015, filed 4/11/22, effective 5/12/22)

WAC 194-24-030 Definitions. The definitions in chapter 19.260 RCW apply throughout this chapter.

(1) The following terms have the same meaning as used in the California Rule:

- (a) Showerheads;
- (b) Tub spout diverters;
- (c) Showerhead tub spout diverter combinations;
- (d) Lavatory faucets and replacement aerators;
- (e) Kitchen faucets and replacement aerators;
- (f) Public lavatory faucets and replacement aerators;
- (g) Urinals;
- (h) Water closets; ((and))

(i) Computers and computer monitors; and

(j) Portable electric spas.

(2) "California Rule" means Title 20, Article 4, California Code of Regulations, in effect on December 9, 2021.

(3) "MAEDbS" means the modernized appliance efficiency database system established pursuant to section 1606(c) of the California Rule and maintained by the California energy commission.

(4) "Distribute" means to import, consign, buy or sell for re-sale, offer for sale, sell, barter, exchange, install for compensation or otherwise supply a product subject to the standards in this chapter or chapter 19.260 RCW.

(5) "Distributor" means a person who distributes.

(6) "Manufacturer" has the same meaning as used in the California Rule.

[Statutory Authority: RCW 19.260.070 and 19.260.040. WSR 22-09-015, § 194-24-030, filed 4/11/22, effective 5/12/22; WSR 20-21-083, § 194-24-030, filed 10/19/20, effective 11/19/20. Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-030, filed 1/6/20, effective 2/6/20. Statutory Authority: Chapter 19.260 RCW. WSR 07-14-092, § 194-24-030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-105 Portable electric spas. (1) **Scope.** This rule applies to new portable electric spas manufactured on or after January 1, ~~((2010, and installed for compensation in the state on or after January 1, 2011))~~ 2024.

(2) **Standard.** Portable electric spas must meet the requirements ~~((of the American National Standard for portable electric spa energy efficiency (ANSI/APSP/ICC-14 2014))~~) specified in section 1605.3 of the California Rule.

(3) **Testing.** Portable electric spas must be tested in accordance with the method specified in the American National Standard for portable electric spa energy efficiency (ANSI/APSP/ICC-14 ~~((2014))~~ 2019).

(4) **Listing.** Each manufacturer must cause to be listed each portable electric spa, by model number, in MAEDbS.

(5) **Marking.** Every unit of every portable electric spa must comply with the requirements of section 1607 of the California Rule.

[Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-105, filed 1/6/20, effective 2/6/20.]

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-115 Commercial hot food holding cabinets. (1) **Scope.** This rule applies to new commercial hot food holding cabinets manufactured on or after January 1, 2010, and installed for compensation in the state on or after January 1, 2011.

(2) **Standard.** ~~((The idle energy rate of commercial hot food holding cabinets shall be no greater than 40 watts per cubic foot of meas-~~

~~ured interior volume.)) Commercial hot food holding cabinets must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial hot food holding cabinets, version 2.0.~~

(3) **Testing.** The idle energy rate of commercial hot food holding cabinets shall be determined using ANSI/ASTM F2140-11 standard test method for the performance of hot food holding cabinets (test for idle energy rate dry test). ~~((Commercial hot food holding cabinet interior volume shall be calculated using straight line segments following the gross interior dimensions of the appliance and using the following equation: Interior height × interior width × interior depth. Interior volume shall not account for racks, air plenums, or other interior parts.))~~

(4) **Listing.** Each manufacturer must cause to be listed each commercial hot food holding cabinet, by model number, in MAEDbS.

(5) **Marking.** Every unit of every commercial hot food holding cabinet must comply with the requirements of section 1607 of the California Rule.

[Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-115, filed 1/6/20, effective 2/6/20.]

NEW SECTION

WAC 194-24-127 Commercial ovens. (1) **Scope.** This rule applies to new commercial ovens manufactured on or after January 1, 2024.

(2) **Standard.** Commercial ovens must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial ovens, version 2.2.

(3) **Testing.** Commercial ovens must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial ovens, version 2.2.

(4) **Listing.** Each manufacturer must cause to be listed each commercial oven, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every commercial oven must have an ENERGY STAR® label.

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AMENDATORY SECTION (Amending WSR 20-21-083, filed 10/19/20, effective 11/19/20)

WAC 194-24-150 Residential ventilating fans manufactured before January 1, 2024. (1) **Scope.** This rule applies to new residential ventilating fans manufactured ~~((on or after))~~ between January 1, 2021, and December 31, 2023.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection

Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

- (4) **Listing.** There is no listing requirement for this product.
- (5) **Marking.** There is no marking requirement for this product.

[Statutory Authority: RCW 19.260.070 and 19.260.040. WSR 20-21-083, § 194-24-150, filed 10/19/20, effective 11/19/20. Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-150, filed 1/6/20, effective 2/6/20.]

NEW SECTION

WAC 194-24-151 Residential ventilating fans manufactured on or after January 1, 2024. (1) **Scope.** This rule applies to new residential ventilating fans manufactured on or after January 1, 2024.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 4.1.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 4.1.

(4) **Listing.** Each manufacturer must cause to be listed each residential ventilating fan, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every residential ventilating fan must have an ENERGY STAR® label.

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NEW SECTION

WAC 194-24-187 Air purifiers. (1) **Scope.** This rule applies to new air purifiers and room cleaners manufactured on or after January 1, 2024.

(2) **Standard.** Air purifiers must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for room air cleaners, version 2.0.

(3) **Testing.** Air purifiers must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for room air cleaners, version 2.0.

(4) **Listing.** Each manufacturer must cause to be listed each air purifier, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every air purifier must have an ENERGY STAR® label.

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NEW SECTION**WAC 194-24-200 Electric vehicle supply equipment. (1) Scope.**

This rule applies to new electric vehicle supply equipment manufactured on or after January 1, 2024.

(2) **Standard.** Electric vehicle supply equipment must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for electric vehicle supply equipment, version 1.0.

(3) **Testing.** Electric vehicle supply equipment must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for electric vehicle supply equipment, version 1.0.

(4) **Listing.** Each manufacturer must cause to be listed each electric vehicle supply equipment, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every electric vehicle supply equipment must have an ENERGY STAR® label.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 194-24-100 Residential pool pumps.

WAC 194-24-195 Uninterruptible power supplies.

WSR 23-07-054
PERMANENT RULES
CLOVER PARK
TECHNICAL COLLEGE

[Filed March 9, 2023, 3:55 p.m., effective April 9, 2023]

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

Purpose: To adopt new and revised language on hazing as mandated by the Washington state legislature (HB [2SHB] 1751).

Citation of Rules Affected by this Order: New WAC 495C-121-065; and amending WAC 495C-121-010, 495C-121-030, and 495C-121-050.

Statutory Authority for Adoption: RCW 288.50.140 [28B.50.140], United States Department of Education 34 C.F.R. Part 106; HB [2SHB] 1751.

Adopted under notice filed as WSR 22-24-008 on November 28, 2022.

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 3, 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 1, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 1, 2023.

Dean Kelly
 Interim Vice President for Student Success

OTS-4117.1

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-010 Definitions. The following definitions shall apply for the purposes of this student conduct code, chapter 495C-121 WAC:

(1) "College" means Clover Park Technical College, College District ((~~Twenty-nine~~)) 29.

(2) "College facilities" includes all campuses of the college, wherever located, and all land, buildings, vehicles, equipment, and other real and personal property which are owned, leased, used, or controlled by the college.

(3) "Committee" and "student conduct committee" means the committee which is formed under WAC 495C-121-140 and which hears the matters specified in WAC 495C-121-110.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and then either reviewing or referring an appeal of student disciplinary action in accordance with WAC

495C-121-110 and following sections of this chapter. The president may reassign any and all of the conduct review officer's responsibilities as set forth in this chapter as he/she deems appropriate.

(5) "Day" means a calendar day, except that when a "business day" is specified, business day means a weekday, excluding weekends and college holidays.

(6) "Disciplinary action" is the process by which the student conduct officer, or the committee upon a referral, imposes discipline against a student for violation of WAC 495C-121-050. Disciplinary action does not include instructional decisions and actions which are under the authority of faculty members and instructional administrators, such as determinations of academic credit and grading; any such determinations, and any review or appeal of these, are outside the scope of this chapter.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal discipline, as provided in WAC 495C-121-110 through 495C-121-180.

(8) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. §1232g; 34 C.F.R. Part 99).

(9) "Filing" is delivery of a document to the college official who is designated under this chapter to receive it for the purpose of review of a disciplinary action. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to that official or the official's assistant during regular office hours; or

(b) Sending the document both by first class mail postage prepaid to the official's office and by email to his/her college email address.

(10) "Hazing" as used in RCW 28B.10.901 and 28B.10.902, includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(11) "Includes" and "including" means contained as part of a larger described whole or grouping, but these terms are not a limitation and mean "but not limited to."

~~((11))~~ (12) "President" is the president of the college. The president may delegate any of his or her responsibilities under this chapter as he/she deems appropriate.

~~((12))~~ (13) "Respondent" is the student against whom disciplinary action is initiated.

~~((13))~~ (14) "Service" is the delivery of a document or copy of a document to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document both by first class and/or certified mail postage prepaid to the party's last known address and by email to the email address shown in the college's records.

Service is deemed complete either upon hand delivery or when the document has been both deposited in the mail and emailed.

~~((14))~~ (15) "Student" includes 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 "students."

~~((15))~~ (16) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for investigating allegations of student misconduct and taking disciplinary action as provided in WAC 495C-121-100. The president or vice president of student services may reassign any of the student conduct officer's responsibilities under this chapter as he/she deems appropriate.

~~((16))~~ (17) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, affinity groups, members of a class or student cohort, student performance groups, and student living groups within student housing.

(18) "Vice president of student services" is the position which reports directly to the president and which the president assigns overall operational responsibility for this chapter. The president may reassign, or the vice president may delegate, any such responsibility as he/she deems appropriate.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-010, filed 5/19/14, effective 6/19/14.]

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-030 Jurisdiction. (1) The student conduct code, chapter 495C-121 WAC, shall apply to student conduct that occurs:

- (a) In or on college facilities;
- (b) At or in connection with college-sponsored activities; or
- (c) Off-campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) ~~((This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned activities.~~

(3) ~~This chapter applies to conduct from the time of application for admission through the actual receipt 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. This chapter shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.~~

~~(4) The college has sole discretion, on a case-by-case basis, to determine whether this student conduct code will be applied to conduct that occurs off campus.)~~ Jurisdiction extends to, but is not limited to, locations where students or student groups are engaged in official college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic events or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or 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.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-030, filed 5/19/14, effective 6/19/14.]

AMENDATORY SECTION (Amending WSR 16-06-026, filed 2/22/16, effective 3/24/16)

WAC 495C-121-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit any act of misconduct, which includes, but is not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or providing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct or complete information, in response to the request or requirement of a college official or employee.

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyber misconduct. Cyberstalking, cyberbullying or online harassment.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state, including college facilities;

(b) Any college student, official, employee, or organization; or

(c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or

device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view;

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing; and

(e) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization, that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm to any student.

(b) Examples of hazing include, but not limited to:

(i) 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;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** Use, possession, delivery, sale, or being observably under the influence of marijuana, the psychoactive compounds found in marijuana, or any product containing marijuana or such compounds that is intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college facilities or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic ste-

roids, 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 health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking devices, and/or related products on or in any college facility is prohibited, except that such use in a designated smoking area or in a closed private vehicle is permitted when consistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or distribution of such a recording.

(c) Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was

such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic.

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's policies or procedures governing the use of such time or resources.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, procedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.

(19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.

(20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.

(21) **Student procedures violations.** Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:

(a) Falsification or misrepresentation of information;

(b) Failure to obey a subpoena;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or

(f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.

(22) **Ethical violation.** Ethical violations include, but are not limited to, breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-050, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-050, filed 5/19/14, effective 6/19/14.]

NEW SECTION

WAC 495C-121-065 Hazing prohibited—Sanctions. (1) Hazing by a student or student group is prohibited pursuant to WAC 495C-121-050.

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) 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 nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit an entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups 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.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual conduct, 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.

[]

WSR 23-07-055
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-38—Filed March 9, 2023, 5:49 p.m., effective April 9, 2023]

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

Purpose: This revision to the fishing guide logbook rule will improve enforceability and compliance of the rule. Specifically, this revision will require trip location and date information before the fishing activity begins, remove the web reporting tool as a reporting option, and remove reference to vessel so it's clear that all guided fishing trips, whether on foot or on a vessel, must be reported. The revision will also increase the frequency at which paper reports must be returned from once a month to twice a month.

Citation of Rules Affected by this Order: Amending WAC 220-352-245 Reporting required of licensed food fish, game fish and combination fishing guides.

Statutory Authority for Adoption: RCW 77.65.500.

Adopted under notice filed as WSR 22-21-100 [23-01-128] on October 17, 2022 [December 20, 2022].

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 0, Repealed 0.

Date Adopted: February 17, 2023.

B. Baker, Chair
 Washington Fish and Wildlife Commission

OTS-4142.3

AMENDATORY SECTION (Amending WSR 19-17-010, filed 8/9/19, effective 1/1/20)

WAC 220-352-245 Reporting required of licensed food fish, game fish and combination fishing guides. (1) Licensed food fish, game fish and combination fishing guides shall maintain a daily logbook of guiding activity to include:

- (a) Guide name and license No. for the guide leading the trip;
- (b) Date that fishing took place. For multiday trips, each day is considered a separate trip;
- (c) Specific name of river, stream, or lake fished;

(d) Site code of site fished as referenced within a list provided to each guide. If multiple sites are fished on the same day, each site is considered a separate trip;

(e) Client, "comped angler" and crew current fishing license number (wild ID No.) for each person on board if required to have a license or catch record card. A comped angler is an angler that fishes without charge;

(f) Indicate if person was a crew member or if angler was "comped";

(g) Species kept or released. For salmon and steelhead specify origin (hatchery, wild) and life stage (adult, jack).

(2) ~~((Logbooks are required to be completed for each trip before offloading any fish from the vessel or if no fish were kept, complete the logbook before leaving the site))~~ Every daily logbook entry must be started before fishing activity begins by entering guide name, license number, date, and waterbody the trip initiated from.

(3) Report of daily guiding activity shall be made using the department's paper logbook or ~~((online))~~ mobile reporting application. ((Logbook pages)) Trips reported using the paper logbook for activity that occurred between the first day of the calendar month and the 15th day of the calendar month must be ((provided)) postmarked and mailed to the department ((or postmarked within ten days following any calendar month in which the guiding activity took place)) by the 28th day of the same calendar month. Trips reported using the paper logbook for activity that occurred between the 16th day of the calendar month and the last day of the calendar month must be postmarked and mailed to the department by the 14th day of the calendar month immediately following. Reports logged using the mobile application must be finalized or submitted at the end of the guided trip before leaving the site.

(4) Each day of fishing ~~((that occurs on a designated WDFW licensed guide fish vessel))~~ will be required to be recorded in the logbook. This includes any personal use or nonguided fishing trips that occur. Only guide name, license number, and date are required for nonguided fishing trips.

(5) Information collected under this section may be exempt from public disclosure to the extent provided under RCW 42.56.430.

(6) Failure to report any guiding activity listed in subsections (1) through (4) of this section is an infraction, punishable under RCW 77.15.160.

(7) A fishing guide, or person under the control or direction of a fishing guide, that submits false information is guilty of a gross misdemeanor, punishable under RCW 77.15.270.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020 and 77.04.055. WSR 19-17-010 (Order 19-141), § 220-352-245, filed 8/9/19, effective 1/1/20.]

WSR 23-07-057

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 9, 2023, 11:14 p.m., effective June 1, 2023]

Effective Date of Rule: June 1, 2023.

Purpose: Multiple health profession fee amendments, including WAC 246-803-990, 246-809-990, 246-810-990, 246-815-990, 246-817-990, 246-817-99005, 246-828-990, 246-845-990, 246-915-990, 246-915-99005, 246-930-990, and 246-980-990. Changes to fees are being adopted to align revenue with program costs for the following professions: Acupuncturist or acupuncture and Eastern medicine practitioner, licensed mental health counselor, licensed advanced social worker and licensed independent clinical social worker, certified counselor, certified adviser, registered agency affiliated counselor, dental hygienist, dentist, registered dental assistant, certified dental anesthesia assistant, licensed expanded function dental auxiliary, audiologist, speech-language pathologist, hearing aid specialist, speech-language pathology assistant, nursing pool operator, physical therapist, physical therapist assistant, sex offender treatment provider, affiliate treatment provider certificate, and home care aide. Additional technical updates are included to ensure clarity and consistency.

Citation of Rules Affected by this Order: Repealing WAC 246-803-990, 246-809-990, 246-810-990, 246-815-990, 246-817-990, 246-817-99005, 246-828-990, 246-845-990, 246-915-990, 246-915-99005, 246-930-990, and 246-980-990.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and 43.70.280.

Adopted under notice filed as WSR 23-01-133 on December 20, 2022.

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 12, 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 12, Repealed 0.

Date Adopted: March 9, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4235.1

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-990 Acupuncturist or acupuncture and Eastern medicine practitioner fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(, ~~Part 2~~).

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	(\$100.00) <u>\$60.00</u>
License renewal	(196.00) <u>60.00</u>
Inactive license renewal	50.00
Late renewal penalty	(105.00) <u>50.00</u>
Expired license reissuance	50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
Acupuncture or Eastern medicine training program application	500.00
UW library access fee	9.00

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-990, filed 4/8/21, effective 5/9/21. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-990, filed 8/22/11, effective 9/22/11.]

OTS-4236.1

AMENDATORY SECTION (Amending WSR 21-20-030, filed 9/24/21, effective 10/25/21)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Except for a probationary license as described in WAC 246-809-095, a license must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than six times, except as provided in RCW 18.225.145.

(3) The following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	\$290.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	180.00

Title	Fee
Late renewal penalty	90.00
Expired license reissuance	85.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed marriage and family therapy associate	
Original application	
Application	65.00
UW online access fee (HEAL-WA)	16.00
Renewal	
Renewal	50.00
UW online access fee (HEAL-WA)	16.00
Late renewal penalty	50.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application	95.00
Initial license	80.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((90.00)) <u>125.00</u>
Late renewal penalty	((50.00)) <u>65.00</u>
Expired license reissuance	65.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor associate	
Original application	
Application	35.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00

Title	Fee
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application <u>and initial license</u>	((100.00))
	<u>170.00</u>
((Initial license	100.00))
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((100.00))
	<u>70.00</u>
Late renewal penalty	50.00
Expired license reissuance	72.50
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	65.00
Late renewal penalty	30.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	
	10.00
Verification of license	
	25.00
Licensed advanced social worker associate and licensed independent clinical social worker associate	
Original application	
Application	35.00
UW online access fee (HEAL-WA)*	16.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
UW online access fee (HEAL-WA)*	16.00
Expired license reissuance	40.00
Duplicate license	
	10.00
Verification of license	
	25.00

* Surcharge applies to independent clinical social worker associate only.

(4) For a probationary license as described under WAC 246-809-095, the following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	\$290.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
Duplicate license	
	10.00
Verification of license	
	25.00
Licensed mental health counselor	
Original application	

Title	Fee
Application and initial license	175.00
Active license renewal	
Renewal	90.00
Late renewal penalty	50.00
Expired license reissuance	65.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	200.00
Active license renewal	
Renewal	100.00
Late renewal penalty	50.00
Expired license reissuance	72.50
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 18.225.040, 18.205.060, and 2021 c 57; RCW 18.225.145, 18.205.095. WSR 21-20-030, § 246-809-990, filed 9/24/21, effective 10/25/21. Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-809-990, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 18-01-098, § 246-809-990, filed 12/18/17, effective 4/1/18. Statutory Authority: RCW 43.70.110, 43.70.280 and 18.225.145. WSR 15-19-149, § 246-809-990, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 18.130.250, 18.225.170, 43.70.110, and 43.70.250. WSR 13-24-097, § 246-809-990, filed 12/3/13, effective 2/1/14. Statutory Authority: RCW 43.70.110 (3) (c) and 43.70.250. WSR 12-19-088, § 246-809-990, filed 9/18/12, effective 11/1/12. Statutory Authority: RCW 43.70.110 and 43.70.112. WSR 11-19-098, § 246-809-990, filed 9/20/11, effective 1/1/12. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-809-990, filed 9/16/10, effective 10/15/10. Statutory Authority: Chapter 18.225 RCW. WSR 09-15-039, § 246-809-990, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-809-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-809-990, filed 5/20/05, effective 7/1/05. Statutory Authority: 2001 c 251, RCW 43.70.250. WSR 01-17-113, § 246-809-990, filed 8/22/01, effective 9/22/01.]

OTS-4237.1

AMENDATORY SECTION (Amending WSR 21-16-002, filed 7/22/21, effective 11/1/21)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, a counselor must renew their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	\$155.00
Renewal	\$80.00
Late renewal penalty	\$75.00
Expired registration reissuance	\$75.00
Duplicate registration	\$10.00
Verification of registration	\$25.00
Certified counselor:	
Application and certification	((\$345.00)) <u>\$680.00</u>
Examination or reexamination	\$85.00
Renewal	((\$305.00)) <u>\$800.00</u>
Late renewal penalty	((\$155.00)) <u>\$300.00</u>
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Certified adviser:	
Application and certification	((\$285.00)) <u>\$620.00</u>
Examination or reexamination	\$85.00
Renewal	((\$250.00)) <u>\$745.00</u>
Late renewal penalty	((\$125.00)) <u>\$300.00</u>
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Registered agency affiliated counselor:	
Application and registration	((\$90.00)) <u>\$175.00</u>
Renewal	((\$75.00)) <u>\$185.00</u>
Late renewal penalty	((\$50.00)) <u>\$95.00</u>
Expired registration reissuance	\$50.00
Duplicate registration	\$10.00
Verification of registration	\$25.00

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 21-16-002, § 246-810-990, filed 7/22/21, effective 11/1/21; WSR 18-01-098, §

246-810-990, filed 12/18/17, effective 4/1/18. Statutory Authority: RCW 43.70.250, 18.19.050, 43.70.110 and 2013 c 4. WSR 14-07-095, § 246-810-990, filed 3/18/14, effective 7/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-810-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-990, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-810-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 18.19.050. WSR 06-08-106, § 246-810-990, filed 4/5/06, effective 5/6/06. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-810-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-810-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-810-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.19.050(1). WSR 97-17-113, § 246-810-990, filed 8/20/97, effective 9/20/97. Statutory Authority: Chapter 18.19 RCW. WSR 96-08-069, § 246-810-990, filed 4/3/96, effective 5/4/96. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-810-990, filed 6/24/93, effective 7/25/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-810-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-18-039 (Order 084), § 308-190-010, filed 8/29/90, effective 9/29/90; WSR 90-04-094 (Order 029), § 308-190-010, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-033 (Order PM 669), § 308-190-010, filed 8/27/87.]

OTS-4238.1

AMENDATORY SECTION (Amending WSR 18-21-141, filed 10/19/18, effective 11/19/18)

WAC 246-815-990 Dental hygiene fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application examination and reexamination. .	\$100.00
Renewal.	((50.00))
	<u>70.00</u>
Late renewal penalty.	50.00
Expired license reissuance.	50.00
Credentialing application.	100.00
Limited license application.	100.00
Limited license renewal.	((50.00))
	<u>70.00</u>
Limited license late renewal penalty.	50.00
Expired limited license reissuance.	50.00
Duplicate license.	15.00
Verification of license.	25.00

Title of Fee	Fee
Education program evaluation.	200.00

[Statutory Authority: RCW 18.29.210, 43.70.280, and chapter 18.29 RCW. WSR 18-21-141, § 246-815-990, filed 10/19/18, effective 11/19/18. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-815-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-815-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 05-01-018, § 246-815-990, filed 12/2/04, effective 3/22/05; WSR 03-07-095, § 246-815-990, filed 3/19/03, effective 7/1/03. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-815-990, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.29 RCW and RCW 18.20.150(4). WSR 95-16-102, § 246-815-990, filed 8/1/95, effective 9/1/95. Statutory Authority: RCW 43.70.250. WSR 94-02-059, § 246-815-990, filed 1/3/94, effective 3/1/94. Statutory Authority: RCW 43.70.250 and 1993 c 323. WSR 93-16-073, § 246-815-990, filed 8/2/93, effective 9/2/93. Statutory Authority: RCW 43.70.250. WSR 91-13-002 (Order 173), § 246-815-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-815-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-25-065, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-10-028 (Order PM 650), § 308-25-065, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-25-065, filed 8/10/83. Formerly WAC 308-25-060.]

OTS-4239.1

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(7-Part-2)~~), except faculty and resident licenses.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC(~~(7-Part-2)~~).

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	\$500.00
Original application - Without examination	
Initial application	500.00
Initial license	500.00
Faculty license application	500.00
Resident license application	115.00
Active license renewal:	
Renewal	((350.00)) <u>365.00</u>

Title of Fee	Fee
Surcharge - Impaired dentist	50.00
Late renewal penalty	((288.00))
	<u>185.00</u>
Expired license reissuance	300.00
Inactive license renewal:	
Renewal	125.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	50.00
Retired active license renewal	
Renewal	150.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	75.00
Duplicate license	15.00
Certification of license	25.00
Anesthesia permit	
Initial application	150.00
Renewal - (Three-year renewal cycle)	((150.00))
	<u>160.00</u>
Late renewal penalty	((75.00))
	<u>80.00</u>
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

[Statutory Authority: RCW 18.130.250, 43.70.250 and 18.32.534. WSR 15-07-004, § 246-817-990, filed 3/6/15, effective 4/6/15. Statutory Authority: RCW 43.70.250, 43.70.280, and 2013 c 129. WSR 13-21-069, § 246-817-990, filed 10/16/13, effective 1/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-817-990, filed 9/16/10, effective 10/15/10. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-817-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-817-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.32.0365 and 43.70.250. WSR 01-11-166, § 246-817-990, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-817-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-817-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.040. WSR 95-16-122, § 246-817-990, filed 8/2/95, effective 9/1/95.]

OTS-4240.1

AMENDATORY SECTION (Amending WSR 12-24-015, filed 11/27/12, effective 7/1/13)

WAC 246-817-99005 Dental assistant, dental anesthesia assistant, and expanded function dental auxiliary fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) The following nonrefundable fees will be charged for dental assistant, dental anesthesia assistant, and expanded function dental auxiliary credentials:

Title of Fee - Dental Professionals	Fee
Registered dental assistant application	\$40.00
Registered dental assistant renewal	((21.00)) <u>25.00</u>
Registered dental assistant late renewal	((21.00)) <u>25.00</u>
Registered dental assistant expired reactivation	20.00
Certified dental anesthesia assistant application	100.00
Certified dental anesthesia assistant renewal	((75.00)) <u>85.00</u>
Certified dental anesthesia assistant late renewal	50.00
Certified dental anesthesia assistant expired reactivation	75.00
Licensed expanded function dental auxiliary application	175.00
Licensed expanded function dental auxiliary renewal	((160.00)) <u>165.00</u>
Licensed expanded function dental auxiliary late renewal	((80.00)) <u>85.00</u>
Licensed expanded function dental auxiliary expired reactivation	50.00
Duplicate credential	15.00
Certification of credential	25.00

[Statutory Authority: 2012 c 208, 2012 c 23, 2012 c 137, 2012 c 153, RCW 43.70.110, and 43.70.250. WSR 12-24-015, § 246-817-99005, filed 11/27/12, effective 7/1/13. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-817-99005, filed 9/16/10, effective 10/15/10. Statutory Authority: RCW 43.70.250. WSR 08-13-069, § 246-817-99005, filed 6/13/08, effective 7/1/08.]

OTS-4241.1

AMENDATORY SECTION (Amending WSR 22-13-103, filed 6/15/22, effective 8/1/22)

WAC 246-828-990 Hearing aid specialist, audiologist, speech-language pathologist, and speech-language pathology assistant fees and

renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in WAC 246-12-030.

(2) Practitioners must pay the following nonrefundable fees:

Audiologist or Speech-Language Pathologist

Fee Type:	Fee
Interim permit	
Application	\$165.00
Permit	140.00
Initial license	
Application <u>and license</u>	((110.00)) <u>175.00</u>
((License	95.00))
HEAL-WA* surcharge	16.00
Active license renewal	
Renewal	((75.00)) <u>45.00</u>
Late renewal penalty	((50.00)) <u>45.00</u>
HEAL-WA* surcharge	16.00
Expired license reissuance	140.00
Inactive license	
Renewal	60.00
Expired license reissuance	90.00
Verification of license	25.00
Duplicate license	10.00

* Surcharge applies to speech-language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

Hearing Aid Specialist

Fee Type:	Fee
Initial license	
Application <u>and license</u>	((110.00)) <u>\$175.00</u>
((License	95.00))
Hearing aid specialist practical exam for Washington hearing society applicants	350.00
Active license renewal	
Renewal	((75.00)) <u>45.00</u>
Late renewal penalty	((50.00)) <u>45.00</u>
Expired license reissuance	136.00
Inactive license renewal	
Renewal	56.00
Expired license reissuance	86.00
Verification of license	25.00
Duplicate license	10.00

**Speech-Language Pathology
Assistant**

Fee Type:	Fee
Initial credential	
Application	((\$85.00)) <u>\$55.00</u>
Active credential renewal	
Renewal	((45.00)) <u>15.00</u>
Late renewal penalty	((45.00)) <u>15.00</u>
Expired credential reissuance	50.00
Inactive credential renewal	
Renewal	50.00
Expired credential reissuance	50.00
Verification of credential	25.00
Duplicate credential	10.00

[Statutory Authority: RCW 18.35.161 and 43.70.250. WSR 22-13-103, § 246-828-990, filed 6/15/22, effective 8/1/22. Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 16-07-087, § 246-828-990, filed 3/17/16, effective 7/1/16. Statutory Authority: RCW 43.70.250, 43.70.280 and 2014 c 189. WSR 15-16-020, § 246-828-990, filed 7/24/15, effective 8/24/15. Statutory Authority: RCW 43.70.280 and 2013 c 249. WSR 13-21-077, § 246-828-990, filed 10/17/13, effective 1/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-828-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-990, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-828-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-828-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.35.161. WSR 04-02-068, § 246-828-990, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-828-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.35.090 and 43.70.250. WSR 97-04-043, § 246-828-990, filed 1/31/97, effective 1/31/97. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017, § 246-828-990, filed 9/7/95, effective 10/8/95. Statutory Authority: RCW 43.70.250. WSR 94-08-038, § 246-828-990, filed 3/31/94, effective 5/1/94; WSR 93-14-011, § 246-828-990, filed 6/24/93, effective 7/25/93; WSR 91-13-002 (Order 173), § 246-828-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-11-030 (Order 139), recodified as § 246-828-990, filed 5/8/91, effective 6/8/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-50-440, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-031 (Order PM 667), § 308-50-440, filed 8/27/87.]

OTS-4242.1

AMENDATORY SECTION (Amending WSR 17-24-014 and 17-22-088, filed 11/27/17 and 10/27/17, effective 3/1/18)

WAC 246-845-990 Nursing pool fees and renewal cycle. (1) Registrations must be renewed every year on the ~~((practitioner's birthday))~~ date of original issuance as provided in chapter 246-12 WAC ~~((, Part 2))~~.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	\$175.00
Renewal	((155.00)) <u>280.00</u>
Late renewal penalty	((80.00)) <u>140.00</u>
Expired registration reissuance	60.00
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 17-24-014 and 17-22-088, § 246-845-990, filed 11/27/17 and 10/27/17, effective 3/1/18. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-845-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-845-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-845-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-845-990, filed 6/24/93, effective 7/25/93; WSR 91-13-002 (Order 173), § 246-845-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-845-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-310-010, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 88-20-076 (Order 784), § 308-310-010, filed 10/5/88.]

OTS-4243.1

AMENDATORY SECTION (Amending WSR 18-21-140, filed 10/19/18, effective 2/1/19)

WAC 246-915-990 Physical therapist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC ~~((, Part 2))~~.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	
Application	((65.00)) <u>80.00</u>
Active license renewal	
License renewal	((75.00)) <u>100.00</u>

Title of Fee	Fee
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 18.74.510, 43.70.250, and 43.70.320. WSR 18-21-140, § 246-915-990, filed 10/19/18, effective 2/1/19. Statutory Authority: RCW 43.70.280. WSR 15-19-149, § 246-915-990, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-915-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-915-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.74.073. WSR 05-09-003, § 246-915-990, filed 4/7/05, effective 5/8/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-915-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-915-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250. WSR 91-13-002 (Order 173), § 246-915-990, filed 6/6/91, effective 7/7/91; WSR 91-05-004 (Order 128), § 246-915-990, filed 2/7/91, effective 3/10/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-915-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.24.086. WSR 87-10-028 (Order PM 650), § 308-42-075, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-42-075, filed 8/10/83. Formerly WAC 308-42-100.]

OTS-4244.1

AMENDATORY SECTION (Amending WSR 18-21-140, filed 10/19/18, effective 2/1/19)

WAC 246-915-99005 Physical therapist assistant fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) The following nonrefundable fees will be charged for physical therapist assistant:

Title of Fee	Fee
Original application	
Application	(\$60.00) <u>\$75.00</u>
Active license renewal	
License renewal	(70.00) <u>95.00</u>
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	

Title of Fee	Fee
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	10.00
Verification of license	25.00

[Statutory Authority: RCW 18.74.510, 43.70.250, and 43.70.320. WSR 18-21-140, § 246-915-99005, filed 10/19/18, effective 2/1/19. Statutory Authority: RCW 43.70.280. WSR 15-19-149, § 246-915-99005, filed 9/22/15, effective 1/1/16. Statutory Authority: RCW 43.70.250. WSR 08-13-068, § 246-915-99005, filed 6/13/08, effective 7/1/08.]

OTS-4245.1

AMENDATORY SECTION (Amending WSR 21-13-079, filed 6/15/21, effective 7/16/21)

WAC 246-930-990 Sex offender treatment provider fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) The following nonrefundable fees will be charged for:

Title of Fee	Fee
Sex offender treatment provider:	
Application and examination	((\$600.00)) <u>\$450.00</u>
Reexamination	250.00
Initial certification	((200.00)) <u>50.00</u>
Renewal	((1,000.00)) <u>500.00</u>
Inactive status	300.00
Late renewal penalty	((300.00)) <u>250.00</u>
Expired certificate reissuance	300.00
Expired inactive certificate reissuance	150.00
Duplicate certificate	15.00
Verification of certification	15.00

(3) The following nonrefundable fees will be charged for affiliate treatment provider:

Title of Fee	Fee
Application and examination	((400.00)) <u>200.00</u>
Reexamination	250.00
Renewal	((500.00)) <u>250.00</u>
Inactive status	250.00
Late renewal penalty	((250.00)) <u>125.00</u>

Title of Fee	Fee
Expired affiliate certificate reissuance	250.00
Expired inactive affiliate certificate reissuance	100.00
Duplicate certificate	15.00

(4) Under RCW 71.09.360, fees established in this section may be waived for sex offender treatment providers contracted to provide treatment services to persons on conditional release in underserved counties as determined by the department of social and health services.

[Statutory Authority: RCW 18.155.040 and 2020 c 266, and 2020 c 76. WSR 21-13-079, § 246-930-990, filed 6/15/21, effective 7/16/21. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-930-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 18.155.040. WSR 05-12-014, § 246-930-990, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-930-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-930-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-930-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.155.040. WSR 94-13-179, § 246-930-990, filed 6/21/94, effective 7/22/94; WSR 92-12-027 (Order 275), § 246-930-990, filed 5/28/92, effective 6/28/92; WSR 91-11-063 (Order 168), § 246-930-990, filed 5/16/91, effective 6/16/91.]

OTS-4246.1

AMENDATORY SECTION (Amending WSR 16-05-021 and 15-19-150, filed 2/8/16 and 9/22/15, effective 5/1/16)

WAC 246-980-990 Home care aide certification fees. (1) Certifications must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) The following nonrefundable fees will be charged for home care aide:

Title of Fee	Fee
Application	((85.00)) <u>\$100.00</u>
Certification renewal	((85.00)) <u>100.00</u>
Late renewal penalty	((30.00)) <u>50.00</u>
Expired certification reactivation	30.00
Duplicate certification	15.00
Verification	25.00

[Statutory Authority: RCW 43.70.110, 43.70.250, 43.70.280. WSR 16-05-021 and 15-19-150, § 246-980-990, filed 2/8/16 and 9/22/15, ef-

fective 5/1/16. Statutory Authority: Chapters 18.88B and 74.39A RCW.
WSR 10-15-103, § 246-980-990, filed 7/20/10, effective 1/1/11.]

WSR 23-07-058

PERMANENT RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed March 9, 2023, 11:20 p.m., effective April 9, 2023]

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

Purpose: Establishing WAC 246-945-171 Retired active pharmacist license status. On March 26, 2020, Governor Inslee signed Proclamation 20-32 to help increase the number of health care workers available to meet the needs of patients during the coronavirus disease 2019 (COVID-19) pandemic. This proclamation included a provision that allows a pharmacist with a retired active pharmacist license status to practice pharmacy. Specifically, the proclamation waived the phrase "shall not be authorized to practice pharmacy and" from WAC 246-863-080(2) Retired pharmacist license. In other words, the proclamation amended WAC 246-863-080(2) to read: "The holder of a retired pharmacist license need not comply with the continuing education requirements of chapter 246-861 WAC."

However, the commission recently updated and consolidated all rules under its authority into one new chapter (chapter 246-945 WAC). In this rewrite process, WAC 246-863-080 and the retired active pharmacist license was removed, effective July 1, 2020, as the retired active pharmacist status at the time did not allow for the practice of pharmacy in any capacity and was deemed unnecessary.

The novel coronavirus COVID-19 pandemic illustrated the need for additional qualified and licensed personnel in intermittent and emergency settings, and the commission chose to reinstate the retired active pharmacist license status. However, the interaction between the old rule language and Proclamation 20-32 prompted the commission to approve new rule language to both accommodate the proclamation language and reestablish the retired active pharmacist licensing requirements.

In order to allow retired pharmacists to assist with the COVID-19 response with pharmacy services such as vaccine administration while permanent rule making was ongoing, the commission adopted an emergency rule on February 1, 2021, under WSR 21-04-116, creating a retired active pharmacy license status in the new chapter. Permanent rules are necessary to keep the retired active pharmacist license status in place.

This rule differs from the emergency rules in that it includes updated references to license application fees, license renewal fees, and the license renewal period in rule. The rule language also adds a reference to continuing education requirements for licensees.

Governor Inslee rescinded Proclamation 20-32 on October 27, 2022. Since that date, holders of the retired active pharmacist license must comply with continuing education requirements associated with the license status. However, this permanent rule will continue to provide guidance for prospective and current licensees should another state of emergency be declared in the future.

Citation of Rules Affected by this Order: New WAC 246-945-171.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.205.

Adopted under notice filed as WSR 22-20-101 on October 4, 2022.

A final cost-benefit analysis is available by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2987, fax 360-236-2901, TTY 711, email PharmacyRules@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 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 1, Amended 0, Repealed 0.

Date Adopted: March 8, 2023.

Teri Ferreira, RPh
Chair

OTS-2798.4

NEW SECTION

WAC 246-945-171 Retired active pharmacist license status. (1) A pharmacist may apply for a retired active pharmacist license status if they:

(a) Hold an active pharmacist license issued by the commission under chapter 18.64 RCW that is in good standing;

(b) Submit an application on a form provided by the commission; and

(c) Pay the retired credential status application fee as specified in WAC 246-945-990.

(2) A pharmacist with a retired active pharmacist license status shall practice only in emergent or intermittent circumstances.

(a) "Emergent" includes, but is not limited to, earthquakes, floods, times of declared war or other states of emergency.

(b) "Intermittent" means no more than a total of ninety days each year in Washington state.

(3) A pharmacist with a retired active pharmacist license status must meet the continuing education requirements in WAC 246-945-178.

(4) A pharmacist with a retired active pharmacist license status must renew their license every two years in compliance with WAC 246-12-130 and pay the retired active credential status renewal fee set in WAC 246-945-990.

(5) A pharmacist with a retired active pharmacist license status must meet the requirements in WAC 246-12-140 to return their license to active status and pay the active renewal fee set in WAC 246-945-990.

[]

WSR 23-07-059
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 10, 2023, 10:36 a.m., effective April 10, 2023]

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

Purpose: The department is adopting amendments to WAC

388-464-0001 Am I required to cooperate with quality control? These amendments more accurately align with federal regulations related to quality control for the Supplemental Nutrition Assistance Program, and specifically clarify to which programs these requirements apply.

Citation of Rules Affected by this Order: Amending WAC

388-464-0001.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Adopted under notice filed as WSR 22-19-093 on September 21, 2022, and WSR 22-22-100 on November 2, 2022.

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 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: March 10, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4912.1

AMENDATORY SECTION (Amending WSR 11-14-084, filed 7/1/11, effective 8/1/11)

WAC 388-464-0001 Am I required to cooperate with quality ((assurance)) control? (1) To be eligible for ((temporary assistance for needy families (TANF), state family assistance (SFA), or food assistance through)) basic food assistance, transitional food assistance (TFA), or the Washington combined application project (WASHCAP), ((the following persons)) all household members must cooperate in the quality ((assurance (QA))) control (QC) review process((:

(a) ~~All adult recipients or payees in a TANF or SFA assistance unit (AU); or~~

(b) ~~All household members in a Basic Food, TFA or WASHCAP AU).~~

(2) If someone who must cooperate under subsection (1) of this section refuses to cooperate, your ((AU)) assistance unit (AU) is in-

eligible for benefits from the date ((QA)) QC has determined that you are refusing to cooperate until the person meets ((QA)) QC requirements or(÷

~~(a) For TANF/SFA clients, one hundred twenty days from the end of the annual QA review period; or~~

~~(b) For Basic Food, TFA, or WASHCAP members, the penalty period is one hundred twenty-five)) 125 days from the end of the annual ((QA)) QC review period.~~

(3) If a person leaves a basic food AU that is currently disqualified for refusing to cooperate in the ((QA)) QC review process, the penalty for refusal to cooperate follows that person and continues for the AU that includes the person(s) who refused to cooperate. If we cannot determine which person refused to cooperate, the penalty continues for the AU that includes the head of household at the time ((QA)) QC found your AU refused to cooperate.

(4) The ((QA)) QC review period covers the federal fiscal year, which runs from October 1st of one calendar year through September 30th of the following calendar year.

(5) People applying for ((TANF, SFA, or)) basic food after the penalty period in subsection (2) of this section has ended must provide verification of all eligibility requirements. However, if your AU is eligible for expedited service under WAC 388-406-0015, you only need to provide expedited service required verifications.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090 and 7 C.F.R. § 273.2 (d)(2). WSR 11-14-084, § 388-464-0001, filed 7/1/11, effective 8/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-464-0001, filed 7/31/98, effective 9/1/98.]

WSR 23-07-060
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 10, 2023, 10:58 a.m., effective April 10, 2023]

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

Purpose: The department is adopting amendments to WAC

388-444-0055 What are the penalties if I refuse or fail to meet basic food work requirements?, to more accurately align with federal regulations related to basic food disqualification, and clarify that a basic food sanction can be lifted effective the first of the following month when a client meets work requirements or becomes exempt from work requirements during a basic food sanction.

Citation of Rules Affected by this Order: Amending WAC

388-444-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 23-03-049 on January 10, 2023.

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 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: March 10, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4959.1

AMENDATORY SECTION (Amending WSR 13-21-126, filed 10/22/13, effective 11/22/13)

WAC 388-444-0055 What are the penalties if I refuse or fail to meet basic food work requirements? (1) If we register you for work you must meet the work requirements under WAC 388-444-0005 or 388-444-0030 unless you have good cause as defined in WAC 388-444-0050. If you do not follow these rules, you will become an ineligible assistance unit member as described under WAC 388-408-0035. The remaining members of the assistance unit continue to be eligible for basic food.

(2) If you do not meet basic food work requirements and we find that you did not have good cause, you cannot receive basic food for the following periods of time and until you meet program requirements:

- (a) For the first failure, one month;
- (b) For the second failure, three months; and
- (c) For the third or subsequent failure, six months.

(3) If you become exempt under WAC 388-444-0010 and are otherwise eligible, you may begin to receive basic food.

(4) If you do not comply with the work requirements of the following programs, you cannot receive basic food unless you meet one of the conditions described under WAC 388-444-0010 (~~except subsections (4) or (5)~~):

- (a) WorkFirst;
- (b) Unemployment compensation;
- (c) The refugee cash assistance program.

(5) Within (~~ten~~) 10 days after learning of your refusal to participate in your program, (~~the financial worker~~) we will send you a notice that your basic food benefits will end unless you comply with your program requirements.

(6) If you do not comply within (~~ten~~) 10 days, you will be issued a notice disqualifying you from receiving basic food until you comply with your program, or until you meet the work registration disqualification requirements in subsection (2) of this section.

(7) (~~After the penalty period in subsection (2) of this section is over, and you meet work requirements and you are otherwise eligible, you may receive basic food:~~

- ~~(a) If you are alone in the assistance unit and apply to reestablish eligibility; or~~
- ~~(b) If you are a member of an assistance unit, you may resume receiving basic food.~~

~~(8))~~ During the penalty period, if you begin to participate in (~~one~~) any of the programs listed in subsection (4)(a) through (c) (~~and that penalty is removed,~~) of this section or meet one of the conditions described under WAC 388-444-0010, the work registration disqualification also ends. If you are otherwise eligible, you may begin to receive basic food effective the first of the month following the change.

(8) After the penalty period in subsection (2) of this section is over, and you meet work requirements, and you are otherwise eligible, you may receive basic food:

- (a) If you are alone in the assistance unit and apply to reestablish eligibility; or
- (b) If you are a member of an assistance unit, you may resume receiving basic food.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.7. WSR 13-21-126, § 388-444-0055, filed 10/22/13, effective 11/22/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 U.S.C. 2015 (d)(1); 7 C.F.R. § 273.7. WSR 10-18-048, § 388-444-0055, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-444-0055, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.050 and 74.04.510. WSR 00-04-006, § 388-444-0055, filed 1/20/00, effective 3/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-444-0055, filed 7/31/98, effective 9/1/98.]

WSR 23-07-061
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 10, 2023, 11:19 a.m., effective April 10, 2023]

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

Purpose: The department is adopting amendments to WAC

388-460-0005 Can I choose someone to apply for basic food for my assistance unit?, to more accurately align rule language with statewide protocol for approving authorized representatives to apply for basic food assistance for an assistance unit in which they are not a member.

Citation of Rules Affected by this Order: Amending WAC

388-460-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Adopted under notice filed as WSR 23-03-046 on January 10, 2023.

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 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: March 10, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4961.1

AMENDATORY SECTION (Amending WSR 03-22-038, filed 10/28/03, effective 12/1/03)

WAC 388-460-0005 Can I choose someone to apply for basic food for my assistance unit? Your basic food assistance unit (AU) can choose an adult who is not a member of the AU to act on their behalf. This is called an authorized representative.

(1) A responsible member of the AU can name, in writing, an authorized representative. A responsible member of the AU is either:

(a) The applicant;

(b) The applicant's spouse;

(c) Another member of the AU the applicant states is able to conduct business on behalf of all members in the AU.

(2) The AU's authorized representative has the authority to apply for basic food on the AU's behalf.

(3) If you receive basic food benefits in a qualified drug and alcohol treatment facility under WAC 388-408-0040, you **must** have an employee of the facility as your authorized representative for basic food.

(4) If the authorized representative provides information to the department that causes an AU to have an overpayment, the AU members are liable for the overpayment.

(5) An authorized representative may act on behalf of more than one basic food AU (~~(only if the community services office administrator approves)~~).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-460-0005, filed 10/28/03, effective 12/1/03; WSR 03-03-072, § 388-460-0005, filed 1/15/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-460-0005, filed 7/31/98, effective 9/1/98.]

WSR 23-07-062
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 10, 2023, 11:23 a.m., effective April 10, 2023]

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

Purpose: The department is repealing WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for basic food applicants during COVID-19. The federal COVID-19 flexibility waiver that authorized this WAC expired September 30, 2022.

Citation of Rules Affected by this Order: Repealing WAC 388-437-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.2 (f) (1) (v).

Adopted under notice filed as WSR 22-23-033 on November 7, 2022.

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 1; 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 0, Repealed 1.

Date Adopted: March 10, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4952.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-437-0015	Good cause extension of Social Security number (SSN) requirement for basic food applicants during COVID-19.
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WSR 23-07-065
PERMANENT RULES
DEPARTMENT OF HEALTH
 (Board of Massage)

[Filed March 10, 2023, 1:02 p.m., effective April 10, 2023]

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

Purpose: WAC 246-830-201, 246-830-485, 246-830-490, 246-830-500, and 246-830-510, massage therapists. The department of health (department) and the board of massage (board) are adopting amendments to existing sections of the massage therapist rules to correct the names of the national examinations, clarify the training requirements for somatic education and intraoral massage education, and clarify and modernize the language in the equipment and sanitation rule and the hygiene rule.

Citation of Rules Affected by this Order: Amending WAC 246-830-201, 246-830-485, 246-830-490, 246-830-500, and 246-830-510.

Statutory Authority for Adoption: RCW 18.108.085, 18.108.025.

Adopted under notice filed as WSR 22-21-123 on October 18, 2022.

Changes Other than Editing from Proposed to Adopted Version: Changes are clarifying and not substantive.

- WAC 246-830-201 Examinations, was amended to correct grammatical errors by capitalizing the first letters of the name of the organization that administers the national examination and to also include the acronym of the national examination.
- WAC 246-830-500 Equipment, linens, and sanitation, was amended to change the term "bacterial agent" to "antimicrobial agent."

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 5, 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 5, Repealed 0.

Date Adopted: March 10, 2023.

Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary
 Heidi Williams, LMT
 Board of Massage Chair

OTS-3660.3

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-201 Examination. (1) An applicant for a massage therapist license must successfully pass one of the following examinations:

~~((1))~~ (a) The Federation of State Massage Therapy ~~((Board and))~~ Boards' massage and bodywork licensing examination (MBLEx); ~~((or~~
~~(2))~~ (b) The national certification examination for therapeutic massage ~~((therapy))~~ and bodywork; or
~~((3))~~ (c) A board-approved examination.

~~((4))~~ (2) An applicant who does not pass an examination after three attempts must provide proof to the board of having successfully completed additional clinical training or course work as determined by the board before being permitted three additional attempts to pass an exam.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-201, filed 6/29/17, effective 7/30/17. Statutory Authority: RCW 18.108.025. WSR 91-01-077 (Order 102B), recodified as § 246-830-201, filed 12/17/90, effective 1/31/91; WSR 88-11-011 (Order PM 725), § 308-51-100, filed 5/10/88. Statutory Authority: RCW 18.108.020 and 18.108.070. WSR 85-01-043 (Order PL 501), § 308-51-100, filed 12/13/84. Statutory Authority: RCW 18.108.020. WSR 80-01-018 (Order PL 329, Resolution No. 12/79), § 308-51-100, filed 12/13/79; Order PL 248, § 308-51-100, filed 5/25/76.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-485 Somatic education training program exemption.

(1) The secretary may approve an exemption from this chapter for an individual who has completed a somatic education and training program that has a professional organization with a permanent administrative location that oversees the practice of somatic education and training and that has the following:

- (a) Standards of practice;
- (b) A training accreditation process;
- (c) An instructor certification process;
- (d) A therapist certification process; and
- (e) A code of ethics or code of professional conduct.

(2) An authorized representative must submit a request for approval of a program on forms provided by the secretary.

(3) The secretary in consultation with the board will evaluate the education and training program and grant approval or denial. If denied, applicants will be given the opportunity to appeal through the brief adjudicative hearing process as authorized in chapter 246-10 WAC.

(4) The secretary may request from an approved education and training program, and the program must provide, updated information every three years to ensure the program's compliance with this rule. Approval may be withdrawn if the program fails to maintain the requirements of this rule. Where a determination has been made that the program no longer meets the requirements of this rule and a decision

is made to withdraw approval, an approved program may appeal through the brief adjudicative proceeding as authorized in chapter 246-10 WAC.

(5) Organizations representing multiple training programs such as the International Alliance of Healthcare Educators, must obtain an exemption for each training program to ensure clarity regarding what is and is not exempt as a somatic education program.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-485, filed 6/29/17, effective 7/30/17. Statutory Authority: Chapter 18.108 RCW. WSR 00-07-086, § 246-830-485, filed 3/15/00, effective 4/15/00.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-490 Intraoral massage education and training. A massage therapist may perform intraoral massage after completing specific intraoral massage education and training and after receiving an intraoral massage endorsement to their massage therapist license.

To qualify for an intraoral massage endorsement a massage therapist must complete the following education and training:

- (1) Sixteen hours of direct supervised education and training, which must include:
 - (a) Hands-on intraoral massage techniques, cranial anatomy, physiology, and kinesiology;
 - (b) Pathology, cautions, and contraindications; and
 - (c) Hygienic practices, safety and sanitation. Hygienic practices, safety and sanitation includes, but is not limited to:
 - (i) Gloves must be worn during treatment and training which involves intraoral procedures;
 - (ii) Fresh gloves must be used for every intraoral client or patient contact;
 - (iii) Gloves that have been used for intraoral treatment must not be reused for any other purpose; and
 - (iv) Gloves must not be washed or reused for any purpose. The same pair of gloves must not be used, removed, and reused for the same client or patient at the same visit or for any other purpose.
- (2) Supervised education and training must be obtained from a massage therapist endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-490, filed 6/29/17, effective 7/30/17. Statutory Authority: Chapter 18.108 RCW, 2007 c 272. WSR 08-17-001, § 246-830-490, filed 8/6/08, effective 9/6/08.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-500 Equipment, linens, and sanitation. (1) A massage therapist using hydrotherapies including, but not limited to,

cabinet, vapor or steam baths, whirlpool, hot tub or tub baths must have ~~((available))~~ adequate shower facilities available for client or patient use.

(2) All cabinets, showers, tubs, basins, massage or steam tables, hydrotherapy equipment, and all other fixed equipment used must be thoroughly cleansed using an ~~((effective bactericidal))~~ antimicrobial agent in accordance with the manufacturer directions.

(3) Combs, brushes, shower caps, mechanical, massage and hydrotherapy instruments, or bathing devices that come in contact with the body must be sterilized or disinfected by modern and approved methods and instruments. Devices, equipment or parts thereof having been used on one person must be sterilized or disinfected before being used on another person.

(4) Impervious material must cover, full length and width, all massage tables or pads, pillows, bolsters, and face cradles directly under ~~((fresh sheets and linens or disposable paper sheets))~~ single service linens or disposable covers. Impervious materials and surfaces must be disinfected after each use.

(5) A massage therapist must provide single service materials or clean ~~((linen such as sheets, towels, gowns, pillow cases, and all other))~~ linens used in the practice of massage. Linens must be stored in a sanitary manner.

(6) All ~~((towels and))~~ linens used for one client or patient must be laundered or cleaned before they are used on any other client or patient.

(7) All soiled linens must be immediately placed in a covered receptacle.

(8) Soap and clean towels must be provided by the massage therapist for use by massage therapists, clients or patients and any employees.

(9) All equipment must be clean, ~~((well))~~ in good repair, and maintained ~~((and in good repair))~~ to industry standards.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-500, filed 6/29/17, effective 7/30/17.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-510 Hygiene. To maintain a professional standard of hygiene in their practice, a massage therapist must:

(1) Cleanse ~~((their))~~ any exposed body part used for applying treatment, before and after each treatment, using a sink with ~~((hot))~~ water and soap or a chemical germicidal product;

(2) Maintain a barrier of unbroken skin on their exposed body part used for applying treatment during each treatment and in the case of broken skin use a finger cot, glove or chemical barrier product to cover the affected area during treatment; and

(3) Wear clothing that is clean.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-510, filed 6/29/17, effective 7/30/17.]

WSR 23-07-066
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed March 10, 2023, 3:32 p.m., effective April 10, 2023]

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

Purpose: The department of children, youth, and families (DCYF) is filing permanent rules to clarify DCYF's authority to access licensed space and the consequences for refusing access. The rules also require two emergency exits for each floor of licensed space in family home child cares and describe the specific criteria for each exit. The rules better ensure nondiscrimination of LGBTQIA+ children enrolled in child care. Lastly, the rules align immunization requirements with chapter 246-105 WAC, under which child care providers who enroll unimmunized children must notify their parents or guardians that children who are not immunized within 30 days of enrollment will be excluded from care.

Citation of Rules Affected by this Order: New WAC 110-300-0035; and amending WAC 110-300-0005, 110-300-0030, 110-300-0166, and 110-300-0210.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065, and 43.216.250.

Adopted under notice filed as WSR 22-24-069 on December 2, 2022.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than nonsubstantive edits, are:

- "Monitoring" was removed from WAC 110-300-035(1) and replaced with "inspections."
- WAC 110-300-0166 (4)(a) was revised as follows: "Each level or floor of the home licensed for early learning programming, except basements, must have at least two emergency exits pathways that open lead directly to the exterior of and away from the building space."

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 1, 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: March 10, 2023.

Brenda Villarreal
Rules Coordinator

OTS-2729.7

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0005 Definitions. Unless the context requires otherwise, the following definitions apply to this chapter:

"Accessible to children" means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires ~~((a))~~ early learning providers to see and hear the children they are responsible for during higher risk activities. ~~((The))~~ Providers must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act, ~~((as now and hereafter amended))~~ 42 U.S.C. Sec. 12101, et seq.

"Aide" is a person who offers support to ~~((the))~~ early learning program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

"Annual" or **"annually"** means ~~((the))~~ an event that occurs each calendar year, ((January 1st through December 31st)) not to exceed 365 days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assistant director" is a person responsible for the overall management of the center early learning program including the facility and operations.

"Assistant teacher" is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Body of water" or **"bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children (~~(an)~~) early learning providers (~~(is)~~) are authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Center early learning program" is a facility providing regularly scheduled care for a group of children birth through (~~(twelve)~~) 12 years of age for periods of less than (~~(twenty-four)~~) 24 hours a day, pursuant to RCW 43.216.010 (1)(a) (child day care center).

"Center early learning program licensee" or **"center licensee"** means an entity licensed and authorized by the department to operate a center early learning program.

"Certificate of exemption (COE)" (~~(means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(2), or an immunization form produced by the state immunization information system)~~) has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of immunization status (~~(child)~~)" (~~(means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(1), or an immunization form produced by the state immunization information system)~~) has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of occupancy" means a document issued by a local government agency or building department that certifies a building complies with applicable building codes and other laws and indicates that the building is in a condition suitable for occupancy.

"Certification" means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is younger than age (~~(thirteen)~~) 13, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse" or **"neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than (~~(twenty-four)~~) 24 hours a day.

"Child care basics (~~(or)~~) (CCB)" means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate (~~(or)~~) (CCA)" is a wood preservative and insecticide that contains roughly (~~(twenty-two)~~) 22 percent arsen-

ic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the department of health's website.

"Clean" or **"cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

"DCYF" or **"the department"** refers to the Washington state department of children, youth, and families.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder.

(Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009).

"Developmentally appropriate" means:

- (a) ((An)) Early learning providers interact((s)) with ((each child)) children in a way that recognizes and respects ((the)) each child's chronological and developmental age;
- (b) Knowledge about how children grow and learn;
- (c) Reflects the developmental level of the individual child; and
- (d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management of a center early learning program including the facility and operation.

"Disability" or **"disabilities"** has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

(a) The application of a fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or

(b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or **"potable water"** is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education and assistance program (ECEAP)" is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Early childhood education (ECE) initial certificate" (~~((twelve))~~) 12 quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education (ECE) short certificate," (~~((+))~~) an initial certificate plus eight quarter credits (~~((+))~~), is (~~((Washington's))~~) Washington state's short certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate," (~~((+))~~) a short certificate plus (~~((twenty-seven))~~) 27 quarter credits (~~((+))~~), is (~~((Washington's state))~~) Washington state's certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning program" refers to regularly scheduled care for a group of children birth through (~~((twelve))~~) 12 years of age for periods of less than (~~((twenty-four))~~) 24 hours, licensed by the department.

"Early learning program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Early learning program staff" refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

"Early learning provider" or "provider" refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center

directors, assistant directors, program supervisors, lead teachers, assistants, aides, and volunteers.

(~~"ECEAP" or "early childhood education and assistance program" is a comprehensive preschool program that provides free services and support to eligible children and their families.~~)

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to (~~the Washington state department of children, youth, and families'~~) DCYF's current database of professional records of individual early learning providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalency" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or "exemption" means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a child plans on attending or is attending a center early learning program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or "expulsion" means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Family home early learning program" means an early learning program licensed by the department where a family home licensee provides child care or education services for (~~twelve~~) 12 or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216.010 (1)(c) (family day care provider).

"Family home early learning program licensee" or "family home licensee" means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

"Family living quarters" means a family home licensee or applicant's residence and other spaces or building on the premises.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards

are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

"Gay" means physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Good repair" means about ((eighty)) 80 percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Household member" means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

"Inactive" when used by the department to indicate a licensing status, means early learning providers who have requested and have been approved to temporarily cease caring for children and close their early learning program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"Infant" is a child birth through ((eleven)) 11 months of age.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an early learning provider.

"Inspection report" means a written or digital record developed by the department that identifies violations of licensing standards. An inspection report is separate from and does not include a facility licensing compliance agreement (FLCA).

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395, as now or hereafter amended.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lead teacher" means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym (e.g., pansexual, gender nonbinary, and Two-spirit).

"License" means a permit issued by the department legally authorizing an applicant to operate an early learning program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Nonexpiring license" means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

"Parent" or "guardian" means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

"Personal needs" means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or ((a)) wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and

a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preschool-age children" means children (~~(thirty)~~) 30 months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program supervisor" means the center early learning provider responsible for planning and supervising the learning and activity program.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or **"revoke"** when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the early learning program, (~~(+)~~) for example (~~(+)~~), feeding, diapering, toileting, napping, resting, playing, and learning(~~(+)~~).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in

the early learning program. Program changes must be agreed to in writing and signed by all participants at the meeting. Safety plans expire (~~(thirty)~~) 30 calendar days after being signed by all parties. Safety plans may only be extended for an additional (~~(thirty)~~) 30 calendar days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age children" means a child (~~(not less than)~~) who is five years of age through (~~(twelve)~~) 12 years of age (~~(who)~~) and is attending (~~(kindergarten or elementary)~~) a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requiring professional medical care; poisoning; or an overdose of a chemical substance.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Sleep equipment" or **"sleeping equipment"** includes a bed, cot, mattress, mat, crib, bassinet, play pen, play yard or "pack and play" but does not include a car seat or infant swing.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any early learning provider providing care in the early learning program.

"Strengthening families program self-assessment" refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

- (a) Parental resilience;
- (b) Social connections;
- (c) Knowledge of parenting and child development;
- (d) Concrete support in times of need; and
- (e) Social and emotional competence of children.

"Supervise" or **"supervision"** means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (24 inches).

"Technical assistance" means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Toddler" means a child (~~twelve~~) 12 months through (~~twenty-nine~~) 29 months of age.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Tummy time" means placing an infant in a nonrestrictive prone position, lying on his or her stomach when not in sleeping equipment.

"Two-spirit" means a modern, pan-indigenous umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-spirit does not imply any specific sexual orientation.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

"USDA" means the U.S. Department of Agriculture.

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to guidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a

risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"WLAD" means the law against discrimination, chapter 49.60 RCW.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0005, filed 11/6/19, effective 12/7/19. WSR 18-14-078, recodified as § 110-300-0005, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0005, filed 6/30/18, effective 8/1/19. Statutory Authority: RCW 43.215.020, 43.215.060, 43.215.070, 43.215.201, and Governor Directive 16-06. WSR 17-10-032, § 170-300-0005, filed 4/26/17, effective 5/27/17.]

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0030 Nondiscrimination. (1) Early learning programs are defined by state law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, color, national origin, sex, honorably discharged veteran or military status, marital status, gender, sexual orientation, age, religion, or ability. For the purposes of this chapter, "sex" means gender and "sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity, also referred to as SOGIE, and includes all persons who identify as LGBTQIA+; and

(b) Comply with the requirements of the ((Washington law against discrimination-)) WLAD, chapter 49.60 RCW((+)), and the ADA.

(2) An early learning program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0030, filed 11/6/19, effective 12/7/19. WSR 18-15-001, recodified as § 110-300-0030, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0030, filed 6/30/18, effective 8/1/19.]

NEW SECTION

WAC 110-300-0035 Department access to licensed space. (1) Pursuant to RCW 43.216.250(8), licensees must grant reasonable access to

department licensors during the licensees' hours of operation for the purpose of announced or unannounced inspections. Licensors must be allowed to inspect the indoor and outdoor licensed space to verify compliance with the requirements of this chapter and chapter 43.216 RCW. For the purposes of this chapter "hours of operation" means the hours of the day that licensees offer early learning services as reported to the department on the license application or modification paperwork, or as indicated in the parent or guardian handbook.

(2) The department may deny, suspend, revoke, or not continue a license when licensees refuse to allow the department's authorized staff access to any of the following:

- (a) Information relevant to the early learning program;
- (b) The licensed space;
- (c) Child, staff, or program records or files; or
- (d) Staff members or children in care.

[]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, ~~((an))~~ early learning programs must have an emergency preparedness plan ~~((pursuant to))~~ required by WAC 110-300-0470.

(2) ~~((An))~~ Early learning providers must have the following in case of an emergency:

- (a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and
- (b) A working telephone must be available for use with sufficient backup power to function for at least five hours.

(3) To ensure a safe exit from the premises during an emergency, ~~((the))~~ early learning providers must comply with the following requirements:

- (a) Emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the early learning program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned;
- (b) Exit doors that are not designated as an emergency exit door may be locked during operating hours. Locking interior doors in early learning program space must be designed to be unlocked from either side. An unlocking device must be readily available; and
- (c) Exit doors must not be partially or entirely blocked ~~((and~~
- ~~((d) Family home early learning programs must have at least one pivoting or side-hinged swinging exit door. Other exit doors may be sliding glass doors)).~~

(4) For family home early learning programs:

(a) Each level or floor of the home licensed for early learning programming, except basements, must have at least two emergency exit pathways that lead directly to the exterior of and away from the building.

(i) The emergency exits on each floor must be as widely spaced as possible, ideally at opposite ends of the floor.

(ii) At least one emergency exit on each floor must be an emergency exit door. At least one emergency exit door must be a pivoting or side-hinged swinging door. Other exit doors may be sliding glass doors.

(iii) The portion of a home that is partly or completely below grade (basement) must have at least one emergency exit window or door that leads directly to the exterior of the building.

(b) Every room licensed for early learning programming, except bathrooms, must have at least two emergency exits. These exits must be any combination of the following:

(i) An emergency exit door that leads directly to the exterior of the building;

(ii) An emergency exit window that leads directly to the exterior of the building; or

(iii) A door or doorway that leads to an emergency exit pathway. No two doors or doorways can lead to the same emergency exit pathway.

(c) Any window used as an emergency exit window must:

(i) Remain unlocked during operating hours except that a manufacturer-installed latch may remain latched;

(ii) Be designed to open from the inside of the room without the use of keys, tools, or special knowledge;

(iii) Be easy to open to the full position;

(iv) Have at least five point seven square feet of open area, except emergency exit windows on the ground floor which must have at least five square feet of open area;

(v) Be at least 20 inches wide and at least 24 inches tall when fully opened;

(vi) Have an interior sill height no more than 44 inches above the interior floor; and

(vii) Have a place to land outside that is no more than 48 inches below the exterior window sill.

[WSR 18-15-001, recodified as § 110-300-0166, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0166, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 19-14-076, filed 7/1/19, effective 8/1/19)

WAC 110-300-0210 Immunizations and exempt children. (1) On or before their children's first day of attending an early learning program, ((a child)) the parents or guardians of enrolled children must ((be vaccinated against or show)) give to early learning providers proof of vaccination or acquired immunity for the vaccine-preventable disease, ((pursuant to)) required under RCW 43.216.690 and chapter 246-105 WAC. ((An)) Early learning providers may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) ((Pursuant to WAC 246-105-050, an)) Early learning providers must receive for each enrolled child upon enrollment and annually thereafter, as required by RCW 43.216.690 and WAC 246-105-050:

(a) A current ((and)), complete ((department of health approved)), and medically verified certificate of immunization status (CIS) form;

(b) A department approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, ~~((an))~~ early learning providers must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) ~~((The))~~ Parents or guardians provides a signed and dated statement detailing when the child's immunizations will be brought up to date and stating they understand their child will be excluded from care if the immunizations are not completed within 30 calendar days of the specified due date.

(4) ~~((An))~~ Early learning providers must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) ~~((An))~~ Early learning providers may accept homeless or foster children into care without the records listed in this section if the child's family, caseworker, or health care provider offers written proof that ~~((he or she is))~~ they are in the process of obtaining the child's immunization records.

(6) ~~((An))~~ Early learning providers must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify ~~((the))~~ parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) ~~((An))~~ Early learning providers may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

[Statutory Authority: RCW 43.216.250 and 43.216.255. WSR 19-14-076, § 110-300-0210, filed 7/1/19, effective 8/1/19. WSR 18-15-001, recodified as § 110-300-0210, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0210, filed 6/30/18, effective 8/1/19.]

WSR 23-07-069

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed March 13, 2023, 9:08 a.m., effective April 13, 2023]

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

Purpose: The university is updating the policies and regulations for all student living groups, specifically WAC 504-24-030 Undergraduate housing requirement.

Citation of Rules Affected by this Order: Amending WAC 504-24-030.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 23-02-066 on January 4, 2023.

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: March 13, 2023.

Deborah L. Bartlett
Director, Procedures, Records, and Forms
University Rules Coordinator

OTS-4227.3

AMENDATORY SECTION (Amending WSR 20-23-059, filed 11/16/20, effective 12/17/20)

WAC 504-24-030 Undergraduate housing requirement. ~~((1) University-recognized housing includes residence halls, and university-approved fraternities, sororities, and co-op houses.~~

~~(2))~~ Housing requirements for single undergraduate students on residential campuses. To the extent that room is presently available, as determined by the university, ~~((in an official university-recognized living group,))~~ all single undergraduate ~~((freshmen))~~ first-year students under ~~((twenty))~~ 20 years of age are required to live in ~~((organized living groups which are officially recognized by the university))~~ a residence ~~((halls, fraternities and sororities))~~ hall for one academic year.

~~((a))~~ (1) Exemptions. Exemptions ~~((will be))~~ are considered when a student demonstrates to the Pullman campus vice ~~((president))~~ chancellor for student affairs or designee that either:

~~((i))~~ (a) The student has attended an institution of higher education as a regularly enrolled student for at least two regular semesters or three regular quarters (excluding summer sessions);

~~((ii))~~ (b) The student is living with immediate family in a family situation (mother and/or father; legal guardian; aunt or uncle; or grandparent(s));

~~((iii))~~ (c) The student has secured a statement from a physician or psychologist stating that residence in ~~((recognized student housing))~~ a residence hall would detrimentally affect the student's physical or mental health ~~((or emotional well-being))~~; or

~~((iv))~~ (d) The student demonstrates that living in ~~((recognized University housing))~~ a residence hall would cause undue financial hardship or other extraordinary hardship.

~~((b))~~ (2) Process. Applications for permission to reside off campus are available from Washington State University. Applications are reviewed and a determination is made whether an exemption ~~((will))~~ is to be granted. Persons applying for such exemption ~~((will be))~~ are informed of the decision in writing. Requests for reconsideration of the decision may be submitted to the Pullman campus vice ~~((president))~~ chancellor for student affairs or designee. The vice ~~((president))~~ chancellor or designee ~~((will))~~ evaluates the appeal and approves or ~~((deny))~~ denies the appeal.

[Statutory Authority: RCW 28B.30.150. WSR 20-23-059, § 504-24-030, filed 11/16/20, effective 12/17/20. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. WSR 95-07-044, § 504-24-030, filed 3/8/95, effective 4/8/95. Statutory Authority: RCW 28B.30.095, 28B.30.125, 28B.30.150 and chapter 28B.19 RCW. WSR 87-12-013 (Order 87-1), § 504-24-030, filed 5/26/87. Statutory Authority: RCW 28B.30.125 and 28B.30.150. WSR 80-07-015 (Order 80-2, Resolution No. 6/80-15), § 504-24-030, filed 6/11/80; Order 77-2, § 504-24-030, filed 8/3/77; Order 73-7, § 504-24-030, filed 10/5/73; Order 73-6, § 504-24-030, filed 8/1/73; Order 4, § 504-24-030, filed 10/20/71; Order 3, § 504-24-030, filed 8/5/71.]

WSR 23-07-070
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-40—Filed March 13, 2023, 10:48 a.m., effective April 13, 2023]

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

Purpose: The purpose of this rule is to rescind open fishing periods from the permanent Eulachon commercial fishing regulations to align these fishing regulations with current management strategies.

Citation of Rules Affected by this Order: Amending WAC 220-358-060 Commercial fisheries—Columbia River below Bonneville Dam—Smelt.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047.

Adopted under notice filed as WSR 22-21-099 on October 17, 2022.

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 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: February 17, 2023.

B. Baker, Chair
 Fish and Wildlife Commission

OTS-4143.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-358-060 Smelt. It is unlawful to fish for smelt in the lower Columbia River for commercial purposes or to possess smelt taken from those waters for commercial purposes, except as provided in this section:

Gear

- (1) Otter trawl gear may be used to fish for smelt if:
 - (a) The head rope of the trawl does not exceed 25 feet in length.
 - (b) The foot rope or groundline of the trawl does not exceed 25 feet in length.
 - (c) The dimensions of the trawl's otter doors do not exceed 3 feet by 4 feet.
 - (d) The bag length of the trawl, as measured from the center of the head rope to the terminal end of the bunt, does not exceed 35 feet.

(e) The bridal rope from the rear of the otter doors to the foot and head ropes does not exceed 8 feet.

(f) Each breast rope does not exceed 5 feet.

(g) The mesh size used in the trawl does not exceed 2 inches stretch measure.

(h) Only one trawl net is fished from the boat at a time.

(2) Gillnet gear may be used to fish for smelt if it does not exceed 1,500 feet in length along the cork line and the mesh size of the net does not exceed 2 inches stretch measure.

(3) Hand dip net gear may be used to fish for smelt if it does not measure more than 36 inches across the bag frame.

(4) From December 1 through March 31 it is lawful for smelt fishers to have salmon or sturgeon gillnets aboard while fishing for smelt.

(~~Fishing periods~~)

~~(5) Otter trawl gear may be used to fish for smelt in SMCRA 1A from 6 p.m. Monday to 6 p.m. Wednesday of each week from March 1 through March 31, and for boats not exceeding 32 feet in length, in SMCRA 1B, 1C, 1D and 1E 7 days per week from December 1 through March 31 of the following year.~~

~~(6) Gillnet gear may be used to fish for smelt in SMCRA 1A, 1B, 1C, 1D and 1E 7 days per week from December 1 of each year through March 31 of the following year.~~

~~(7) Hand dip net gear may be used to fish for smelt in SMCRA 1A, 1B, 1C, 1D and 1E and tributaries to these areas 7 days per week from December 1 of each year through March 31 of the following year.~~

~~(8) The following areas of the lower Columbia River remain closed to smelt fishing during the open time periods specified in this section:~~

~~(a) Those waters within one mile of a dam or other obstruction.~~

~~(b) Those waters of the Cowlitz River upstream from a monument located at Peterson's Eddy, also known as Miller's Eddy.)~~

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-358-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 00-17-117 (Order 00-146), § 220-33-040, filed 8/17/00, effective 9/17/00. Statutory Authority: RCW 75.08.080. WSR 88-18-066 (Order 88-86), § 220-33-040, filed 9/2/88.]

WSR 23-07-073

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 13, 2023, 4:18 p.m., effective April 13, 2023]

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

Purpose: Update procedures, guidelines, and language of the financial responsibility judgment hearings to align with the intent of chapter 46.29 RCW. The purpose of these WAC amendments is to update and clarify the process of financial responsibility hearings, specifically to bring the rules into compliance with the governing authority set forth in RCW, clarify portions of WAC that are harder to read, and bring WAC more in line with inclusive language.

Citation of Rules Affected by this Order: Amending WAC 308-102-004 Presiding officer, 308-102-006 Correspondence address, 308-102-008 Property damage threshold, 308-102-010 Order fixing amount of security, 308-102-011 Amount of security—How determined, 308-102-020 Notice of intent to suspend, 308-102-085 Agreements for payment of damages—Effect on administrative proceedings, 308-102-100 Request for informal settlement—Effect, timeliness, 308-102-140 Informal settlement—Interview, 308-102-190 Informal settlement—Interview—Decision, 308-102-200 Request for adjudicative proceeding—Formal hearing, 308-102-250 Issues to be determined—Formal hearing, 308-102-255 Determination of possibility of judgment, 308-102-260 Presiding officer—Duties, 308-102-265 Formal hearing—Failure to appear, and 308-102-290 Formal hearings—Findings, conclusions and decisions.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 46.01.040(10) Powers, duties, and functions relating to motor vehicle laws vested in department. (10) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW.

Adopted under notice filed as WSR 23-01-143 on December 21, 2022.

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 16, 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: March 13, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-4234.2

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-004 Presiding officer. Hearings ~~((,))~~ and informal interviews ~~((and document reviews))~~ held under this chapter shall be conducted by a presiding officer who shall be delegated the authority to conduct such hearings ~~((, informal document reviews))~~ and informal interviews by the director. The presiding officer shall have the powers and duties provided by chapter 34.05 RCW, and may be authorized by the director to make final determinations regarding the issuance, denial, cancellation, or suspension or revocation of a driver's license or a nonresident's privilege to drive. If the presiding officer is authorized by the director to make final determinations, the decision shall be final.

If the presiding officer is not authorized to make final decisions the results shall be subject to review by the director or his ~~((or))~~ her, or their designated representative. The director or his ~~((or))~~ her, or their designated representative upon review of the records, the evidence, and the findings of the presiding officer shall promptly render his ~~((or))~~ her, or their decision sustaining, modifying, or reversing any order entered by the department.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-004, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 96-20-089, filed 10/1/96, effective 11/1/96)

WAC 308-102-006 Correspondence address. All correspondence shall be addressed to the Department of Licensing, Hearings and Interviews Section, P.O. Box ~~((9030))~~ 9031, Olympia, WA 98507-~~((9030))~~ 9031, or sent by facsimile transmission (fax) to ~~((360) 664-8492, at-~~ 360-570-4950, or emailed to ~~ention Hearings and Interviews Section)~~ hearings@dol.wa.gov. Any correspondence must include the driver's full name and license number, or case number if assigned.

[Statutory Authority: RCW 46.01.110 and 46.20.205. WSR 96-20-089, § 308-102-006, filed 10/1/96, effective 11/1/96. Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-006, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-008 Property damage threshold. In the case of property damage, the provisions of the Financial Responsibility Act shall apply where the damage to the property of any one person is of an apparent extent equal to or greater than ~~((five hundred dollars))~~ \$1,000. In the event that this amount differs from that established by the chief of the Washington state patrol under the provisions of RCW 46.52.030, the amount established ~~((by the chief of the Washington state patrol shall prevail))~~ in WAC 446-85-010.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-008, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-010 Order fixing amount of security. Whenever under the Financial Responsibility Act, the department fixes the amount of the security required of any person it shall ~~((forthwith))~~ notify the person of the amount so required by mailing to the ~~((person at his or her))~~ person's address ~~((as shown by department records))~~ of record, a notice of security stating the amount of the security required, the date by which the security must be posted, ~~((which shall be not less than twenty nor more than sixty days following the date of mailing,))~~ and ~~((which notice shall contain))~~ containing instructions ~~((pertaining to the filing of))~~ on how to file the proof of financial responsibility. The date by which the security must be posted shall not be less than 20 nor more than 60 days following the date of mailing.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-010, filed 3/25/92, effective 4/25/92; Order 103-MV, § 308-102-010, filed 8/17/71; Order 101-MV, § 308-102-010, filed 3/8/71.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-011 Amount of security—How determined. The department shall determine the amount of security deposit required of any person upon the basis of reports submitted, such reports to be in a form provided by the department which must be completed by the parties who sustain a loss, or their successors in interest, or upon the basis of other information or evidence received by the department which provides sufficiently specific information for the department to enter its decision concerning the amount of security with reasonable certainty: Provided, That a fatality or fatalities will create the presumption that the amount shall be for the full amount of the limit provided by RCW 46.29.090 in reference to the acceptable limits of a policy or bond. Failure to respond to a request for specific information within ~~((thirty))~~ 30 days will allow the department to conclude that no claim is being pursued.

The department shall determine the amount of security deposit required by a person based on the reports submitted to the department or based on other information or evidence received by the department which provides sufficiently specific information for the department to enter its decision concerning the amount of security with reasonable certainty. Any submitted reports must be in a form provided by the department and must be completed by the parties who sustained the loss or their successor in interest. A fatality or fatalities will create the presumption that the amount shall be for the full amount of the limit provided by RCW 46.29.090 in reference to the acceptable limits of a policy or a bond. Failure to respond to a request for specific

information within 30 days will allow the department to conclude that no claim is being pursued.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-011, filed 3/25/92, effective 4/25/92; Order 228, § 308-102-011, filed 12/31/74.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-020 Notice of intent to suspend. (1) The department shall mail a notice of intent to suspend:

(a) At the time the department mails a notice of security (~~(it shall also mail a notice of intent to suspend.)~~); or

(b) At the time the department receives all required certifications from a judgment creditor pursuant to RCW 46.29.230.

(2) The notice of intent to suspend sent with the notice of security under subsection (1)(a) of this section shall give notice to the person required to post security of the department's intention to suspend the person's driving privilege, the effective date of such suspension to be not less than (~~(twenty)~~) 20 and not more than (~~(sixty)~~) 60 days from the date of mailing. The grounds stated in the notice shall (~~(be:—)~~) communicate that failure to deposit the security (~~(requirements)~~) amount and (~~(to)~~) file proof of financial responsibility (~~(—)~~) is the basis for the license suspension. A person receiving (~~(a)~~) this notice of intent to suspend may apply for administrative (~~(review)~~) relief under WAC 308-102-100. Failure to apply for administrative (~~(review)~~) relief within the time limits of WAC 308-102-100 shall constitute a default and shall result in the suspension becoming effective on the date indicated on the notice of intent to suspend and the loss of the right to further administrative (~~(review)~~) relief. In the event the person so notified posts the security and files proof of financial responsibility for the future within the time allowed for such purposes, no suspension shall be (~~(effected)~~) affected. (~~(The department may extend the effective date of the suspension where it appears the person suspended has made a bona fide attempt to file proof of financial responsibility for the future within the time permitted and will in all probability be able to do so within thirty days.)~~)

(3) The notice of intent to suspend, sent at the time the department receives all required certifications from a judgment creditor pursuant to RCW 46.29.230, shall give notice to the person of the department's intention to suspend the person's driving privilege. The effective date of the suspension shall not be less than 20 nor more than 60 days from the date of mailing. The notice shall advise the person that the suspension is required under chapter 46.29 RCW and shall include:

(a) The name of the court where the civil judgment has been entered;

(b) The dollar amount of the judgment;

(c) The date of the collision of theft of motor vehicle collision; and

(d) The cause number.

A person receiving this notice of intent may contest the proposed action by formal hearing under WAC 308-102-200(2). Failure to submit a

request to contest the suspension within 15 days of the notice of intent shall constitute a default and shall result in the suspension becoming effective on the date indicated on the notice of intent to suspend. In the event the department receives a certified copy or abstract of judgment indicating the default judgment has been resolved, no suspension shall occur.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-020, filed 3/25/92, effective 4/25/92; Order 103-MV, § 308-102-020, filed 8/17/71; Order 101-MV, § 308-102-020, filed 3/8/71.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-085 Agreements for payment of damages—Effect on administrative proceedings. (~~An individual~~) A person that submits a written payment agreement to the department in accordance with RCW 46.29.140, waives any further review to the validity of the department's action. Any pending (~~document review~~) administrative interview(~~s~~) or formal hearing shall be canceled upon receipt of the written payment agreement.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-085, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-100 Request for informal settlement—Effect, timeliness. Pursuant to WAC 10-08-230, regarding informal settlements, any person notified of the requirement of depositing security and suspension for failure to deposit security under the Financial Responsibility Act, chapter 46.29 RCW, may within (~~fifteen~~) 15 days of the date of the notice of intent to suspend his (~~or~~) her, or their driver's license or nonresident privilege to drive request an interview before a presiding officer. The request (~~may be oral or~~) must be written (~~but if made orally, such request must be confirmed by the person in writing within five days following such request~~).

Upon receipt of a timely request for interview, the suspension shall be stayed pending the outcome of the document review or interview.

If the person does not request an interview within the time specified above, or fails to attend an interview scheduled at the person's request, said person shall have waived his (~~or~~) her, or their right to any further administrative remedies, including the formal hearing, and the suspension of the person's driver's license or driving privilege shall become effective. If the person shows good cause as to why they failed to appear, the default may be vacated.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-100, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-100, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391,

46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-100, filed 3/12/86; Order 466-DOL, § 308-102-100, filed 12/30/77; Order MV-302, § 308-102-100, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-140 Informal settlement—Interview. The interview only applies to notices to suspend arising under WAC 308-102-020(2). The interview shall be held before a presiding officer who, in making the decision, shall consider any of the following:

- (1) Oral testimony or argument offered by, for, or on behalf of the person seeking review by their legal representative;
- (2) Affidavits from the individuals claiming the loss and/or from a representative of any insurance carrier that has a subrogated interest therein;
- (3) Investigating officer's reports of the accident in question;
- (4) Court records of convictions (~~or bail forfeitures~~) submitted to the department of licensing and arising out of the accident in question;
- (5) The department's financial responsibility files concerning the person seeking review;
- (6) Affidavits or witness testimony (~~of~~) offered by the person seeking review; and
- (7) Any other evidence relevant to the issues to be determined.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-140, filed 3/25/92, effective 4/25/92; Order 466-DOL, § 308-102-140, filed 12/30/77; Order MV-302, § 308-102-140, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-190 Informal settlement—Interview—Decision. Upon conclusion of an interview the presiding officer shall make findings on the matter under consideration and shall sustain, modify, or reverse the department's notice of intention to suspend (~~and/or~~), address, and confirm the amount of security required. The department shall (~~notify the person of the presiding officer's decision and said person's~~) send a copy of the presiding officer's decision (findings) with the notice of the decision and right to request a formal administrative hearing in writing by first class mail sent to the last address of record (~~. A copy of the presiding officer's findings shall be sent to the person with the notice of the decision and right to a formal hearing~~), or email, provided the driver or their legal representative has consented to electronic receipt of the interview decision. Upon receipt of a timely request for formal hearing the order for the deposit of security and suspension for failure to deposit security shall (~~be~~) remain stayed pending the results of the hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-190, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-190, filed

3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-190, filed 3/12/86; Order MV-302, § 308-102-190, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-200 Request for adjudicative proceeding—Formal hearing. (1) Any person (~~who is aggrieved by the interview of the department~~) may request a formal hearing (~~on the matter~~) if they disagree with the presiding officer's decision following an administrative interview. The request for formal hearing must be in writing and must be addressed to the department of licensing and postmarked within (~~fifteen~~) 15 days following the mailing of the decision of the department to the person or the notices of suspension for failure to satisfy a judgment. Failure to make timely request for a formal hearing to the department shall be considered a withdrawal of the person's request for adjudicative proceedings and shall result in a waiver of the person's right to such hearing and the decision of the department shall become final.

(2) If a timely request for a formal hearing is made, the department shall notify the person of the time of such hearing in writing, and mail such notice to the person's last address of record, at least (~~twenty~~) 10 days in advance of the hearing date. In accordance with RCW 34.05.449(3), the hearing shall be by telephone or other electronic means. (~~If in the discretion of the presiding officer an in-person hearing is necessary, the hearing shall be held within a reasonable distance of the county wherein the person resides, or, if the person is a nonresident of Washington, in the county where the accident occurred.~~) The notice shall include the information required by RCW 34.05.434(2).

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-200, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-200, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-200, filed 3/12/86; Order 466-DOL, § 308-102-200, filed 12/30/77; Order MV-302, § 308-102-200, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-250 Issues to be determined—Formal hearing. (1) Only the following issues shall be considered at any formal hearing held on request of a person for failing to deposit sufficient security funds:

(~~(1)~~) (a) Whether the person was the owner or driver of any motor vehicle of a type subject to registration under the motor vehicle laws of this state which was in any manner involved in an accident within this state;

(~~(2)~~) (b) Whether the accident resulted in bodily injury or death of any person or damage to the property of any one person in an

amount meeting or exceeding the property damage threshold established by WAC 308-102-008;

~~((3))~~ (c) Whether there is a reasonable possibility of a judgment being entered against the person in the amount required by the order of the department fixing such security;

~~((4))~~ (d) Whether the amount of security to be deposited, if any, is sufficient to satisfy any judgment or judgments resulting from such accident as may be recovered against the person, not to exceed the amount listed in chapter 46.29 RCW; and

~~((5))~~ (e) Whether the person is entitled to an exception to the requirement of security pursuant to RCW 46.29.080.

(2) The following issues shall be considered at any formal hearing held on request of a person for failure to satisfy a judgment pursuant to RCW 46.29.330; whether the department received the following from the judgment creditor:

(a) A certified copy or abstract of such judgment;

(b) A certificate of facts relative to such judgment; and

(c) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of the summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him, her, or them.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-250, filed 3/25/92, effective 4/25/92; Order 467-DOL, § 308-102-250, filed 12/30/77; Order MV-302, § 308-102-250, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-255 Determination of possibility of judgment. For the purposes of WAC 308-102-250~~((3))~~ (1)(c), the department may presume that there is a reasonable possibility of a judgment being entered against a person if:

(1) The person was convicted of ~~((or forfeited bail for))~~ a traffic violation arising out of the accident~~((r))~~; or

(2) A law enforcement officer investigating the accident completed a report which specified that a violation of a rule of the road contributed to the accident regardless of whether a citation was issued~~((r))~~; or

(3) The person was negligent, having committed an act which a reasonably careful and prudent person would not have done under the same or similar circumstances, or failed to act in a way which a reasonably careful and prudent person would have acted under the same or similar circumstances, and such act or omission was a proximate cause of the accident.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-255, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-260 Presiding officer—Duties. (1) The presiding officer, in making his ((or)), her, or their decision at the formal hearing held on request of a person for failing to deposit security, shall consider:

((1)) (a) Evidence as allowed under RCW 34.05.452;

((2)) (b) Court records of convictions ((or bail forfeitures)) submitted to the department of licensing and arising out of the accident in question;

((3)) (c) Traffic collision reports completed by a police officer who investigated the accident, all reports and other information submitted to the department by the individual(s) who sustained the loss or the insurance carrier who has a subrogated interest therein, records and documents in the possession of the department of which it desires to avail itself, repair estimates, repair and medical bills, towing bills and any other reasonable accounting of a loss proximately arising from an accident or photocopies thereof; and

((4)) (d) Any other evidence related to the issues before the hearing which have probative value commonly accepted by reasonable, prudent persons in the conduct of their affairs.

(2) The presiding officer, in making his, her, or their decision, at the formal hearing, held at the request of a person who failed to satisfy a judgment, shall consider whether the department received all the certificates required by RCW 46.29.310.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-260, filed 3/25/92, effective 4/25/92; WSR 82-03-046 (Order 668 DOL), § 308-102-260, filed 1/19/82; Order 466-DOL, § 308-102-260, filed 12/30/77; Order MV-302, § 308-102-260, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-265 Formal hearing—Failure to appear. In the event that a final default order is entered against the person who requested a formal hearing pursuant to this chapter ((fails to appear at the time and place of the scheduled hearing)), no hearing shall be held. The case shall be remanded to the department, and the previous department order requiring security shall be affirmed: Provided, That the presiding officer:

(1) May consider evidence as to whether the amount of security to be deposited is sufficient to satisfy any judgment or judgments as may be recovered against the person, and may adjust the amount of security required accordingly; or

(2) Determine whether the department received the certificates required by RCW 46.39.330, and if not, may enter a decision to cancel the suspension.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-265, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-265, filed 3/12/86.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-290 Formal hearings—Findings, conclusions and decisions. At the conclusion of the formal hearing, the presiding officer shall, as soon as practical, (~~make and enter~~) issue findings of fact, conclusions of law, and enter an order as provided by RCW 34.05.461.

If the order of the department is affirmed, the department shall suspend the driver's license or nonresident driving privilege of the person required to deposit security or satisfy judgment, but the order of suspension shall carry an effective date of (~~thirty~~) 30 days after the date of mailing, during which time the person may comply with the terms of the order.

If the order of the department is reversed, the department shall cancel its previous order.

If the order of the department is modified, the department shall (~~nonetheless~~) suspend the driver's license or nonresident driving privilege of the person required to deposit security, but the order of suspension shall carry an effective date of (~~thirty~~) 30 days after the date of mailing, during which time the person may comply with the terms of the order.

Petitions for reconsideration, as provided by RCW 34.05.470, shall be filed with the presiding officer within (~~ten~~) 10 days of service of the final order. The department is deemed to have denied the petition for reconsideration if, within (~~twenty~~) 20 days from the date the petition is filed, the department does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-290, filed 3/25/92, effective 4/25/92; WSR 82-03-046 (Order 668 DOL), § 308-102-290, filed 1/19/82; Order MV-349, § 308-102-290, filed 1/28/76; Order MV-302, § 308-102-290, filed 3/31/75.]

WSR 23-07-074

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 13, 2023, 4:19 p.m., effective April 13, 2023]

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

Purpose: Update procedures, guidelines, and language of the hearings rules to align with the intent of the governing statutes. These updates will bring the hearings in compliance with the governing authority set forth in RCW, clarify procedures that are unclear, allow for procedures currently prohibited, clarify portions of WAC that are no longer procedural, and bring WAC more in line with inclusive language.

Citation of Rules Affected by this Order: Amending WAC 308-101-040 Eligibility for hearing, 308-101-070 Signatures, 308-101-090 Scheduling—Notice of hearing, 308-101-120 Continuances, 308-101-150 Subpoenas, 308-101-155 Filing of exhibits and other documents with the department, 308-101-170 Video evidence, 308-101-180 Format and length for briefs, and 308-101-210 Conduct of hearings.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 46.01.040(10) Powers, duties, and functions relating to motor vehicle laws vested in department. (10) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW.

Adopted under notice filed as WSR 23-01-144 on December 21, 2022.

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 9, 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: March 13, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-4161.1

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-040 Eligibility for hearing. (1) A person is eligible for a hearing whenever the department proposes an adverse action against the driving privilege and the opportunity for a hearing or an interview is required by law. A person is also eligible for a hearing in the following circumstances:

(2) **HTO stay hearings:** A habitual traffic offender is eligible for a stay hearing under RCW 46.65.060 so long as the following conditions have been met:

(a) There is an alcohol/drug assessment from a state approved treatment agency on file that indicates substance dependence, and it was completed after the last drug or alcohol related offense on the driving record;

(b) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080;

(c) If a stay has previously been denied after a hearing, there is evidence of ~~((alcoholism or drug addiction-))~~ substance dependence ~~((+))~~ with new treatment information from a state approved treatment agency.

(3) **HTO reinstatement hearings:** A habitual traffic offender is eligible for a reinstatement hearing if all of the following conditions have been met:

(a) At least four years have elapsed since the beginning of the habitual traffic offender revocation or if a habitual traffic offender stay has been violated, at least four years have elapsed since the date of the new revocation notice or the period of time set by the department has been satisfied;

(b) The person submits a declaration stating that he or she has not driven within two years prior to the request for a hearing. A record of any traffic infraction or conviction is conclusive evidence that a person drove within the past two years;

(c) The driver's record does not show any traffic infractions or criminal cases indicative of driving within the past two years. A conviction is conclusive evidence that a person drove in the past two years;

(d) Any period of additional revocation imposed following a habitual traffic offender reinstatement probation violation must be completed;

~~((d))~~ (e) If there has been a previous denial of a petition for reinstatement by a hearings examiner, at least one year has elapsed since the denial unless a shorter time is ordered by the hearings examiner;

(f) The person is not incarcerated at the time of the hearing;
and

(g) The person has complied with any department required treatment obligations.

(4) **HTO reinstatement without a hearing:** The department may grant a habitual traffic offender a reinstatement without a hearing if the person is eligible for a hearing under subsection ~~((4))~~ (3) of this section and at the time of the request for a hearing:

(a) There are no other suspensions or revocations in effect;

(b) There are no vehicular homicide or vehicular assault convictions on the driver's record; ~~((and))~~

(c) ~~((There is no more than one alcohol or drug related incident on the driver's record. An alcohol or drug related incident shall include an alcohol related offense as defined in RCW 46.01.260, or an incident for which a sworn report was received under RCW 46.20.308 or 46.25.120, or similar incidents involving drugs and alcohol (including minor in possession laws), so long as the same incident is not counted more than once.))~~ The person has no unresolved court cases involving driving offenses; and

(d) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080.

(5) Notification if ineligible: The department shall notify any person seeking a reinstatement or stay, of any finding of ineligibility and the basis for the ineligibility. If a hearing request is denied for a lack of eligibility, once the reason for the ineligibility has been resolved, the driver may make another request for a hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-040, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-070 Signatures. (1) Legal representative signatures. An electronic document which requires a legal representative's signature may be signed in the following manner:

/s/ Jane Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567
Fax: 206-123-4567
Email: Jane.Attorney@lawfirm.com

~~(2) ((Nonattorney signatures. An electronic document which requires a nonattorney's signature may be signed in the following manner:~~

~~/s/ John Citizen
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567
Fax: 206-123-4567
Email: John.Citizen@email.com~~

~~(3))~~ Law enforcement officer signatures on documents signed under penalty of perjury. Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the statewide electronic collision and traffic online records application, the justice information network data exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be presumed to have been made under penalty of perjury under the laws of the state of Washington and on the date and at the place set forth in the report and/or citation.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-070, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-090 Scheduling—Notice of hearing. (1) The department shall ~~((mail))~~ send a hearing notice to the petitioner or petitioner's legal representative, either through the U.S. Postal Services or through an alternative electronic transmission, in the time frame prescribed in Title 46 RCW. If no period is prescribed, the petitioner shall be served with a notice of hearing at least ~~((ten))~~ 10 days before the date set for the hearing.

(2) The department's hearing notice will include the assigned examiner's name, a phone number at which he or she may be contacted, and other information concerning the hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations. The notice must also include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held;

(c) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-090, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-120 Continuances. (1) After a hearing has been scheduled, it may be continued~~((7))~~ or rescheduled~~((7-or-adjourned))~~ only at the discretion of the hearings examiner.

(2) ~~Requests for a continuance, or to reschedule, ((or to adjourn must be made in writing, to the assigned hearings examiner, and shall include the basis for the request.~~

~~(3) Except in the case of an emergency, the hearings examiner must receive the continuance))~~ must include all of the following:

(a) A written request directed to the assigned hearings examiner;

(b) The basis for the request; and

(c) At least two proposed reschedule dates.

(3) A party may make one continuance or reschedule request without judicial review.

(4) A party requesting a second or later continuance or reschedule must file the request at least two business days before the scheduled hearing~~((Absent an emergency, requests made with less than two business days' notice may be summarily denied.~~

~~(4))~~, except upon showing of good cause.

(5) Good cause is defined as substantive reason or legal justification for failing to meet the reschedule deadline. Good cause may include, but are not limited to:

(a) Military deployment;

(b) Medical treatment or hospitalization;

(c) Housing instability;

(d) Language barriers;

(e) Domestic violence; or

(f) Incarceration.

~~((6))~~ (6) The hearings examiner may continue ~~((7))~~ or reschedule ~~((7-or adjourn))~~ the hearing at any time, including on the date of the ~~((ad- ministrative))~~ hearing.

~~((5))~~ (7) A party shall not consider a hearing continued ~~((7))~~ or rescheduled ~~((7-or adjourned))~~ until notified affirmatively by the hearings examiner or his ~~((or))~~ her, or their designee.

~~((6))~~ (8) The hearings examiner may require the party who re- quests a second or later continuance ~~((7-to))~~ or reschedule ~~((7-or to adjourn))~~ to submit documentary evidence that substantiates the reason for the request.

~~((7))~~ A second request for a continuance, to reschedule, or to adjourn will only be granted in the event of an emergency and at the discretion of the assigned hearings examiner.

~~((8))~~ (9) Notwithstanding any provisions of this section to the contrary, a hearings examiner may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearings examiner must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. ~~((A hearing continued under this subsection must be ad- journed until such time as the subpoena may be enforced under RCW 7.21.060.))~~

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-120, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-150 Subpoenas. (1) Subpoenas shall be issued and enforced, ~~((and witness fees paid,))~~ as provided in RCW 46.20.308(7). All subpoenas shall direct the witness to appear by telephone unless otherwise ~~((agreed to))~~ ordered by the hearings examiner.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at www.dol.wa.gov, for approval by a hearings examiner. If approved, the hearings examiner ~~((may ei- ther))~~ will sign and issue the subpoena back to the party requesting the subpoena ~~((or direct the requesting party, by telephone, electron- ic mail, or other reliable means, to note the hearings examiner's ap- proval on the subpoena)).~~

~~((a))~~ (3) A subpoena to a person to provide testimony at a hearing shall:

(a) Specify the date and time set for hearing((-)); and

(b) The hearing department's contact information. This contact information must enable the person receiving the subpoena to request an alternative date and time for the department to receive their tes- timony, if they are unavailable on the date of the hearing.

(4) A subpoena duces tecum requesting a person to produce design- ated books, documents, or things under his or her control shall ~~((specify a time and place for producing))~~ direct the person to pro- duce the books, documents, or things ~~((That time and place may be the~~

~~time and place set for hearing, or another reasonably convenient time and place))~~ by a reasonable time in advance of the hearing.

~~((3))~~ (5) A subpoena must be personally served by a suitable person over ~~((eighteen))~~ 18 years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her ~~((abode))~~ residence. Proof of service shall be made by affidavit or declaration under penalty of perjury, and must be filed with the hearings examiner at least two days prior to the hearing. If the subpoena is served by personal service, proof of service must include a copy of the subpoena that shows it was received by the law enforcement agency. Service by certified mail must be preapproved by the hearings examiner. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

~~((4))~~ ~~The hearings examiner may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.~~

~~(5))~~ (6) A subpoena must be properly served five days prior to the date of the hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-150, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-155 Filing of exhibits and other documents with the department and calling expert witnesses. (1) Any exhibit or document submitted to the hearings and interviews unit must include the petitioner's case number assigned by the unit, if a case number has been assigned. All exhibits or documents submitted electronically, shall only be submitted in a PDF format.

(2) A petitioner may submit documents for consideration via any one of the following methods:

(a) U.S. mail addressed to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9030, Olympia, WA 98507-9030.

(b) Facsimile transmission to the assigned hearings examiner.

(c) An internet portal made available by the department.

(d) Email ~~((to the hearings examiner, but only with the hearings examiner's preapproval))~~ hearings@dol.wa.gov.

(3) Petitioners are permitted to call expert witnesses, at their own expense. The petitioner must file notice with the hearings unit of the following:

(a) Notice of the expert testimony;

(b) A curriculum vitae (CV) of the anticipated expert; and

(c) A summary of their expected testimony at least five business days prior to the hearing. If petitioner fails to comply with these requirements, the expert testimony may be properly excluded and not considered.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-155, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-170 Video evidence. (1) If the petitioner wishes to submit video evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video evidence shall be submitted sufficiently in advance of the hearing to allow the hearings examiner the opportunity to review it prior to the hearing. The hearings examiner may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed. Video evidence must be submitted by DVD and in a format which allows the DVD to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

(2) Video evidence may be submitted in the following ways: On a DVD, on a flash drive, or submitted electronically in a digital format. If the petitioner wishes to submit a digital copy of video evidence, the petitioner shall email hearings@dol.wa.gov with the evidence and any instructions on viewing the evidence. The video must be in a format that allows the video to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-170, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-180 ((Format and length for) Briefs, motions, memoranda, and other pleadings. (1) The text of ((any brief must be typed or printed in a proportionally spaced typeface and must appear in print as twelve point or larger type with no more than ten characters per inch and double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as ten point or larger type and be the equivalent of single-spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the typewritten or printed material in the brief may not be reduced or condensed by photographic or other means.

(2) Briefs shall not exceed twenty pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the hearings examiner may grant a motion to file an over-length brief.

(3) Unpublished opinions of the Washington court of appeals are those opinions not published in the *Washington Appellate Reports*. Unpublished opinions of the court of appeals have no precedential value and are not binding on any court. However, unpublished opinions of the court of appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the hearings examiner deems appropriate.) all documents filed with this department should be double-spaced, except footnotes and block quotations, which may be single-spaced. In a document produced using word processing software, all text, including footnotes and block quotations, should appear in a 14-

point font serif equivalent to Times New Roman or San serif font equivalent to Arial.

(2) **Brief length and certificate of compliance:** All documents filed with this department and produced using word processing software should contain a short statement above the signature line certifying the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the certificate of compliance, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, exhibits). The signor may rely on the word count calculation of the word processing software used to prepare the brief or motion. Motions/briefs shall not exceed 5,000 words or 20 pages if handwritten. Any appendices or attachments are not to be included in the length. For good cause, a hearings examiner may permit an over-length brief.

(3) Citations to the legal authority shall comply with the Washington state court general rules 14 and 14.1.

(4) All exhibits or documents submitted electronically shall be submitted only in a PDF format.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-180, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-210 Conduct of hearings. Hearings are (~~open to~~) public (~~observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record~~) proceedings. Public access is achieved through providing a copy of the audio recording and admitted exhibits in compliance with a public records request. The hearings examiner's authority includes, but shall not be limited to, the authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308(7);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good

cause;

(7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearings examiner may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

(8) Call additional witnesses (~~and request and/or obtain additional exhibits~~) deemed necessary to complete the record and receive such (~~evidence~~) testimony subject to full opportunity for cross-examination and rebuttal by the petitioner;

(9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(10) Examine and admit public records including, but not limited to, maps, policy and procedure manuals, breath testing equipment man-

uals and the Washington state patrol breath test section website at any time before, during, or after the hearing, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(13) Issue an order of default;

(14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

(15) Take any other action necessary and authorized by any applicable statute or rule; and

(16) Waive any requirement of these rules (~~((unless petitioner shows that he or she would be prejudiced by such a waiver))~~) so long as neither the department nor the petitioner is prejudiced by such a waiver.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-210, filed 5/21/18, effective 9/4/18.]

WSR 23-07-086
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-42—Filed March 15, 2023, 11:28 a.m., effective April 15, 2023]

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

Purpose: The purpose of this rule change is to adopt WAC for the coastal recreational bottomfish fishery that are consistent with regulations adopted by the Pacific Fishery Management Council.

Recreational fisheries in Washington harvest copper rockfish, quillback rockfish, and vermilion rockfish. To keep catch consistent with federal annual catch limits and within state-specific harvest guidelines (HGs), the possession of copper rockfish, quillback rockfish, and vermilion rockfish would be prohibited in coastal marine waters for three months (May, June, and July) of the eight-month recreational bottomfish season. The partial season restriction on possession is intended [to] prohibit catch during peak periods to stay within the HGs while allowing possession during other months to support collection of biological (length, age) data essential to inform scientific stock assessment models that evaluate stock status.

WAC 220-314-020 Possession limits—Bottomfish, this change would prohibit the possession of copper rockfish, quillback rockfish, and vermilion rockfish in May, June, and July.

Citation of Rules Affected by this Order: Amending WAC 220-314-020 Possession limits—Bottomfish.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: Title 50 C.F.R., Part 660.

Adopted under notice filed as WSR 23-02-065 on January 4, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 0, Repealed 0.

Date Adopted: March 14, 2023.

Kelly Susewind
Director

OTS-4231.1

AMENDATORY SECTION (Amending WSR 21-16-069, filed 7/30/21, effective 8/30/21)

WAC 220-314-020 Possession limits—Bottomfish. It is unlawful for any person to fish for or take bottomfish for personal use except within the seasons, daily quantities, and possession limits prescribed as follows:

(1) Coastal areas (Marine Areas 1 through 3 and 4 west of the Bonilla-Tatoosh line):

(a) Bottomfish fishing is open the second Saturday in March through the third Saturday in October, except fishing for surfperch from the shore is allowed year-round.

(b) Limit of surfperch is 12 per person per day. For all other bottomfish, limit is 9 fish total per person per day, which may include no more than:

(i) Lingcod: 2 fish, no minimum length.

(ii) Rockfish: 7 fish in aggregate. The possession limit for yelloweye rockfish is 0. In May, June, and July the possession limit for copper rockfish, quillback rockfish, and vermilion rockfish is 0.

(iii) Wolf-eel: 0 fish from Catch Record Card Area 4.

(iv) Cabezon: Marine Areas 1 through 4: 1 fish, no minimum size.

(c) Additional flatfish: In addition to the bottomfish limit in (b) of this subsection, anglers may take 5 flatfish per person, per day, not to be counted towards the bottomfish limit but in addition to it.

(2) Inner Puget Sound (Marine Areas 4 east of the Bonilla-Tatoosh line, and 5 through 13):

(a) Marine Area 4 east of the Bonilla-Tatoosh line: Limit of surfperch is 12 per person per day. For all other bottomfish, 9 fish total, which may include no more than:

(i) Lingcod: 2 fish, no minimum length.

(ii) Rockfish: 7 fish. Only black, blue/deacon, yellowtail, and widow rockfish may be retained.

(iii) Wolf-eel: 0 fish.

(iv) Cabezon: 1 fish, no minimum size.

(b) Marine Areas 5 and 6: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. Only black or blue/deacon rockfish may be retained.
in Marine Area 5 west of Slip Point	3 fish. Only black or blue/deacon rockfish may be retained.
in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	2 fish

(c) Marine Area 7: 15 fish total for all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pollock	2 fish
Pacific hake	2 fish

(d) Marine Areas 8-1 through 11, and 13: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	0 fish

(e) Marine Area 12: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	0 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut) only in Dabob Bay north of Turner Creek	15 fish
Lingcod	0 fish
Wolf-eel	0 fish
Cabezon	0 fish
Pacific hake	0 fish

(f) The possession limit for lingcod taken by angling gear is 26 to 36 inches in length. For spear fishing, lingcod may not be possessed that exceed 36 inches in length but there is no minimum size limit.

(g) In Marine Areas 5 through 11, and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Marine Areas 5 through 11, and 13, from December 1 through April 30.

(h) In Marine Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three legal rockfish caught. Only black or

blue/deacon rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In Marine Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

(3) The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form.

(4) Unless otherwise provided, bottomfish fishing is open the entire year.

(5) Daily limits include bottomfish caught in adjacent areas bordering other states, such as Oregon.

(6) It is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks.

[Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047 and C.F.R. Title 50, Part 660. WSR 21-16-069 (Order 21-130), § 220-314-020, filed 7/30/21, effective 8/30/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, and 77.04.055. WSR 20-04-058 (Order 20-19), § 220-314-020, filed 1/30/20, effective 7/1/20. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047 and C.F.R. Title 50, Part 660. WSR 19-16-001 (Order 19-150), § 220-314-020, filed 7/24/19, effective 8/24/19; WSR 18-23-070 (Order 18-302), § 220-314-020, filed 11/16/18, effective 12/17/18; WSR 17-17-045, § 220-314-020, filed 8/10/17, effective 9/10/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-314-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047, and C.F.R. Title 50, Part 660. WSR 16-17-017 (Order 16-200), § 220-56-235, filed 8/5/16, effective 9/5/16. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047. WSR 15-15-012 (Order 15-199), § 220-56-235, filed 7/2/15, effective 8/2/15. Statutory Authority: RCW 77.04.012 and 77.12.047. WSR 13-19-007 (Order 13-221), § 220-56-235, filed 9/5/13, effective 10/6/13; WSR 12-05-082 (Order 12-17), § 220-56-235, filed 2/16/12, effective 3/18/12. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047, and C.F.R. Title 50, Part 660. WSR 11-15-003 (Order 11-142), § 220-56-235, filed 7/6/11, effective 8/6/11. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047 and 50 C.F.R., Parts 223 and 224. WSR 11-07-107 (Order 11-30), § 220-56-235, filed 3/23/11, effective 4/23/11. Statutory Authority: RCW 77.12.047. WSR 10-07-105 (Order 10-64), § 220-56-235, filed 3/19/10, effective 5/1/10. Statutory Authority: RCW 77.12.047 and 77.65.200. WSR 07-12-080, § 220-56-235, filed 6/5/07, effective 7/6/07. Statutory Authority: RCW 77.12.047. WSR 04-17-098 (Order 04-218), § 220-56-235, filed 8/17/04, effective 9/17/04; WSR 04-07-009 (Order 04-39), § 220-56-235, filed 3/4/04, effective 5/1/04; WSR 03-16-100 (Order 03-178), § 220-56-235, filed 8/6/03, effective 9/6/03; WSR 03-05-057 (Order 03-24), § 220-56-235, filed 2/14/03, effective 5/1/03; WSR 02-09-001 (Order 02-53A), § 220-56-235, filed 4/3/02, effective 5/4/02; WSR 01-06-036 (Order 01-24), § 220-56-235, filed 3/5/01, effective 5/1/01. Statutory Authority: 2000 c 107 § 7. WSR 00-17-016 (Order 00-139), § 220-56-235, filed 8/3/00, effective 9/3/00. Statutory Authority: RCW 75.08.080, 77.12.040. WSR 00-08-038 (Order 00-29), § 220-56-235, filed 3/29/00, effective 5/1/00; WSR 99-15-081 (Order 99-102), § 220-56-235, filed 7/20/99, effective 8/20/99. Statutory Authority: RCW 75.08.080. WSR 98-15-032 (Order 98-119), § 220-56-235, filed 7/7/98, effective 8/7/98; WSR 97-07-078 (Order 97-53), § 220-56-235, filed 3/19/97, effective 5/1/97; WSR 96-05-004 (Order 96-13), § 220-56-235, filed 2/9/96, effective 5/1/96; WSR 95-04-066 (Order 95-10), § 220-56-235,

filed 1/30/95, effective 5/1/95; WSR 94-14-069, § 220-56-235, filed 7/1/94, effective 8/1/94; WSR 93-08-034 (Order 93-20), § 220-56-235, filed 3/31/93, effective 5/1/93; WSR 92-11-012 (Order 92-19), § 220-56-235, filed 5/12/92, effective 6/12/92; WSR 91-08-054 (Order 91-13), § 220-56-235, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-235, filed 2/28/90, effective 3/31/90; WSR 89-07-060 (Order 89-12), § 220-56-235, filed 3/16/89; WSR 88-10-013 (Order 88-15), § 220-56-235, filed 4/26/88; WSR 85-09-017 (Order 85-20), § 220-56-235, filed 4/9/85; WSR 84-09-026 (Order 84-22), § 220-56-235, filed 4/11/84; WSR 83-07-043 (Order 83-16), § 220-56-235, filed 3/17/83; WSR 80-07-017 (Order 80-45), § 220-56-235, filed 6/11/80; WSR 80-03-064 (Order 80-12), § 220-56-235, filed 2/27/80, effective 4/1/80.]

WSR 23-07-087
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-43—Filed March 15, 2023, 11:35 a.m., effective April 15, 2023]

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

Purpose: The purpose of this rule change is to allow commercial landings of dressed rockfish for vessels that obtain a director's permit to do so. To ensure accurate data collection for stock assessments, fish are currently required to be landed into Washington ports in the whole (also known as "round") condition, unless specifically exempted in regulation. This rule would expand the list of exempted species/species groups to include rockfishes, again as authorized by permit of the director.

Participants in the federal fixed gear sablefish fishery off Washington, as well as the salmon troll fishery, have expressed interest in the ability to land their incidentally caught rockfish in the dressed condition (i.e., gilled and gutted with the head attached) to preserve their marketability and reduce discarding early in the trip due to spoilage. Rockfish are an important contribution to overall revenue, and this rule change would allow more fishers to sell a larger percentage of their catch and to better sell their rockfish in direct-to-consumer markets. Buyers have also commented that, with this rule change, they expect to be able to sell more of the rockfish they receive from fishers.

Citation of Rules Affected by this Order: Amending WAC 220-353-050 Possession of food fish and shellfish—Identification—Commercial.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.12.045, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 23-04-094 on January 31, 2023.

A final cost-benefit analysis is available by contacting Corey Niles, 1111 Washington Street S.E., Olympia, WA 98501, phone 360-902-2733, email Corey.Niles@dfw.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 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 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: March 14, 2023.

Kelly Susewind
Director

OTS-4308.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-353-050 Possession of food fish and shellfish—Identification—Commercial. (1) It is unlawful to possess any food fish or shellfish in a condition where the species, length, weight, or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for that species on a vessel engaging in commercial fishing or that has commercially caught fish aboard, except:

(a) It is permissible to possess fish or shellfish legally taken for commercial purposes, landed, and properly accounted for on a completed fish receiving ticket;

(b) It is permissible to possess, transport through the waters of the state, or land dressed sablefish;

(c) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen dressed Chinook salmon are 21 1/2 inches or more in length and frozen dressed coho salmon are 12 inches or more in length, measured from the midpoint of the clavicle arch to the fork of the tail;

(d) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements so long as halibut is landed with the heads still attached; ~~((and))~~

(e) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed lingcod when taken during a lawful commercial fishery; and

(f) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed rockfish if authorized by a permit issued by the director and in accordance with the permit's terms and conditions.

(2) Violation of this section is a gross misdemeanor under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) "Dressed fish" is defined as provided in WAC 220-350-050.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-353-050, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 13-03-153 (Order 13-16), § 220-20-121, filed 1/23/13, effective 2/23/13.]

WSR 23-07-095
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 17, 2023, 12:57 p.m., effective April 17, 2023]

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

Purpose: The department of social and health services is adopting amendments to WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

These amendments comply with federal laws that pertain to cost-of-living adjustments and updated utility values for the basic food program for federal fiscal year 2023.

These amendments have been in place via emergency adoption since October 1, 2022, under WSR 22-20-070 and 23-04-051.

Citation of Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250.

Adopted under notice filed as WSR 23-04-045 on January 26, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: March 17, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4947.1

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) **How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) **Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) **Prorated benefits in the first month.** If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a (~~thirty~~) 30-day month:

(a) If your prorated benefits for the first month are under (~~ten~~) 10 dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits.** If you apply for benefits on or after the (~~sixteenth~~) 16th of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) (~~Twenty dollars~~) \$23 if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) (~~Twenty~~) \$23 dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-412-0015, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-412-0015, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050,

74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-412-0015, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 16-20-087, § 388-412-0015, filed 10/4/16, effective 2/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-412-0015, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-412-0015, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-412-0015, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-412-0015, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-412-0015, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-02-016, § 388-412-0015, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0015, filed 8/30/01, effective 9/30/01; WSR 99-16-024, § 388-412-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
(3) 4 or fewer	\$(177) 193

Eligible AU members	Standard deduction
((4)) <u>5</u>	\$((184)) <u>225</u>
((5	\$215))
6 or more	\$258

(b) ((Twenty percent)) 20% of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over \$35 ((dollars)) a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0185, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0185, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0185, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0185, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0185, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0185, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0185, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0185, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated

August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0185, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0185, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0185, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0185, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (a) and (e) (1); 7 C.F.R. §§ 273.1 and 273.9 (d) (1). 10-16-104, § 388-450-0185, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and P.L. 107 - 171 § 4101. WSR 09-23-004, § 388-450-0185, filed 11/5/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and Food and Nutrition Act of 2008, Title 7 Part 273 of the C.F.R. WSR 09-07-054, § 388-450-0185, filed 3/11/09, effective 4/11/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-450-0185, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0185, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0185, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of (~~(159-dollars)~~) \$166. If the homeless AU has shelter costs in excess of this amount, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
 - (ii) Actual shelter costs.
- (2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2) (a) through (2) (d) from your AU's gross income. The result is your AU's countable income.
- (3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:
- (a) Up to a maximum of (~~(597-dollars)~~) \$624 if no one in your AU is elderly or disabled; or
 - (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over (~~(597-dollars)~~) \$624.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0190, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0190, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500,

74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0190, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0190, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0190, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0190, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0190, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0190, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.10. WSR 13-11-103, § 388-450-0190, filed 5/20/13, effective 6/20/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0190, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0190, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0190, filed 11/17/10, effective 12/18/10; WSR 09-24-001, § 388-450-0190, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-450-0190, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0190, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0190, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, §

388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; WSR 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; WSR 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?

(1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

- (a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or
- (b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than (~~20 dollars~~) \$20 in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of (~~459 dollars~~) \$462.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of (~~459 dollars~~) \$462.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of (~~361 dollars~~) \$365.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~59 dollars~~) \$59.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and

74.08A.250. WSR 22-09-040, § 388-450-0195, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0195, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0195, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0195, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0195, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.9 (d) (6) (iii) (B). WSR 17-10-069, § 388-450-0195, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0195, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0195, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0195, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090 and Agricultural Act of 2014. WSR 14-12-085, § 388-450-0195, filed 6/3/14, effective 7/4/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0195, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0195, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9 (d) (6) (3). WSR 10-18-050, § 388-450-0195, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-450-0195, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055,

74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 08-21-106, § 388-450-0195, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-036, § 388-450-0195, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.9 (d)(6)(iii)(b). WSR 06-21-011, § 388-450-0195, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-10-056, § 388-450-0195, filed 5/1/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. WSR 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. WSR 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.040.510 [74.04.510]. WSR 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. WSR 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). WSR 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
 - (b) **"You"** means a person applying for or getting benefits from the department.
 - (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
 - (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
 - (e) **"Community property"** means a resource in the name of the husband, wife, or both.
 - (f) **"Separate property"** means a resource of a married person that one of the spouses:
 - (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.
- (2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

(a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;

(b) You own the resource and we consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that does not have a title;

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within 20 days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than 20 days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, there is an equity value resource limit of (~~(\$6,000 dollars)~~) \$6,000.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:

(a) (~~(Three thousand seven hundred fifty dollars)~~) \$4,250 if your AU has either an elderly or disabled individual; or

(b) (~~(Two thousand five hundred dollars)~~) \$2,750 for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

- (b) Who has legal control of a resource;
- (c) The value of a resource;
- (d) The availability of a resource; or
- (e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-470-0005, filed 4/13/22, effective 5/14/22; WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE 10/1/2021				
Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$((1,396)) <u>1,473</u>	\$((1,074)) <u>1,133</u>	\$((250)) <u>281</u>	\$((1,777)) <u>1,869</u>
2	((1,888)) <u>1,984</u>	((1,452)) <u>1,526</u>	((459)) <u>516</u>	((2,396)) <u>2,518</u>
3	((2,379)) <u>2,495</u>	((1,830)) <u>1,920</u>	((658)) <u>740</u>	((3,020)) <u>3,167</u>
4	((2,871)) <u>3,007</u>	((2,209)) <u>2,313</u>	((835)) <u>939</u>	((3,644)) <u>3,816</u>
5	((3,363)) <u>3,518</u>	((2,587)) <u>2,706</u>	((992)) <u>1,116</u>	((4,268)) <u>4,465</u>
6	((3,855)) <u>4,029</u>	((2,965)) <u>3,100</u>	((1,190)) <u>1,339</u>	((4,893)) <u>5,114</u>
7	((4,347)) <u>4,541</u>	((3,344)) <u>3,493</u>	((1,316)) <u>1,480</u>	((5,517)) <u>5,763</u>
8	((4,839)) <u>5,052</u>	((3,722)) <u>3,886</u>	((1,504)) <u>1,691</u>	((6,141)) <u>6,412</u>

9	((5,331)) <u>5,564</u>	((4,101)) <u>4,280</u>	((1,692)) <u>1,902</u>	((6,766)) <u>7,061</u>
10	((5,823)) <u>6,076</u>	((4,480)) <u>4,674</u>	((1,880)) <u>2,113</u>	((7,391)) <u>7,710</u>
Each Additional Member	+((492)) <u>512</u>	+((379)) <u>394</u>	+((153)) <u>211</u>	+((625)) <u>649</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is 60 years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are 60 years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-478-0060, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-478-0060, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-478-0060, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-478-0060, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-478-0060, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-478-0060, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-478-0060, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-478-0060, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510,

74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-478-0060, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-478-0060, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-478-0060, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-478-0060, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-478-0060, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-478-0060, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-478-0060, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-478-0060, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. WSR 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. WSR 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. WSR 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

WSR 23-07-119
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 21, 2023, 10:09 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: The department of labor and industries' (L&I) division of occupational safety and health (DOSH) is adopting amendments to chapter 296-850 WAC, Beryllium, necessary to align with the federal Occupational Safety and Health Administration (OSHA) final rule revising the beryllium standard for general industry, 29 C.F.R. 1910.1024 and OSHA final rule occupational exposure to beryllium and beryllium compounds in construction and shipyard sectors, 29 C.F.R. 1915.1024 and 1926.1124.

The purpose of these adopted amendments is to clarify certain provisions and simplify or improve compliance, in keeping with the updated federal rules, which OSHA asserts, "are designed to maintain or enhance worker protections overall by ensuring that the rule is well understood and compliance is more straightforward." OSHA's final rule also eliminated some requirements for construction and maritime that remain in chapter 296-850 WAC because the Washington rule covers all industries and clarifying language to that effect has been added where appropriate.

Citation of Rules Affected by this Order: Amending WAC 296-850-090, 296-850-130, 296-850-140, 296-850-145, 296-850-150, 296-850-155, 296-850-160, 296-850-165, 296-850-170, and 296-850-180.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: OSH Act of 1970, Section 18.

Adopted under notice filed as WSR 23-03-092 on January 17, 2023.

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Date Adopted: March 21, 2023.

Joel Sacks
Director

OTS-4073.3

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-090 Definitions. For the purposes of this section the following definitions apply:

(1) Action level - A concentration of airborne beryllium of 0.1 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) calculated as an 8-hour time-weighted average (TWA).

(2) Airborne exposure and airborne exposure to beryllium - The exposure to airborne beryllium that would occur if the employee were not using a respirator.

(3) Beryllium lymphocyte proliferation test (BeLPT) - The measurement of blood lymphocyte proliferation in a laboratory test when lymphocytes are challenged with a soluble beryllium salt.

(4) Beryllium work area - Any work area (~~(+)~~

~~(a) Containing a process or operation that can release beryllium and involves material that contains at least 0.1 percent beryllium by weight; and~~

~~(b) Where employees are, or can reasonably be expected to be, exposed to airborne beryllium at any level or where there is the potential for dermal contact with beryllium)) where materials that contain at least 0.1 percent beryllium by weight are processed either:~~

~~(a) During any of the operations listed in Appendix A of this standard; or~~

~~(b) Where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level.~~

(5) CBD diagnostic center - A medical diagnostic center that has ~~((an on-site))~~ a pulmonary specialist and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). ~~((This evaluation must include))~~ The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within ~~((twenty-four))~~ 24 hours. The on-site pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

(6) Chronic beryllium disease (CBD) - A chronic granulomatous (inflammatory) disease primarily of the lung, caused by exposure to beryllium, that meets the diagnostic criteria published in the department of labor and industries clinical guideline for the *Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*.

(7) Competent person - An individual who is capable of identifying existing and foreseeable beryllium hazards in the workplace and who has authorization to take prompt corrective measures to eliminate or minimize them. The competent person must have the knowledge, ability, and authority necessary to fulfill the responsibilities set forth in WAC 296-850-125. This term is applicable in construction work conducted under contract with a building or facility owner or other building representative.

(8) Confirmed positive - The person tested has beryllium sensitization, as indicated by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, or any cases confirmed by the criteria published in the department of labor and industries clinical guideline for the *Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. It also means the result of

a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

(9) Construction work - All or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling, of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

(10) Contaminated with beryllium and beryllium-contaminated - Contaminated with dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight.

(11) Dermal contact with beryllium - Skin exposure to:

(a) Soluble beryllium compounds containing beryllium in concentrations greater than or equal to 0.1 percent by weight;

(b) Solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight; or

(c) Visible dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight.

Note: The handling of beryllium materials in nonparticulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is not considered dermal contact under the standard.

(12) Emergency - Any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which may or does result in an uncontrolled and unintended release of airborne beryllium that presents a significant hazard.

(13) High-efficiency particulate air (HEPA) filter - A filter that is at least 99.97 percent efficient in removing particles 0.3 micrometers in diameter.

(14) Objective data - Information, such as air monitoring data from industry-wide surveys or calculations based on the composition of a substance, demonstrating airborne exposure to beryllium associated with a particular product or material or a specific process, task, or activity. The data must reflect workplace conditions closely resembling or with a higher airborne exposure potential than the processes, types of material, control methods, work practices, and environmental conditions in the employer's current operations.

(15) Physician or other licensed health care professional (PLHCP) - An individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows the individual to independently provide or be delegated the responsibility to provide some or all of the health care services required by WAC 296-850-155.

(16) Regulated area - An area, including temporary work areas where maintenance or nonroutine tasks are performed, where an employee's airborne exposure exceeds, or can reasonably be expected to exceed, either the time-weighted average (TWA) permissible exposure limit (PEL) or short term exposure limit (STEL).

(17) Ship breaking - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

(18) Ship building - Construction of a vessel, including the installation of machinery and equipment.

(19) Ship repairing - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-090, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-130 Methods of compliance. (1) Written exposure control plan.

(a) The employer must establish, implement, and maintain a written exposure control plan, which must contain:

(i) A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium;

(ii) A list of operations and job titles reasonably expected to involve airborne exposure at or above the action level;

(iii) A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL;

(iv) Procedures for minimizing cross-contamination, including ~~((preventing))~~ the transfer of beryllium between surfaces, equipment, clothing, materials, and articles within beryllium work areas;

(v) Procedures for keeping surfaces as free as practicable of beryllium;

(vi) Procedures for minimizing the migration of beryllium from beryllium work areas to other locations within or outside the workplace. For construction and shipyard work, procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment are sufficient;

(vii) A list of engineering controls, work practices, and respiratory protection required by subsection (2) of this section engineering and work practice controls, of this rule;

(viii) A list of personal protective clothing and equipment required by WAC 296-850-140 Personal protective clothing and equipment, of this rule;

(ix) Procedures for removing, laundering, storing, leaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators; and

(x) For construction work, procedures used to restrict access to work areas when airborne exposures are, or can reasonably be expected to be, above the TWA PEL or STEL, to minimize the number of employees exposed to airborne beryllium and their level of exposure, including exposures generated by other employers or sole proprietors.

(b) The employer must review and evaluate the effectiveness of each written exposure control plan at least annually and update it, as necessary, when:

(i) Any change in production processes, materials, equipment, personnel, work practices, or control methods results, or can reasonably be expected to result, in new or additional airborne exposure to beryllium;

(ii) The employer is notified that an employee is eligible for medical removal in accordance with WAC 296-850-160, referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with ~~((airborne))~~ exposure to ~~((or dermal contact with))~~ beryllium; or

(iii) The employer has any reason to believe that new or additional airborne exposure is occurring or will occur.

(c) The employer must make a copy of the written exposure control plan accessible to each employee who is, or can reasonably be expected to be, exposed to airborne beryllium in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(2) **Engineering and work practice controls.**

(a) The employer must use engineering and work practice controls to reduce and maintain employee airborne exposure to beryllium to or below the PEL and STEL, unless the employer can demonstrate that such controls are not feasible. Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs with engineering and work practice controls, the employer must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls using respiratory protection in accordance with WAC 296-850-135 Respiratory protection.

(b) Where exposures are, or can reasonably be expected to be, at or above the action level, the employer must ensure that at least one of the following is in place to reduce airborne exposure:

(i) Material and/or process substitution;

(ii) Isolation, such as ventilated partial or full enclosures;

(iii) Local exhaust ventilation, such as at the points of operation, material handling, and transfer; or

(iv) Process control, such as wet methods and automation.

(c) An employer is exempt from using these controls to the extent that:

(i) The employer can establish that such controls are not feasible; or

(ii) The employer can demonstrate that airborne exposure is below the action level, using no fewer than two representative personal breathing zone samples taken at least seven days apart, for each affected operation.

(3) **Prohibition of rotation.** The employer must not rotate employees to different jobs to achieve compliance with the PELs.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-130, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-140 Personal protective clothing and equipment. (1) **Provision and use.** The employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under subsection (1) of this section and other applicable requirements for personal protective equipment. (WAC 296-800-160 Summary personal protective equipment (PPE). Chapter 296-155 WAC, Part C, Personal protective and lifesaving equipment. WAC 296-304-090 Personal protective equipment (PPE)—General requirements.):

(a) Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; or

(b) Where there is a reasonable expectation of dermal contact with beryllium.

(2) **Removal and storage.**

(a) The employer must ensure that each employee removes all beryllium-contaminated personal protective clothing and equipment at the end of the work shift, at the completion of all tasks involving beryllium, or when personal protective clothing or equipment becomes visibly contaminated with beryllium, whichever comes first.

(b) The employer must ensure that each employee removes beryllium-contaminated personal protective clothing and equipment as specified in the written exposure control plan required by WAC 296-850-130(1).

(c) The employer must ensure that each employee stores and keeps beryllium-contaminated personal protective clothing and equipment separate from street clothing and that storage facilities prevent cross-contamination as specified in the written exposure control plan required by WAC 296-850-130(1).

(d) The employer must ensure that no employee removes beryllium-contaminated personal protective clothing or equipment from the workplace, except for employees authorized to do so for the purposes of laundering, cleaning, maintaining or disposing of beryllium-contaminated personal protective clothing and equipment at an appropriate location or facility away from the workplace.

(e) When personal protective clothing or equipment required by this standard is removed from the workplace for laundering, cleaning, maintenance or disposal, the employer must ensure that personal protective clothing and equipment are stored and transported in sealed bags or other closed containers that are impermeable and are labeled in accordance with WAC 296-850-165(3) and chapter 296-901 WAC, Globally harmonized system for hazard communication.

(3) **Cleaning and replacement.**

(a) The employer must ensure that all reusable personal protective clothing and equipment required by this standard is cleaned, laundered, repaired, and replaced as needed to maintain its effectiveness.

(b) The employer must ensure that beryllium is not removed from beryllium-contaminated personal protective clothing and equipment by blowing, shaking or any other means that disperses beryllium into the air.

(c) The employer must inform in writing the persons or the business entities who launder, clean or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of ((airborne)) exposure to ((and dermal contact with)) beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-140, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-145 Hygiene areas and practices. (1) **General.** For each employee working in a beryllium work area, who can reasonably be

expected to have dermal contact with beryllium, or who is required to use personal protective clothing or equipment by this rule in construction work, ship breaking, ship building, or ship repairing, the employer must:

(a) Provide readily accessible washing facilities in accordance with this standard and other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) to remove beryllium from the hands, face, and neck; and

(b) Ensure that employees who have dermal contact with beryllium wash any exposed skin at the end of the activity, process, or work shift and prior to eating, drinking, smoking, chewing tobacco or gum, applying cosmetics, or using the toilet.

(2) **Change rooms.** In addition to the requirements of subsection (1)(a) of this section, the employer must provide employees who (~~work in a beryllium work area~~) are required to use personal protective clothing or equipment under WAC 296-850-140 (1)(b) with a designated change room in accordance with this standard and other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) where employees are required to remove their personal clothing.

(3) **Showers.**

(a) The employer must provide showers in accordance with other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) where:

(i) Airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; and

(ii) Employees' hair or body parts other than hands, face, and neck can reasonably be expected to become contaminated with beryllium.

(b) Employers required to provide showers must ensure that each employee showers at the end of the work shift or work activity if:

(i) The employee reasonably could have had airborne exposure above the TWA PEL or STEL; and

(ii) The employee's hair or body parts other than hands, face, and neck could reasonably have become contaminated with beryllium.

(4) **Eating and drinking areas.** Wherever the employer allows employees to consume food or beverages at a worksite where beryllium is present, the employer must ensure that:

(a) Beryllium-contaminated surfaces in eating and drinking areas are as free as practicable of beryllium;

(b) No employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, (~~surface~~) it is cleaned, as necessary, to be as free as practicable of beryllium (~~has been removed from the clothing or equipment~~) by methods that do not disperse beryllium into the air or onto an employee's body; and

(c) Eating and drinking facilities provided by the employer are in accordance with other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation).

(5) **Prohibited activities.** The employer must ensure that no employees eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas and other work areas where there is a reasonable expectation of exposure above the TWA PEL or STEL.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-145, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-150 Housekeeping. (1) General.

(a) The employer must maintain all surfaces in beryllium work areas and regulated areas as free as practicable of beryllium and in accordance with the written exposure control plan required under WAC 296-850-130(1) and the cleaning methods required under this subsection;

(b) In construction work, ship breaking, ship building or ship repairing, when cleaning beryllium-contaminated areas, the employer must follow the written exposure control plan required under WAC 296-850-130(1); and

(c) The employer must ensure that all spills and emergency releases of beryllium are cleaned up promptly and in accordance with the written exposure control plan required under WAC 296-850-130(1) and the cleaning methods required under this subsection.

(2) Cleaning methods.

(a) The employer must ensure that surfaces in beryllium work areas and regulated areas are cleaned by HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure.

(b) The employer must not allow dry sweeping or brushing for cleaning surfaces in beryllium-work areas or regulated areas unless HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(c) The employer must not allow the use of compressed air for cleaning beryllium-contaminated surfaces unless the compressed air is used in conjunction with a ventilation system designed to capture the particulates made airborne by the use of compressed air.

(d) Where employees use dry sweeping, brushing, or compressed air to clean beryllium-contaminated surfaces, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with WAC 296-850-135 Respiratory protection, and WAC 296-850-140 Personal protective clothing and equipment.

(e) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the reentrainment of airborne beryllium in the workplace.

(3) Disposal ((and)), recycling, and reuse. (~~For materials that contain beryllium in concentrations of 0.1 percent by weight or more or are contaminated with beryllium, the employer must ensure that:~~

~~(a) Materials designated for disposal are disposed of in sealed, impermeable enclosures, such as bags or containers, that are labeled in accordance with WAC 296-850-165(3) warning labels.~~

~~(b) Materials designated for recycling are cleaned to be as free as practicable of surface beryllium contamination and labeled in accordance with WAC 296-850-165(3), or placed in sealed, impermeable en-~~

enclosures, such as bags or containers, that are labeled in accordance with WAC 296-850-165(3).)

(a) Except for intra-plant transfers, when the employer transfers materials that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium for disposal, recycling, or reuse, the employer must label the materials in accordance with WAC 296-850-165(3) Warning labels;

(b) Except for intra-plant transfers, materials designated for disposal that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers; and

(c) Except for intra-plant transfers, materials designated for recycling or reuse that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-150, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-155 Medical surveillance. (1) General.

(a) The employer must make medical surveillance required by this section available at no cost to the employee, and at a reasonable time and place, to each employee:

(i) Who is or is reasonably expected to be exposed at or above the action level for more than ((thirty)) 30 days per year;

(ii) Who shows signs or symptoms of CBD or other beryllium-related health effects;

(iii) Who is exposed to beryllium during an emergency; or

(iv) Whose most recent written medical opinion required by this section recommends periodic medical surveillance.

(b) The employer must ensure that all medical examinations and procedures required by this standard are performed by, or under the direction of, a licensed physician.

(c) When requested by an employee who provides the employer with an abnormal or borderline finding for a single blood BeLPT or two borderline blood BeLPT, the employer must arrange for medical examinations and procedures to be performed at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360).

(2) **Frequency.** The employer must provide a medical examination:

(a) Within ((thirty)) 30 days after determining that:

(i) An employee meets the criteria of subsection (1)(a)(i) of this section, unless the employee has received a medical examination, provided in accordance with this standard, within the last two years;

~~((or who shows signs or symptoms of CBD or other beryllium-related health effects;))~~ or

(ii) An employee meets the criteria of subsection (1)(a)(ii) ~~((or (iii)))~~ of this section.

(b) At least every two years thereafter for each employee who continues to meet the criteria of subsection (1)(a)(i), (ii), or (iv) of this section.

(c) At the termination of employment for each employee who meets any of the criteria of subsection (1)(a) of this section at the time the employee's employment terminates, unless an examination has been provided in accordance with this standard during the six months prior to the date of termination. Each employee who meets the criteria of subsection (1)(a)(iii) of this section and who has not received an examination since exposure to beryllium during the emergency must be provided an examination at the time the employee's employment terminates.

(d) For an employee who meets the criteria of subsection (1)(a)(iii) of this section:

(i) If that employee has not received a medical examination within the previous two years pursuant to subsection (1)(a) of this section, then within 30 days after the employee meets the criteria of subsection (1)(a)(iii) of this section; or

(ii) If that employee has received a medical examination within the previous two years pursuant to subsection (1)(a) of this section, then at least one year but no more than two years after the employee meets the criteria of subsection (1)(a)(iii) of this section.

(3) Contents of examination.

(a) The employer must ensure that the PLHCP conducting the examination advises the employee of the risks and benefits of participating in the medical surveillance program and the employee's right to opt out of any or all parts of the medical examination.

(b) The employer must ensure that the employee is offered a medical examination that includes:

(i) A medical and work history, with emphasis on past and present airborne exposure to or dermal contact with beryllium, smoking history, and any history of respiratory system dysfunction;

(ii) A physical examination with emphasis on the respiratory system;

(iii) A physical examination for skin rashes;

(iv) Pulmonary function tests, performed in accordance with the guidelines established by the American Thoracic Society including forced vital capacity (FVC) and forced expiratory volume in one second (FEV1);

(v) A standardized BeLPT or equivalent test, upon the first examination and at least every two years thereafter, unless the employee is confirmed positive. If the results of the BeLPT are other than normal, follow-up BeLPT testing must be offered within ~~((thirty))~~ 30 days, unless the employee has been confirmed positive or unless the employee requests a medical examination as according to subsection (1)(c) of this section. Samples must be analyzed in a laboratory certified under the College of American Pathologists/Clinical Laboratory Improvement Amendments (CLIA) guidelines to perform the BeLPT;

(vi) A low dose computed tomography (LDCT) scan, when recommended by the PLHCP after considering the employee's history of exposure to beryllium along with other risk factors, such as smoking history, family medical history, sex, age, and presence of existing lung disease; and

(vii) Any other test deemed appropriate by the PLHCP.

(4) **Information provided to the PLHCP.** The employer must ensure that the examining PLHCP (and the evaluating CBD diagnostic center, if an evaluation is required under subsection (7) of this section) has a copy of this rule and must provide the following information, if known:

(a) A description of the employee's former and current duties that relate to the employee's airborne exposure to and dermal contact with beryllium;

(b) The employee's former and current levels of airborne exposure;

(c) A description of any personal protective clothing and equipment, including respirators, used by the employee, including when and for how long the employee has used that personal protective clothing and equipment; and

(d) Information from records of employment-related medical examinations previously provided to the employee, currently within the control of the employer, after obtaining written consent from the employee.

(5) **Licensed physician's written medical report for the employee.**

Exception:

When the PLHCP assists the worker in filing a claim under Title 51 RCW, Industrial insurance, the PLHCP does not need to prepare a separate report for the employee if all the information required in this section is entered into the claim record, the report is directly shared with the employee, and the PLHCP explains the results of the examination to the employee. The PLHCP may provide additional reports or notes to make sure the employee understands the results of the examination and recommendations.

The employer must ensure that the employee receives a written medical report from the licensed physician within (~~forty-five~~) 45 days of the examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section) and that the PLHCP explains the results of the examination to the employee. The written medical report must contain:

(a) A statement indicating the results of the medical examination, including the licensed physician's opinion as to whether the employee has:

(i) Any detected medical condition, such as CBD or beryllium sensitization (i.e., the employee is confirmed positive, as defined in WAC 296-850-090), that may place the employee at increased risk from further airborne exposure; and

(ii) Any medical conditions related to airborne exposure that require further evaluation or treatment.

(b) Any recommendations on:

(i) The employee's use of respirators, protective clothing, or equipment; or

(ii) Limitations on the employee's airborne exposure to beryllium.

(c) If the employee is confirmed positive or diagnosed with CBD or if the licensed physician otherwise deems it appropriate, the written report must also contain a referral for an evaluation at a CBD diagnostic center.

(d) If the employee is confirmed positive or diagnosed with CBD, the written report must also contain a recommendation for continued periodic medical surveillance.

(e) If the employee is confirmed positive or diagnosed with CBD, the written report must also contain a recommendation for medical removal from airborne exposure to beryllium, as described in WAC 296-850-160.

(6) **Licensed physician's written medical opinion for the employer.**

Exception: When a claim has been initiated the PLHCP does not need to prepare a separate report for the employer if all information required in this section is entered into the claim record. As part of initiating a claim, the employee agrees to share all of the relevant medical records, and the limits on information reported to the employer in this section do not apply.

(a) The employer must obtain a written medical opinion from the licensed physician within (~~(forty-five)~~) 45 days of the medical examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section). The written medical opinion must contain only the following:

(i) The date of the examination;

(ii) A statement that the examination has met the requirements;

(iii) Any recommended limitations on the employee's use of respirators, protective clothing, or equipment; and

(iv) A statement that the PLHCP has explained the results of the medical examination to the employee, including any tests conducted, any medical conditions related to airborne exposure that require further evaluation or treatment, and any special provisions for use of personal protective clothing or equipment.

(b) If the employee provides written authorization, the written opinion must also contain any recommended limitations on the employee's airborne exposure to beryllium.

(c) If the employee is confirmed positive or diagnosed with CBD or if the licensed physician otherwise deems it appropriate, and the employee provides written authorization, the written opinion must also contain a referral for an evaluation at a CBD diagnostic center.

(d) If the employee is confirmed positive or diagnosed with CBD and the employee provides written authorization, the written opinion must also contain a recommendation for continued periodic medical surveillance.

(e) If the employee is confirmed positive or diagnosed with CBD and the employee provides written authorization, the written opinion must also contain a recommendation for medical removal from airborne exposure to beryllium, as described in WAC 296-850-160.

(f) The employer must ensure that each employee receives a copy of the written medical opinion described in this subsection within (~~(forty-five)~~) 45 days of any medical examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section) performed for that employee.

(7) CBD diagnostic center.

(a) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360). The examination must be (~~(provided)~~) scheduled within (~~(thirty)~~) 30 days, and must occur within a reasonable time, of:

(i) The employer's receipt of a physician's written medical opinion to the employer that recommends referral to a CBD diagnostic center; or

(ii) The employee presenting to the employer a physician's written medical report indicating that the employee has been confirmed positive or diagnosed with CBD, or recommending referral to a CBD diagnostic center.

(b) The employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bron-

choalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.

(c) The employer must ensure that the employee receives a written medical report from the CBD diagnostic center that contains all the information required in subsection (5) (a), (b), (c), and (e) of this section and that the PLHCP explains the results of the examination to the employee within ~~((thirty))~~ 30 days of the examination.

~~((e))~~ (d) The employer must obtain a written medical opinion from the CBD diagnostic center within ~~((thirty))~~ 30 days of the medical examination. The written medical opinion must contain only the information in subsection (6) (a) of this section, as applicable, unless the employee provides written authorization to release additional information. If the employee provides written authorization, the written opinion must also contain the information from subsection (6) (b), (d), and (e) of this section, if applicable.

~~((d))~~ (e) The employer must ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center described in this subsection within ~~((thirty))~~ 30 days of any medical examination performed for that employee.

~~((e))~~ (f) After an employee has received the initial clinical evaluation at a CBD diagnostic center described in (a) of this subsection, the employee may choose to have any subsequent medical examinations for which the employee is eligible under this section performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360). The employer must provide such examinations at no cost to the employee.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-155, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-160 Medical removal. (1) An employee is eligible for medical removal, if the employee works in a job with airborne exposure at or above the action level and either:

- (a) The employee provides the employer with:
 - (i) An abnormal or borderline finding for a single blood BeLPT test, until confirmatory testing is completed; or
 - (ii) A written medical report indicating a confirmed positive finding or CBD diagnosis; or
 - (iii) A written medical report recommending removal from airborne exposure to beryllium in accordance with WAC 296-850-155 (5) (e) or (7) ~~((b))~~ (c); or

(b) The employer receives a written medical opinion recommending removal from airborne exposure to beryllium in accordance with WAC 296-850-155 (6) (e) or (7) ~~((e))~~ (d).

(2) If an employee is eligible for medical removal, the employer must provide the employee with the employee's choice of:

(a) Removal as described in subsection (3) of this section; or
(b) Remaining in a job with airborne exposure at or above the action level, provided that the employer provides, and ensures that the employee uses, respiratory protection that complies with WAC 296-850-135 Respiratory protection, of this rule whenever airborne exposures are at or above the action level.

(3) If the employee chooses removal:

(a) If a comparable job is available where airborne exposures to beryllium are below the action level, and the employee is qualified for that job or can be trained within one month, the employer must remove the employee to that job. The employer must maintain for six months from the time of removal the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal.

(b) If comparable work is not available, the employer must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal for six months or until such time that comparable work described in (a) of this subsection becomes available, whichever comes first.

(4) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal from a publicly or employer-funded compensation program, or receives income from another employer made possible by virtue of the employee's removal.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-160, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-165 Communication of hazards. (1) General.

(a) Chemical manufacturers, importers, distributors, and employers must comply with all requirements of chapter 296-901 WAC, Globally harmonized system for hazard communication, for beryllium.

(b) In classifying the hazards of beryllium, at least the following hazards must be addressed: Cancer; lung effects (CBD and acute beryllium disease); beryllium sensitization; skin sensitization; and skin, eye, and respiratory tract irritation.

(c) Employers must include beryllium in the hazard communication program established to comply with the HCS. Employers must ensure that each employee has access to labels on containers of beryllium and to safety data sheets, and is trained in accordance with the requirements of chapter 296-901 WAC, Globally harmonized system for hazard communication, and subsection (4) of this section.

(2) Warning signs.

(a) **Posting.** The employer must provide and display warning signs at each approach to a regulated area so that each employee is able to read and understand the signs and take necessary protective steps before entering the area.

(b) Sign specification.

(i) The employer must ensure that the warning signs required by (a) of this subsection are legible and readily visible.

(ii) The employer must ensure each warning sign required by (a) of this subsection bears the following legend:

DANGER
REGULATED AREA
BERYLLIUM
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
AUTHORIZED PERSONNEL ONLY
WEAR RESPIRATORY PROTECTION AND PERSONAL
PROTECTIVE CLOTHING AND EQUIPMENT IN THIS AREA

(3) **Warning labels.** Consistent with chapter 296-901 WAC, Globally harmonized system for hazard communication, the employer must label each (~~bag and~~) immediate container of clothing, equipment, and materials contaminated with beryllium, and must, at a minimum, include the following on the label:

DANGER
CONTAINS BERYLLIUM
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
AVOID CREATING DUST
DO NOT GET ON SKIN

(4) **Employee information and training.**

(a) For each employee who has, or can reasonably be expected to have, airborne exposure to or dermal contact with beryllium:

(i) The employer must provide information and training in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication;

(ii) The employer must provide initial training to each employee by the time of initial assignment; and

(iii) The employer must repeat the training required under this standard annually for each employee.

(b) The employer must ensure that each employee who is, or can reasonably be expected to be, exposed to airborne beryllium can demonstrate knowledge and understanding of the following:

(i) The health hazards associated with airborne exposure to and dermal contact with beryllium, including the signs and symptoms of CBD;

(ii) The written exposure control plan, with emphasis on the location(s) of beryllium work areas, including any regulated areas, and the specific nature of operations that could result in airborne exposure, especially airborne exposure above the TWA PEL or STEL;

(iii) The purpose, proper selection, fitting, proper use, and limitations of personal protective clothing and equipment, including respirators;

(iv) Applicable emergency procedures;

(v) Measures employees can take to protect themselves from airborne exposure to and dermal contact with beryllium, including personal hygiene practices;

(vi) The purpose and a description of the medical surveillance program required by WAC 296-850-155 including risks and benefits of each test to be offered;

(vii) The purpose and a description of the medical removal protection provided under WAC 296-850-160;

(viii) The contents of the standard; and

(ix) The employee's right of access to records under chapter 296-802 WAC, Employee medical and exposure records.

(c) When a workplace change (such as modification of equipment, tasks, or procedures) results in new or increased airborne exposure that exceeds, or can reasonably be expected to exceed, either the TWA PEL or the STEL, the employer must provide additional training to those employees affected by the change in airborne exposure.

(d) Employee information. The employer must make a copy of this rule and its appendices readily available at no cost to each employee and designated employee representative(s).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-165, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-170 Recordkeeping. (1) Air monitoring data.

(a) The employer must make and maintain a record of all exposure measurements taken to assess airborne exposure as prescribed in WAC 296-850-115 Exposure assessment.

(b) This record must include at least the following information:

(i) The date of measurement for each sample taken;

(ii) The task that is being monitored;

(iii) The sampling and analytical methods used and evidence of their accuracy;

(iv) The number, duration, and results of samples taken;

(v) The type of personal protective clothing and equipment, including respirators, worn by monitored employees at the time of monitoring; and

(vi) The name (~~(, Social Security number,)~~) and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

(c) The employer must ensure that exposure records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(2) Objective data.

(a) Where an employer uses objective data to satisfy the exposure assessment requirements under WAC 296-850-115, the employer must make and maintain a record of the objective data relied upon.

(b) This record must include at least the following information:

(i) The data relied upon;

(ii) The beryllium-containing material in question;

(iii) The source of the objective data;

(iv) A description of the process, task, or activity on which the objective data were based; and

(v) Other data relevant to the process, task, activity, material, or airborne exposure on which the objective data were based.

(c) The employer must ensure that objective data are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(3) Medical surveillance.

(a) The employer must make and maintain a record for each employee covered by medical surveillance under WAC 296-850-155.

(b) The record must include the following information about each employee:

- (i) Name (~~(, Social Security number,)~~) and job classification;
- (ii) A copy of all licensed physicians' written medical opinions for each employee; and
- (iii) A copy of the information provided to the PLHCP as required by WAC 296-850-155(4).

(c) The employer must ensure that medical records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(4) **Training.**

(a) At the completion of any training required by this standard, the employer must prepare a record that indicates the name (~~(, Social Security number,)~~) and job classification of each employee trained, the date the training was completed, and the topic of the training.

(b) This record must be maintained for three years after the completion of training.

(5) **Access to records.** The employer shall ensure records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(6) **Transfer of records.** The employer must comply with the requirements involving transfer of records set forth in chapter 296-802 WAC, Employee medical and exposure records.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-170, filed 8/21/18, effective 12/12/18.]

AMENDATORY SECTION (Amending WSR 18-17-156, filed 8/21/18, effective 12/12/18)

WAC 296-850-180 Appendix A—(~~Control strategies to minimize beryllium exposure of this standard is nonmandatory.~~) Operations for establishing beryllium work areas. (~~WAC 296-850-130(2) of this chapter requires employers to use one or more of the control methods listed in WAC 296-850-130(2) to minimize worker exposure in each operation in a beryllium work area, unless the operation is exempt under WAC 296-850-130(2)(b). This appendix sets forth a nonexhaustive list of control options that employers could use to comply with WAC 296-850-130(2) for a number of specific beryllium operations.~~)

~~Table A.1: Exposure Control Recommendations~~

Operation	Minimal Control Strategy*	Application Group
Beryllium Oxide Forming (e.g., pressing, extruding)	<p>For pressing operations: (1) Install local exhaust ventilation (LEV) on oxide press tables, oxide feed drum breaks, press tumblers, powder rollers, and die set disassembly stations; (2) Enclose the oxide presses; and (3) Install mechanical ventilation (make-up air) in processing areas.</p> <p>For extruding operations: (1) Install LEV on extruder powder loading hoods, oxide supply bottles, rod breaking operations, centerless grinders, rod laydown tables, dieing operations, surface grinders, discharge end of extrusion presses; (2) Enclose the centerless grinders; and (3) Install mechanical ventilation (make-up air) in processing areas.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites
Chemical Processing Operations (e.g., leaching, pickling, degreasing, etching, plating)	<p>For medium and high gassing operations: (1) Perform operation with a hood having a maximum of one open side; and (2) Design process so as to minimize spills; if accidental spills occur, perform immediate cleanup.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Copper Rolling, Drawing and Extruding
Finishing (e.g., grinding, sanding, polishing, deburring)	<p>(1) Perform portable finishing operations in a ventilated hood. The hood should include both downdraft and backdraft ventilation, and have at least two sides and a top. (2) Perform stationary finishing operations using a ventilated and enclosed hood at the point of operation. The grinding wheel of the stationary unit should be enclosed and ventilated.</p>	Secondary Smelting; Fabrication of Beryllium Alloy Products; Dental Labs
Furnace Operations (e.g., Melting and Casting)	<p>(1) Use LEV on furnaces, pelletizer; are furnace ingot machine discharge; pellet sampling; are furnace bins and conveyors; beryllium hydroxide drum dumper and dryer; furnace rebuilding; furnace tool holders; are furnace tundish and tundish skimming, tundish preheat hood, and tundish cleaning hoods; dross handling equipment and drums; dross recycling; and tool repair station, charge make-up station, oxide screener, product sampling locations, drum changing stations, and drum cleaning stations. (2) Use mechanical ventilation (make-up air) in furnace building.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Nonferrous Foundries; Secondary Smelting

Operation	Minimal Control Strategy*	Application Group
Machining	Use: (1) LEV consistent with ACGIH® ventilation guidelines on deburring hoods, wet surface grinder enclosures, belt sanding hoods, and electrical discharge machines (for operations such as polishing, lapping, and buffing); (2) High velocity low volume hoods or ventilated enclosures on lathes, vertical mills, CNC mills, and tool grinding operations; (3) For beryllium oxide ceramics, LEV on lapping, dicing, and laser cutting; and (4) Wet methods (e.g., coolants).	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Copper Rolling, Drawing, and Extruding; Precision Turned Products
Mechanical Processing (e.g., material handling (including scrap), sorting, crushing, screening, pulverizing, shredding, pouring, mixing, blending)	(1) Enclose and ventilate sources of emission; (2) Prohibit open handling of materials; and (3) Use mechanical ventilation (make-up air) in processing areas.	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Aluminum and Copper Foundries; Secondary Smelting
Metal Forming (e.g., rolling, drawing, straightening, annealing, extruding)	(1) For rolling operations, install LEV on mill stands and reels such that a hood extends the length of the mill; (2) For point and chamfer operations, install LEV hoods at both ends of the rod; (3) For annealing operations, provide an inert atmosphere for annealing furnaces, and LEV hoods at entry and exit points; (4) For swaging operations, install LEV on the cutting head; (5) For drawing, straightening, and extruding operations, install LEV at entry and exit points; and (6) For all metal forming operations, install mechanical ventilation (make-up air) for processing areas.	Primary Beryllium Production; Copper Rolling, Drawing, and Extruding; Fabrication of Beryllium Alloy Products
Welding	For fixed welding operations: (1) Enclose work locations around the source of fume generation and use local exhaust ventilation; and (2) Install close capture hood enclosure designed so as to minimize fume emission from the enclosure welding operation. For manual operations: (1) Use portable local exhaust and general ventilation.	Primary Beryllium Production; Fabrication of Beryllium Alloy Products; Welding

* All LEV specifications should be in accordance with the ACGIH® Publication No. 2094, "Industrial Ventilation—A Manual of Recommended Practice" (wherever applicable.)

This standard defines a beryllium work area as any work area where materials that contain at least 0.1 percent beryllium by weight are processed (1) during any of the operations listed in Appendix A of this standard, or (2) where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level. Table A.1 in this appendix sets forth the operations that, where performed under the circumstances described in the column heading above the particular operations, trigger the requirement for a beryllium work area.

Table A.1—Operations for Establishing Beryllium Work Areas Where Processing Materials Containing at Least 0.1 Percent Beryllium by Weight

Beryllium metal alloy operations (generally <10% beryllium by weight)	Beryllium composite operations (generally >10% beryllium by weight) and beryllium metal operations	Beryllium oxide operations
<u>Abrasive Blasting.</u>	<u>Abrasive Blasting.</u>	<u>Abrasive Blasting.</u>
<u>Abrasive Processing.</u>	<u>Abrasive Processing.</u>	<u>Abrasive Processing.</u>
<u>Abrasive Sawing.</u>	<u>Abrasive Sawing.</u>	<u>Abrasive Sawing.</u>
<u>Annealing.</u>	<u>Annealing.</u>	<u>Boring.</u>
<u>Bright Cleaning.</u>	<u>Atomizing.</u>	<u>Brazing (>1,100°C).</u>
<u>Brushing.</u>	<u>Attritioning.</u>	<u>Broaching with green ceramic.</u>
<u>Buffing.</u>	<u>Blanking.</u>	<u>Brushing.</u>
<u>Burnishing.</u>	<u>Bonding.</u>	<u>Buffing.</u>
<u>Casting.</u>	<u>Boring.</u>	<u>Centerless Grinding.</u>
<u>Centerless Grinding.</u>	<u>Breaking.</u>	<u>Chemical Cleaning.</u>
<u>Chemical Cleaning.</u>	<u>Bright Cleaning.</u>	<u>Chemical Etching.</u>
<u>Chemical Etching.</u>	<u>Broaching.</u>	<u>CNC Machining.</u>
<u>Chemical Milling.</u>	<u>Brushing.</u>	<u>Cold Isostatic Pressing (CIP).</u>
<u>Dross Handling.</u>	<u>Buffing.</u>	<u>Crushing.</u>
<u>Deburring (grinding).</u>	<u>Burnishing.</u>	<u>Cutting.</u>
<u>Electrical Chemical Machining (ECM).</u>	<u>Casting.</u>	<u>Deburring (grinding).</u>
<u>Electrical Discharge Machining (EDM).</u>	<u>Centerless Grinding.</u>	<u>Deburring (nongrinding).</u>
<u>Extrusion.</u>	<u>Chemical Cleaning.</u>	<u>Destructive Testing.</u>
<u>Forging.</u>	<u>Chemical Etching</u>	<u>Dicing.</u>
<u>Grinding.</u>	<u>Chemical Milling.</u>	<u>Drilling.</u>
<u>Heat Treating (in air).</u>	<u>CNC Machining</u>	<u>Dry/Wet Tumbling.</u>
<u>High Speed Machining (>10,000 rpm).</u>	<u>Cold Isostatic Pressing.</u>	<u>Extrusion.</u>
<u>Hot Rolling.</u>	<u>Cold Pilger.</u>	<u>Filing by Hand.</u>
<u>Lapping.</u>	<u>Crushing.</u>	<u>Firing of Green Ceramic.</u>
<u>Laser Cutting.</u>	<u>Cutting.</u>	<u>Firing of Refractory Metallization (>1,100°C).</u>
<u>Laser Machining.</u>	<u>Deburring.</u>	<u>Grinding.</u>
<u>Laser Scribing.</u>	<u>Dicing.</u>	<u>Honing.</u>
<u>Laser Marking.</u>	<u>Drawing.</u>	<u>Hot Isostatic Pressing (HIP).</u>
<u>Melting.</u>	<u>Drilling.</u>	<u>Lapping.</u>
<u>Photo-Etching.</u>	<u>Dross Handling.</u>	<u>Laser Cutting.</u>
<u>Pickling.</u>	<u>Electrical Chemical Machining (ECM).</u>	<u>Laser Machining.</u>
<u>Point and Chamfer.</u>	<u>Electrical Discharge Machining (EDM).</u>	<u>Laser Scribing.</u>
<u>Polishing.</u>	<u>Extrusion.</u>	<u>Laser Marking.</u>
<u>Torch Cutting (i.e., oxy-acetylene).</u>	<u>Filing by Hand.</u>	<u>Machining.</u>
<u>Tumbling.</u>	<u>Forging.</u>	<u>Milling.</u>
<u>Water-Jet Cutting.</u>	<u>Grinding.</u>	<u>Piercing.</u>
<u>Welding.</u>	<u>Heading.</u>	<u>Mixing.</u>
<u>Sanding.</u>	<u>Heat Treating.</u>	<u>Plasma Spray.</u>

<u>Beryllium metal alloy operations (generally <10% beryllium by weight)</u>	<u>Beryllium composite operations (generally >10% beryllium by weight) and beryllium metal operations</u>	<u>Beryllium oxide operations</u>
<u>Slab Milling.</u>	<u>Honing.</u>	<u>Polishing.</u>
	<u>Hot Isostatic Pressing (HIP).</u>	<u>Powder Handling.</u>
	<u>Lapping.</u>	<u>Powder Pressing.</u>
	<u>Laser Cutting.</u>	<u>Reaming.</u>
	<u>Laser Machining.</u>	<u>Sanding.</u>
	<u>Laser Scribing.</u>	<u>Sectioning.</u>
	<u>Laser Marking.</u>	<u>Shearing.</u>
	<u>Machining.</u>	<u>Sintering of Green Ceramic.</u>
	<u>Melting.</u>	<u>Sintering of Refractory Metallization (>1,100°C).</u>
	<u>Milling.</u>	<u>Snapping.</u>
	<u>Mixing.</u>	<u>Spray Drying.</u>
	<u>Photo-Etching.</u>	<u>Tape Casting.</u>
	<u>Pickling.</u>	<u>Turning.</u>
	<u>Piercing.</u>	<u>Water-Jet Cutting.</u>
	<u>Pilger.</u>	
	<u>Plasma Spray.</u>	
	<u>Point and Chamfer.</u>	
	<u>Polishing.</u>	
	<u>Powder Handling.</u>	
	<u>Powder Pressing.</u>	
	<u>Pressing.</u>	
	<u>Reaming.</u>	
	<u>Roll Bonding.</u>	
	<u>Rolling.</u>	
	<u>Sanding.</u>	
	<u>Sawing (tooth blade).</u>	
	<u>Shearing.</u>	
	<u>Sizing.</u>	
	<u>Skiving.</u>	
	<u>Slitting.</u>	
	<u>Snapping.</u>	
	<u>Sputtering.</u>	
	<u>Stamping.</u>	
	<u>Spray Drying.</u>	
	<u>Tapping.</u>	
	<u>Tensile Testing.</u>	
	<u>Torch Cutting (i.e., oxy-acetylene).</u>	
	<u>Trepanning.</u>	
	<u>Tumbling</u>	
	<u>Turning.</u>	
	<u>Vapor Deposition.</u>	
	<u>Water-Jet Cutting.</u>	
	<u>Welding.</u>	

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 18-17-156, § 296-850-180, filed 8/21/18, effective 12/12/18.]

WSR 23-07-124
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 21, 2023, 1:03 p.m., effective April 21, 2023]

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

Purpose: The amendments correct inadvertent errors in WAC 296-128-99050 and 296-128-99290 and update WAC 296-128-99030 for clarity, all filed under WSR 22-24-034 on November 30, 2022. The adopted language clarifies that a 12-month period is an acceptable interpretation of the 365 calendar day requirement outlined in WAC 296-128-99030 (2)(g) adopted effective January 1, 2023. The adopted amendments only correct typographical errors or clarify language of a rule without changing its effect.

Citation of Rules Affected by this Order: Amending WAC 296-128-99030, 296-128-99050, and 296-128-99290.

Statutory Authority for Adoption: RCW 49.46.300(16); chapter 49.46 RCW.

Adopted under notice filed as WSR 23-03-093 on January 17, 2023.

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 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: March 21, 2023.

Joel Sacks
Director

OTS-4298.1

AMENDATORY SECTION (Amending WSR 22-24-034, filed 11/30/22, effective 1/1/23)

WAC 296-128-99030 Driver electronic receipts and weekly trip notices. (1) **Electronic receipts.** Within 24 hours of each dispatched trip, a transportation network company must transmit to the driver an electronic receipt, available in a communication system, for each unique trip or portion of a unique trip. For the purposes of an electronic receipt, a transportation network company may either provide a downloadable comma-separated values file or searchable PDF format containing a table with rows for each unique trip or portion of the trip and columns for each itemized element contained in the trip receipt. Electronic receipts must be available to the driver for at least two years following the date the transportation network company provided

the receipt to the driver. The electronic receipt must itemize the following information for each unique trip, or portion of a unique trip:

- (a) The total amount of passenger platform time;
- (b) The total mileage driven during passenger platform time;
- (c) The applicable rate(s) of pay including, but not limited to, the rate(s) per minute, rate(s) per mile, percentage of passenger fare, and any applicable price multiplier(s) or variable pricing policy in effect including variable rates based on geographic location;
- (d) Any tip compensation paid by the passenger within 24 hours of the dispatched trip;
- (e) Gross payment;
- (f) Net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
- (g) Itemized deductions or fees, including any tolls, surcharges, commissions, lease fees, and other charges;
- (h) The applicable date and time frame for each trip and each portion of a trip; and
- (i) The passenger pick-up and passenger drop-off locations for each trip and each portion of a trip as described by the street, city, and state in which the passenger pick-up and passenger drop-off occurred; however, if the passenger is an unaccompanied minor, only the city and state need be disclosed.

(2) **Weekly trip notices.** At least once a week, a transportation network company must transmit to the driver a written notice, available in a communication system, that contains the following information for trips, or portions of trips, which occurred in the prior week:

- (a) The driver's total passenger platform time;
- (b) Total mileage driven by the driver during passenger platform time;
- (c) The driver's total tip compensation received from passengers within the prior week, itemized by the date of each dispatched trip or portion of a dispatched trip;
- (d) The driver's gross payment, itemized by:
 - (i) Rate(s) per minute;
 - (ii) Rate(s) per mile; and
 - (iii) Any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable price multiplier(s) or variable pricing policy in effect for the trip, including variable rates based on geographic location;
- (e) The driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
- (f) An itemization of deductions or fees, including all tolls, surcharges, commissions, lease fees, and other charges, from the driver's payment; and
- (g) The total passenger platform time performed within the past 365 calendar days or the last 12 full calendar months immediately prior to the date the weekly notice is provided to the driver.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99030, filed 11/30/22, effective 1/1/23.]

AMENDATORY SECTION (Amending WSR 22-24-034, filed 11/30/22, effective 1/1/23)

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements. (1) A transportation network company must pay drivers in accordance with RCW 49.46.300(4) as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the portion of a trip that occurs within Washington.

(2) For a dispatched trip with a passenger pick-up location in a city in the state of Washington with a population above 600,000, all minimum compensation requirements under RCW 49.46.300 (4)(a)(i) apply, regardless of the passenger drop-off location.

(3) For a trip with a passenger pick-up location in the state of Washington outside a city with a population above 600,000 and a passenger drop-off location inside a city with a population above 600,000 in the state of Washington, the greater of:

(a) The combined total of:

(i) The per minute and per mile minimum compensation requirements under RCW 49.46.300 (4)(a)(i) applied to the portion of passenger platform time or mileage that occurs within the city with a population above 600,000; and

(ii) The per minute and per mile compensation requirements under RCW 49.46.300 (4)(a)(ii) applied to the portion of passenger platform time or mileage that occurs outside the city with a population above 600,000; or

(b) The per trip minimum for a dispatched trip under RCW 49.46.300 (4)(a) (~~(1)~~) (i)(B).

(4) **Shared rides.** The greater of the per trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any portion of the shared ride meets the requirements of subsection (1)(a) or (b) of this section.

(5) **More favorable standards.** If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance in a locality outside of Washington, or any rule or regulation issued under such law or ordinance, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99050, filed 11/30/22, effective 1/1/23.]

AMENDATORY SECTION (Amending WSR 22-24-034, filed 11/30/22, effective 1/1/23)

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental and variance for delayed implementation of accessible system

and communication system requirements. (1) Nothing in these rules limits the department's authority to enforce RCW 49.46.200 through 49.46.350, or associated rules, as otherwise provided under Title 49 RCW.

(2) (a) A transportation network company that qualifies under (b) of this subsection may seek a temporary variance on the requirements for an accessible system or a communication system under this chapter by submitting a written application to the director.

(b) A transportation network company who provides less than 1,000,000 dispatched trips within the state in the preceding calendar year qualifies for the variance in this section. Separate entities that form an integrated enterprise shall be considered a single transportation network company under this rule as provided by RCW 49.46.300

(3) (b).

(c) This variance is limited to the requirements to use an accessible system or a communication system to communicate with drivers. The variance does not change the transportation network company's obligations to provide all notices, receipts, paid sick time balances and any other communications required by chapter 49.46 RCW and associated rules to the driver in an electronic format that is readily accessible through either a smartphone application or an online web portal.

(d) A written application for a variance must contain the following:

(i) A description of the specific requirements the qualifying transportation network company seeks to delay;

(ii) Reasons for the variance request, including good cause for the delayed implementation of the requirements for an accessible system or a communication system being sought;

(iii) The length of delay being sought for the requirement(s) and a timeline showing how the transportation network company plans to come into compliance with the applicable requirements of this chapter;

(iv) An explanation of how the transportation network company will ensure drivers are provided the required notifications under this chapter during the variance period; and

(v) Evidence confirming that the transportation network company qualifies under this subsection (~~are met~~).

(e) After reviewing the application, the director may grant a temporary variance to remain valid for up to one year if the director determines that the transportation network company meets the requirements of this section, will ensure that drivers are being provided all required notices under this chapter during the variance period, and has established good cause. The director will take into consideration the timeline provided in the variance application in determining the length of the variance.

(f) "Good cause" means the transportation network company can establish that it is infeasible for the company to come into full compliance with the requirements for the use of an accessible system or a communication system within the necessary time frame.

(g) The director may revoke or terminate the variance order at any time, upon at least 30 days' notice to the transportation network company.

(h) Upon further request by a transportation network company, the director may approve an extension of the variance for up to an additional year. An extension request must contain the information outlined in (d) of this subsection.

(i) If a transportation network company obtains a variance under these rules, within 15 days of being granted the variance the transportation network company must provide drivers notice indicating how they will be receiving the required notifications under this chapter. The transportation network company must make this information readily available to all drivers.

[Statutory Authority: RCW 49.46.300(16) and chapter 49.46 RCW. WSR 22-24-034, § 296-128-99290, filed 11/30/22, effective 1/1/23.]

WSR 23-07-130
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 22, 2023, 7:47 a.m., effective April 22, 2023]

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

Purpose: Amendments to WAC 388-101D-0065 replace details about background checks in WAC 388-101D-0065 with cross-references to chapters 388-113 and 388-825 WAC for consistency. Amendments to chapter 388-825 WAC: Replace inaccurate cross references; add, remove, and amend definitions; clarify service eligibility for state-only funded services and medicaid state plan services; update rules about home care agencies and individual providers to align with chapters 388-71, 388-113, and 388-115 WAC; amend appeal-related rules; add exemptions allowable under statute for enrolled members of federally recognized Indian tribes; amend background check rules, particularly those for residential habilitation center employees; and create comprehensive lists of developmental disabilities administration (DDA)-authorized services.

Citation of Rules Affected by this Order: New WAC 388-825-0581 and 388-825-621; repealing WAC 388-825-073, 388-825-079, 388-825-081, 388-825-325 and 388-825-395; and amending WAC 388-101D-0065, 388-825-020, 388-825-058, 388-825-059, 388-825-067, 388-825-068, 388-825-072, 388-825-074, 388-825-082, 388-825-120, 388-825-150, 388-825-300, 388-825-305, 388-825-310, 388-825-315, 388-825-330, 388-825-340, 388-825-375, 388-825-385, 388-825-396, 388-825-600, 388-825-605, 388-825-610, 388-825-615, 388-825-620, 388-825-625, 388-825-630, 388-825-635, 388-825-650, 388-825-655, 388-825-660, 388-825-670, and 388-845-1615.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, 43.43.837.

Adopted under notice filed as WSR 23-03-013 on January 6, 2023.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-825-615(4), an effective date was changed from January 1, 2023, to July 1, 2023. The date was mistakenly left in the proposed rule text. DDA cannot implement that change retroactively, so the rule text was updated to include an implementation date in the future.

DDA is not proceeding with amendments to WAC 388-825-0571 at this time and the rule was removed from the final rule text. Whether DDA will proceed with amendments to WAC 388-825-0571 is to be determined.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.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 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 33, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 33, Repealed 5.

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 33, Repealed 5.

Date Adopted: March 21, 2023.

Lisa N. H. Yanagida
Chief of Staff

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-08](#) issue of the Register.

WSR 23-07-132

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 22, 2023, 8:33 a.m., effective April 22, 2023]

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

Purpose: The agency is amending these rules to provide medical nutrition therapy for eligible adult medicaid clients. The agency is also updating the program names for alien emergency medical and TAKE CHARGE, consistent with the current names for those programs.

Citation of Rules Affected by this Order: Amending WAC 182-501-0060, 182-555-0300, and 182-555-0500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-05-071 on February 14, 2023.

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 3, 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: March 22, 2023.

Wendy Barcus
Rules Coordinator

OTS-4321.1

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories. (1) This rule provides a table that lists:

- (a) The following Washington apple health programs:
 - (i) The alternative benefits plan (ABP) medicaid;
 - (ii) Categorically needy (CN) medicaid;
 - (iii) Medically needy (MN) medicaid; and
 - (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) ~~((Alien emergency medical (AEM) services))~~ Medical assistance programs for noncitizens (see chapter 182-507 WAC); and

(b) ~~((TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);))~~ Family planning only programs (see WAC 182-532-500 through 182-532-570);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients 20 years of age and younger, and the other addresses clients 21 years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	Y	Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	Y	Y	Y	Y	Y	N
Behavioral health services	Y	Y	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y	Y	Y	Y
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
Health homes	Y	Y	Y	Y	N	N	N
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	Y	Y	Y	Y	Y	Y
Home health services	Y	Y	Y	Y	Y	Y	Y
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y
Medical nutrition therapy	Y	(N) Y	Y	(N) Y	Y	(N) Y	Y
Nursing facility services	Y	Y	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y	Y	Y
Orthodontic services	Y	N	Y	N	Y	N	N
Out-of-state services	Y	Y	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	N	Y
Personal care services	Y	Y	Y	Y	N	N	N
Prescription drugs	Y	Y	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	Y	Y	N
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y
Reproductive health services	Y	Y	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N

¹ Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-501-0060, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021, 41.05.160, 2018 c 159. WSR 19-14-020, § 182-501-0060, filed 6/24/19, effective 7/25/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-07-083, § 182-501-0060, filed 3/17/15, effective 4/17/15. Statutory Authority: RCW 41.05.021, 2013 2nd sp.s. c 4, and Patient Protection and Affordable Care Act (P.L. 111-148). WSR 14-06-045, § 182-501-0060, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 41.05.021. WSR 13-15-044, § 182-501-0060, filed 7/11/13, effective 8/11/13. WSR 11-14-075, recodified as § 182-501-0060, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-501-0060, filed 11/30/06, effective 1/1/07.]

OTS-4320.1

AMENDATORY SECTION (Amending WSR 18-22-060, filed 10/31/18, effective 1/1/19)

WAC 182-555-0300 Eligibility. The medicaid agency covers medical nutrition therapy for clients who are ((~~(1) Age twenty and younger; and~~
~~(2))~~) referred to a registered dietitian for medical nutrition therapy by a physician, physician assistant (PA), or an advanced registered nurse practitioner (ARNP).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-060, § 182-555-0300, filed 10/31/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 18-22-060, filed 10/31/18, effective 1/1/19)

WAC 182-555-0500 Covered services. (1) The medicaid agency covers medically necessary medical nutrition therapy when related to a nutrition-related diagnosis for eligible clients, as described under WAC 182-555-0300.

(2) The agency covers medical nutrition therapy, nutrition assessment, and counseling for conditions that are within the scope of practice for a registered dietitian (RD) to evaluate and treat.

(3) Medical nutrition therapy services may require prior authorization or expedited prior authorization, as described in WAC 182-501-0163.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-060, § 182-555-0500, filed 10/31/18, effective 1/1/19.]

WSR 23-07-133

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 22, 2023, 8:39 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The agency is amending the electronic record and signature components of WAC 182-537-0700 to streamline requirements, eliminate electronic signature log requirements, and decrease administrative burden on school districts.

Citation of Rules Affected by this Order: Amending WAC 182-537-0700.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-05-031 on February 7, 2023.

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 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: March 22, 2023.

Wendy Barcus
Rules Coordinator

OTS-4281.1

AMENDATORY SECTION (Amending WSR 20-14-062, filed 6/26/20, effective 7/27/20)

WAC 182-537-0700 School district documentation requirements.

(1) Providers must document all school-based health care services as required in this section and the medicaid agency's school-based health care services (SBHS) billing guide.

(2) Documentation to justify billed claims must be maintained for at least six years from the date of service.

(3) Records for each student must include, but are not limited to:

(a) A referral or prescription for services by a physician or other licensed health care provider within their scope of practice;

(b) Assessment reports;

(c) Evaluation and reevaluation reports;

(d) Individualized education program (IEP) or individualized family service plan (IFSP);

(e) Attendance records; and

(f) Treatment notes. Treatment notes must include the:

(i) Child's name;

- (ii) Child's ProviderOne client ID;
- (iii) Child's date of birth;
- (iv) Date of service, and for each date of service:
 - (A) Time-in;
 - (B) Time-out;
 - (C) A procedure code for and description of each service provided;
 - (D) The child's progress related to each service;
 - (E) Whether the occupational therapy, speech-language therapy, physical therapy or counseling service described in the note was individual or group therapy;
 - (F) The licensed provider's printed name, handwritten or electronic signature, and title; and
 - (G) Assistants and nonlicensed people, as defined in WAC 182-537-0350, who provide early intervention or health care-related services under supervision, must have a licensed provider review and cosign all treatment notes.
- (4) The agency accepts electronic records and electronic signatures under chapter 1.80 RCW. (~~Maintaining the records in an electronic format is acceptable only if the original records are available to the agency for program integrity activities for up to six years after the date of service.~~) Each school district is responsible for determining what standards are consistent with state and federal electronic record and electronic signature requirements.
- (5) For a signature to be valid, it must be handwritten or electronic. Signature by stamp is acceptable only if the provider is unable to sign by hand due to a physical disability.
- ~~((6) School districts must maintain a signature log to support the provider's signature identity.~~
- ~~(7) The signature log must include the provider's:

 - ~~(a) Printed name;~~
 - ~~(b) Handwritten signature;~~
 - ~~(c) Initials;~~
 - ~~(d) Credentials;~~
 - ~~(e) License number; and~~
 - ~~(f) National provider identifier (NPI).~~~~
- ~~(8) Each school district must establish policies and procedures to ensure complete, accurate, and authentic records. These policies and procedures must include:

 - ~~(a) Security provisions to prevent the use of an electronic signature by anyone other than the licensed provider to whom the electronic signature belongs;~~
 - ~~(b) Procedures that correspond to recognized standards and laws and protect against modifications;~~
 - ~~(c) Protection of the privacy and integrity of the documentation;~~
 - ~~(d) A list of which documents will be maintained and signed electronically; and~~
 - ~~(e) Verification of the signer's identity at the time the signature was generated.)~~~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-14-062, § 182-537-0700, filed 6/26/20, effective 7/27/20; WSR 19-04-095, § 182-537-0700, filed 2/5/19, effective 3/8/19; WSR 16-07-141, § 182-537-0700, filed 3/23/16, effective 4/23/16; WSR 14-20-090, § 182-537-0700, filed 9/29/14, effective 10/30/14. Statutory Authority: RCW 41.05.021. WSR 13-05-017, § 182-537-0700, filed 2/7/13, effective 3/10/13. WSR 11-14-075, recodified as § 182-537-0700, filed 6/30/11,

effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, and 42 C.F.R. 440.110. WSR 09-07-004, § 388-537-0700, filed 3/4/09, effective 4/4/09.]