

WSR 24-18-007

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 22, 2024, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-014.

Title of Rule and Other Identifying Information: Removing licensure barriers for genetic counselors and updating rules to align with recent legislation. The department of health (department) is proposing amendments to WAC 246-825-080 to comply with RCW 18.130.077.

Hearing Location(s): On October 16, 2024, at 1:00 p.m., at the Washington State Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or via Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_GPB0tn0YRCKYy8l2Q9z8_w. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a hybrid public hearing. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

Date of Intended Adoption: October 23, 2024.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Genetic Counselors, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, beginning the date and time of this filing, by October 16, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, TTY 711, email kimboi.shadduck@doh.wa.gov, by October 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to WAC 246-825-080 to remove barriers to entering and remaining in the health care workforce. The updates will streamline and shorten the credentialing process for genetic counselors. The department is proposing to waive existing education and exam requirements to implement 2SHB 1724, codified as RCW 18.130.077.

Reasons Supporting Proposal: Under RCW 18.130.077, all disciplining authorities shall waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days.

The intent of the law is to make disciplining authorities review and adjust licensure requirements to remove barriers to entering and remaining in the health care workforce, and to streamline and shorten the credentialing process. Rule making is necessary to amend licensure requirements in WAC 246-825-080 to align with RCW 18.130.077.

Statutory Authority for Adoption: RCW 18.290.020, and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Statute Being Implemented: RCW 18.130.077.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt from a cost-benefit analysis under RCW 34.05.328 (5)(c)(i) and (b)(v) because the rule is considered a procedural rule and it incorporates statutory requirements dictated by RCW 18.130.077. Additionally, portions of the rule are exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) as they incorporate by reference existing Washington state law and rule without material change.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impact rules regulating individual professional licenses, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 22, 2024
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5472.4

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-825-080 Licensure by endorsement. (~~((1) An applicant for licensure as a genetic counselor who is currently licensed under the laws of another state shall file an application with the department and submit:~~

~~(a) Documentation verifying that the applicant meets the education requirements under WAC 246-825-060;~~

~~(b) Documentation that the applicant holds an unrestricted active license to practice as a genetic counselor in another state;~~

~~(c) Proof of passing the ABGC certification examination or the ABMG general genetics and genetic counseling specialty examinations or the ABMG clinical genetics specialty or subspecialty certification examinations;~~

~~(d) Any other written declarations or documentation, as required by the secretary; and~~

~~(e)) A genetic counselor license may be issued by endorsement if the applicant meets the requirements in either subsection (1) or (2) of this section. An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.~~

~~(1) An applicant may obtain licensure by endorsement if the applicant is currently licensed in a state or jurisdiction with substantially equivalent standards and has been licensed for at least the immediately preceding two years and meets all other requirements of RCW 18.130.077. The applicant shall submit to the department:~~

~~(a) An application on forms provided by the department;~~

~~(b) Proof of licensure history that demonstrates compliance with RCW 18.130.077; and~~

(c) The appropriate licensing fees required under WAC 246-825-990(2).

~~(2) ((The secretary may examine an endorsement application to determine whether the licensing standards of the other state are substantially equivalent to the licensing standards in Washington state.~~

~~(3) An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.)~~ An applicant may obtain licensure by endorsement if the applicant holds the national certification with the American Board of Genetic Counseling (ABGC) or the American Board of Medical Genetics (ABMG) and meets all other requirements of RCW 18.130.077(3). The applicant shall submit to the department:

(a) An application on forms provided by the department;

(b) Proof of national certification;

(c) Proof of compliance with RCW 18.130.077(3); and

(d) The appropriate licensing fees required under WAC 246-825-990(2).

(3) If an applicant does not meet the requirements described in subsection (1) or (2) of this section, the applicant shall apply for initial licensure as established under WAC 246-825-060.

WSR 24-18-009

PROPOSED RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed August 22, 2024, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-01-099.

Title of Rule and Other Identifying Information: Removing licensure barriers for occupational therapy (OT) profession and amending code of ethics sections. The occupational therapy practice board (board) is proposing rule amendments to implement section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, to lower barriers to entering and remaining in the OT workforce and to streamline and shorten the credentialing process. The board is proposing revisions to WAC 246-847-051, 246-847-068, 246-847-070, 246-847-080, and 246-847-125; and adding new WAC 246-847-127.

Additionally, the board is proposing amendments to WAC 246-847-065 Continued competency, to adjust continuing education requirements so they align with the national certifying board and WAC 246-847-170 Code of ethics and standards of professional conduct, to ensure care is provided ethically and professionally.

Hearing Location(s): On October 18, 2024, at 9:05 a.m., virtual via Microsoft Teams meeting. Join on your computer, mobile app or room device. Copy this URL into your browser to join the meeting https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_YWIZNDg4NTMTyJjA5ZS00Y2M5LTg1MTEtMmFmYzI5NzI3NDVh%40thread.v%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%25226b58aff3-5555-4d17-ae13-0788bdac52c5%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=4fa83572-7f03-4376-87af-db2065cbc3fb&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true, or download Microsoft Teams <https://www.microsoft.com/en-us/microsoft-teams/download-app>, Meeting ID 220 261 893 741, Passcode DC3u4E; or call in (audio only) +1 564-999-2000,,78115422# United States, Olympia, Phone Conference ID 781 154 22#; or in person at Green River College, 12401 S.E. 320th Street, Room 230, Auburn, WA 98902. Individuals may attend this hearing either in person or virtually.

Date of Intended Adoption: October 18, 2024.

Submit Written Comments to: Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, kathy.weed@doh.wa.gov, beginning the date and time of this filing, by October 11, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov, by October 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing revisions and a new section of rule to waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days, or for applicants who are certified by the National Board for Certification in Occupational Therapy (NBCOT). The amendments to licensure and endorsement requirements are

being proposed to implement RCW 18.130.077. The board is also proposing changes to the continuing education (CE) section to adjust the required CE hours so that they align with the NBCOT CE requirements, and an amendment to the code of ethics section for clarity and consistency.

Reasons Supporting Proposal: RCW 18.130.077, directs all disciplining authorities for licensed professionals to waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days. The intent of the bill is to make disciplining authorities review and adjust licensure requirements to remove barriers to entering and remaining in the health care workforce, and shorten the credentialing process. Rule making is necessary to amend licensure requirements throughout chapter 246-847 WAC to align with RCW 18.130.077.

The board often receives inquiries on whether an OT can work off of the evaluation of another profession such as a physical therapist. Proposed amendments to the code of ethics section in WAC 246-847-170 would make it clear that an OT must complete their own evaluation of the client. Modifications to the CE hours required in WAC 246-847-065 and throughout the chapter would align it with the NBCOT national standards. This would make it easier for OTs to meet CE requirements while still maintaining a high standard for training and CE.

These proposed amendments would create consistency throughout the chapter, provide faster pathways to licensure, and ease the burden on licensees and applicants while still maintaining sufficient standards of training and care. Rule making is necessary to ensure accountability and safety for licensees and the public that would be enforceable through rule.

Statutory Authority for Adoption: RCW 18.59.130; and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Statute Being Implemented: RCW 18.130.077.

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

Name of Proponent: Occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Amendments are needed to comply with changes mandated by RCW 18.130.077 and all other changes do not impact small businesses as they are related to OT licensure.

Scope of exemption for rule proposal:

Is fully exempt.

August 22, 2024
Mary Spores, OT, Chair
Occupational Therapy Practice Board

OTS-5446.4

AMENDATORY SECTION (Amending WSR 21-06-046, filed 2/25/21, effective 3/28/21)

WAC 246-847-051 Military equivalence. A graduate of a United States military occupational therapy assistant course that is substantially equivalent to the requirements in chapters 18.59 RCW and 246-847 WAC may apply for licensure in this state when the following additional requirements have been submitted to the department:

(1) Proof of completion of the military's residency program included in their education program in lieu of the field work required under WAC 246-847-150; and

(2) Proof of successfully passing the national certification examination as specified in WAC 246-847-080 (~~;~~ and

~~(3) Proof of completion of the online jurisprudence examination for occupational therapy with a passing score of one hundred percent~~)).

AMENDATORY SECTION (Amending WSR 23-18-045, filed 8/30/23, effective 1/1/24)

WAC 246-847-065 Continued competency. Licensed occupational therapists and licensed occupational therapy assistants must complete (~~30~~) 24 hours of continued competency every two years in the form of continuing education and professional development. The licensee must submit documentation upon request as required by chapter 246-12 WAC.

(1) Beginning January 1, 2014, as part of their continued competency, occupational therapists and occupational therapy assistants are required to obtain at least three hours of training every six years in suicide assessment as specified in WAC 246-847-066. The licensee must keep documentation for six years.

(a) Except as provided in (b) of this subsection, an occupational therapist or occupational therapy assistant must complete the first training required by this section during the first full continued competency reporting period after January 1, 2014, or the first full continued competency reporting period after initial licensure, whichever occurs later.

(b) An occupational therapist or occupational therapy assistant applying for initial licensure on or after January 1, 2014, may delay completion of the first training required by this section for six years after initial licensure if:

(i) He or she can demonstrate successful completion of a three-hour training program in suicide assessment that was completed no more than six years prior to the application for initial licensure; and

(ii) The training meets the qualifications listed in WAC 246-847-066.

(2) As of January 1, 2024, occupational therapists and occupational therapy assistants are required to obtain at least two hours in health equity continuing education training every four years. The continuing education course must meet the minimum standards under RCW 43.70.613 and comply with WAC 246-12-800 through 246-12-830. These hours can be counted towards the total required ((30)) 24 hours of continuing education.

(3) The ((30)) 24 hours of continuing education and professional development must be obtained through two or more of the activities listed in this subsection. A minimum of 20 hours must directly relate to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010. Any remaining hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant. Documentation for all activities must include licensee's name, date of activity, and number of hours. Additional specific documentation is defined below:

(a) Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance.

(b) Employer sponsored in-service training or professional study groups. The required documentation for this activity is a certificate or documentation of attendance. A maximum of 15 hours is allowed per reporting period for this category.

(c) Attendance at a professional conference or workshop presented by a professional organization. The required documentation for this activity is a certificate or documentation of attendance.

(d) Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. One course credit is equal to five hours. A maximum of 15 hours is allowed per reporting period for this category.

(e) Interactive online courses and webinars. The required documentation for this activity is a certificate or documentation of completion.

(f) Presentation to professionals, including poster presentations. One hour of preparation time may be counted per hour of presentation time. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period. A maximum of 10 hours is allowed per reporting period for this category.

(g) Guest lecturing on an occupational therapy-related topic in an academic setting. The occupational therapist or occupational therapy assistant must not be primarily employed in academia to submit credit for this activity. The required documentation for this activity is a letter or other documentation from the course instructor. A maximum of 10 hours is allowed per reporting period for this category. One hour of preparation time may be counted per hour of lecture time.

(h) Authoring a publication. The required documentation for this activity is a copy of the publication. For a peer reviewed journal article or chapter in a textbook a maximum of 10 hours is allowed per reporting period for this category. For nonpeer reviewed professional publication a maximum of five hours is allowed per reporting period for this category.

(i) Development of instructional materials incorporating alternative media such as: Video, audio (~~and~~) or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media(~~)~~ or software materials must be available if requested during audit process. A maximum of 10 hours is allowed per reporting period for this category.

(j) Professional manuscript review. The required documentation for this activity is a letter from the publishing organization verifying review of manuscript. One hour of continuing education may be counted per hour of review time. A maximum of 10 hours is allowed per reporting period for this category.

(k) Service on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of 10 hours is allowed per reporting period for this category.

(l) Self-study of peer reviewed, role-related professional journal articles, textbooks or chapters, or professionally developed multimedia and digital media educational materials. The required documentation for this activity is a typed, one-page synopsis of each item written by the licensee or a certificate from OT practice continuing education article. A maximum of 10 hours is allowed per reporting period for this category. Time spent writing synopsis is not reportable.

(m) Direct supervision of an occupational therapy student or occupational therapy assistant student. The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. Forty hours of supervision per student is equal to one hour of continued competency. A maximum of 12 hours per supervisor is allowed per reporting period for this category.

(n) Mentoring. Mentoring in this section means a relationship in which a more experienced or more knowledgeable person helps to guide a less experienced or knowledgeable person for the informal transmission of knowledge and support relevant to professional development. The required documentation for this activity is a written report of goals, objectives and analysis of mentee performance signed by both mentor and mentee. Mentoring credits do not count towards the requirement of 20 hours directly related to the practice of occupational therapy. A maximum of five hours is allowed per reporting period for this category.

(o) Attending a Washington occupational therapy practice board meeting. A maximum of two credits per reporting period is allowed.

(p) Successfully pass the department's occupational therapy jurisprudence examination with a passing score of 100 percent. A maximum of .5 hours per reporting period is allowed.

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

WAC 246-847-068 Expired license. (1) If the license has expired for three years or less, the practitioner must meet the requirements of (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-020 through 246-12-051.

(2) If the license has expired for over three years but no more than five years at the time of application, the practitioner may return to active status by submitting proof to the department of:

(a) Having met the requirements of (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-020 through 246-12-051; and

- (b) Within the two-year period immediately preceding the date of application for reissuance(~~(:~~
- ~~(i) Completion of thirty hours of continued competency as required in WAC 246-847-065; and~~
 - ~~(ii) Passing the Washington occupational therapy jurisprudence examination as offered by the department)) completion of 24 hours of continuing education as required in WAC 246-847-065.~~
- (3) If the license has expired for over five years at the time of application, the practitioner may return to active status by submitting proof to the department of:
- (a) Having met the requirements in subsection (2) of this section;
 - (b) Completion of a board-approved reentry program; and
 - (c) In addition to these requirements, the applicant has the choice of:
 - (i) Completion of extended course work preapproved by the board;
 - or
 - (ii) Successfully retaking and passing the examination(~~(s))~~) as required by WAC 246-847-080.
- (4) For a practitioner who holds an expired credential in Washington but is currently licensed and in active practice in another United States jurisdiction, the practitioner may return to active practice in Washington by (~~submitting proof to the department of:~~
- ~~(a) Having met the requirements described in subsection (2) of this section; and~~
 - ~~(b) Verification of an active license from the United States jurisdiction)) meeting the licensure by endorsement requirements in WAC 246-847-125.~~
- (5) Completion of any additional requirements as required by the board.

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

- WAC 246-847-070 Inactive credential.** (1) A practitioner may obtain an inactive credential. Refer to the requirements of (~~chapter 246-12 WAC, Part 4)) WAC 246-12-090 through 246-12-110.~~
- (2) If the license has been inactive for three years or less at the time of application to change an inactive credential to an active credential, refer to the requirements of WAC 246-12-110.
- (3) If the license has been inactive for over three years but no more than five years at the time of application to change an inactive credential to an active credential, the practitioner may return to active status by submitting proof to the department of:
- (a) Having met the requirements of WAC 246-12-110; and
 - (b) Within the two-year period immediately preceding the date of application for reissuance(~~(:~~
- ~~(i) Completion of thirty hours of continuing education as required in WAC 246-847-065; and~~
 - ~~(ii) Passing the Washington occupational therapy jurisprudence examination as offered by the department)) completion of 24 hours of continuing education as required in WAC 246-847-065.~~
- (4) If the license has been inactive for over five years at the time of application to change an inactive credential to an active cre-

dential, the practitioner may return to active status by submitting proof to the department of:

(a) Having met the requirements in subsection (3) of this section;

(b) Completion of board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examination as required by WAC 246-847-080.

(5) For a practitioner who holds an inactive credential in Washington, but is currently licensed and in active practice in another United States jurisdiction, the practitioner may return to active status in Washington by ~~((submitting proof to the department of:~~

~~(a) Having met the requirements described in subsection (3) of this section; and~~

~~(b) Verification of active practice from the United States jurisdiction)) meeting the licensure by endorsement requirements in WAC 246-847-125.~~

(6) Completion of any additional requirements as required by the board.

AMENDATORY SECTION (Amending WSR 18-21-044, filed 10/8/18, effective 11/8/18)

WAC 246-847-080 Examinations. (1) The occupational therapy practice board recognizes the examination administered by the National Board for Certification in Occupational Therapy or its predecessor organization as the official examination for licensure as an occupational therapist or as an occupational therapy assistant.

(2) To be eligible for a license an applicant must ~~((~~

~~(a)) attain a passing score on the examination determined by the National Board for Certification in Occupational Therapy or its predecessor organization ~~((; and~~~~

~~(b) Successfully pass the department's occupational therapy jurisprudence examination with a passing score of one hundred percent)).~~

AMENDATORY SECTION (Amending WSR 21-06-047, filed 2/25/21, effective 3/28/21)

WAC 246-847-125 Applicants currently licensed in other states or territories. An ~~((initial))~~ applicant currently licensed to practice as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States as provided in RCW 18.59.070(2), may be licensed by endorsement. An applicant shall comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof of:

(1) For those credentialed in another state with standards substantially equivalent to Washington for at least two years immediately preceding their application: Current licensure from another United States jurisdiction ~~((;))~~.

(2) For applicants licensed less than two years in a substantially equivalent state, or licensed in a state that is not substantially equivalent to Washington:

(a) Current licensure from another United States jurisdiction;

(b) Having passed the examination((s)) as defined in WAC 246-847-080; and

((3) For applicants who have been licensed in another jurisdiction for at least two years, completion of thirty hours of continued competency within the two-year period immediately preceding licensure-)) (c) Comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC.

NEW SECTION

WAC 246-847-127 Applicants currently holding national certification. An initial applicant who holds national certification from the National Board for Certification of Occupational Therapy, or its predecessor organization, may be granted Washington licensure upon proof of current certification in good standing if the applicant meets the requirements of RCW 18.130.077(3).

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

WAC 246-847-170 Code of ethics and standards of professional conduct. (1) It is the professional responsibility of occupational therapists and occupational therapy assistants to provide services for clients without regard to race, creed, national origin, gender, handicap or religious affiliation.

(2) Treatment assessment, objectives, and the therapeutic process as determined by the occupational therapist must be formulated to ensure professional accountability.

(3) Services must be goal-directed in accordance with the overall educational, habilitation or rehabilitation plan and shall include a system to ensure professional accountability.

(4) Occupational therapists and occupational therapy assistants shall recommend termination of services when established goals have been met or when further skilled services are no longer beneficial.

(5) Occupational therapists and occupational therapy assistants shall accurately represent their competence, education, training and experience.

(6) Occupational therapists and occupational therapy assistants shall only provide services and use techniques for which they are qualified by education, training, and experience.

(7) Occupational therapists and occupational therapy assistants shall accurately record information and report information as required by facility standards and state and federal laws.

(8) Occupational therapists or occupational therapy assistants shall support all data recorded in the permanent files or records with observations or objective measures of data collection.

(9) Client records shall only be divulged as authorized by law or with the client's consent for release of information.

(10) Occupational therapists and occupational therapy assistants shall not delegate to other personnel those client-related services where the clinical skills and expertise of an occupational therapist or occupational therapy assistant are required.

(11) If, after evaluating the client, the case is a medical case, the occupational therapist shall refer the case to a physician for appropriate medical direction if such direction is lacking.

(a) The occupational therapist shall seek appropriate medical direction on at least an annual basis.

(b) A case is not a medical case if the following is present:

(i) There is an absence of pathology; or

(ii) If a pathology exists, the pathology has stabilized; and

(iii) The occupational therapist is only treating the client's functional deficits.

(12) Occupational therapists shall establish, review, or revise the client's treatment objectives at sufficient intervals to meet the client's needs. The occupational therapy assistant shall collaborate with the occupational therapist in this review of the client's treatment objectives.

(13) Occupational therapists and occupational therapy assistants shall have sufficient command of the English language to read and write effectively in medical charts and to communicate clearly with service recipients and team members.

WSR 24-18-010

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed August 22, 2024, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-083.

Title of Rule and Other Identifying Information: Respiratory care practitioner licensure and endorsement and temporary permits; reducing barriers. The department of health (department) is proposing rule amendments to implement section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, to reduce barriers to entering and remaining in the respiratory care practitioner (RCP) workforce and to streamline and shorten the credentialing process. Additionally, the department is proposing amendments to the temporary permit section in response to 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020, to reduce barriers for military spouses entering and remaining in the RCP workforce. The department is proposing revisions to WAC 246-928-560 and 246-928-570, and new WAC 246-928-575 for applicants with a current national certification.

Hearing Location(s): On October 16, 2024, at 11:00 a.m., at the Washington State Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or via Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_ja20xEXPR-CiDlAsaz8pxQ. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a hybrid public hearing. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

Date of Intended Adoption: October 23, 2024.

Submit Written Comments to: Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, beginning the date and time of this filing, by October 16, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov, by October 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments and adding a new section of rule to waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days, or for applicants who are certified by the National Board for Respiratory Care (NBRC). The amendments to licensure and endorsement requirements are being proposed to implement RCW 18.130.077. The department is also proposing changes to the temporary permit section to extend the length of time the permit can be active from 90 days to 180 days to implement RCW 18.340.020. The department is proposing changing the length of time for all applicants, not just military spouses. This proposed change will remove barriers to entering and remaining in the health care workforce and obtaining full licensure.

Reasons Supporting Proposal: The intent of RCW 18.130.077 is to make disciplining authorities review and adjust licensure requirements to remove barriers to entering and remaining in the health care workforce, and to streamline and shorten the credentialing process. Rule

making is necessary to amend licensure requirements throughout chapter 246-928 WAC to align and comply with RCW 18.130.077.

RCW 18.340.020 creates requirements for issuing a temporary permit to military spouses and requires that a temporary permit be issued to a military spouse for no less than 180 days. Under current rule, temporary permits are issued for only 90 days. Rule making is necessary to amend licensure requirements to align with and comply with RCW 18.340.020.

The proposed amendments create consistency throughout the chapter, provide faster pathways to licensure, and ease the burden on licensees and applicants while still maintaining sufficient standards of training and care. Rule making is necessary to ensure accountability and safety for licensees and the public that would be enforceable through rule.

Statutory Authority for Adoption: RCW 18.89.050; 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077; and 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020.

Statute Being Implemented: RCW 18.130.077 and 18.340.020.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, fax 360-236-2901, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impact rules regulating individual professional licenses, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 22, 2024
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5532.4

AMENDATORY SECTION (Amending WSR 22-11-013, filed 5/9/22, effective 7/1/22)

WAC 246-928-560 Licensure for persons credentialed out-of-state.
 An applicant who is currently or was previously credentialed in another

er state ((or jurisdiction)) may qualify for licensure in Washington state. ((To be considered for licensure:

(1) ~~The applicant shall submit to the department:~~

(a) ~~A completed application on forms provided by the department;~~

(b) ~~Proof of meeting the education requirements in WAC 246-928-520 or subsection (4) of this section; and~~

(c) ~~A fee as specified in WAC 246-928-990.~~

(2) ~~The applicant shall comply with the examination requirements in WAC 246-928-540 or subsection (4) of this section.~~

(3) ~~The applicant shall request written verification directly from all states in which the applicant is or was credentialed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment.~~

(4) ~~Applicants who have)~~

(1) For those credentialed in another state or states with substantially equivalent standards to Washington for at least two years immediately preceding their application, the applicant shall meet all requirements in RCW 18.130.077 and submit:

(a) A completed application on forms provided by the department;

(b) The required application fee; and

(c) Verification from another United States jurisdiction attesting that the applicant has a current license in good standing.

(2) For applicants licensed less than two years in a state with substantially equivalent standards at the time of application, licensed in a state that is not substantially equivalent to Washington, or expired in another state: The applicant must comply with the requirements for licensure as specified in chapter 18.89 RCW and WAC 246-928-420.

(3) An applicant who has completed at least a two-year program recognized by the Canadian Society of Respiratory Therapists (CSRT) in their current list, or any previous lists, and ((have)) has passed the CSRT registry examination; or ((have)) has been issued a registration by the CSRT are considered to have met the educational and examination requirements in this chapter. A Canadian applicant((s-are)) is required to submit verification directly from CSRT, as well as all of the information listed ((above for applicants licensed in another jurisdiction)) in WAC 246-928-420(1).

AMENDATORY SECTION (Amending WSR 22-11-013, filed 5/9/22, effective 7/1/22)

WAC 246-928-570 Temporary practice permits for applicants credentialed out-of-state. (1) An applicant who is currently ((or was previously)) credentialed in another state or jurisdiction substantially equivalent standards to Washington may qualify for a temporary practice permit while pending licensure in Washington state. Applicants must submit the following documentation to be considered for a temporary practice permit:

(a) A completed application on forms provided by the department with the request for a temporary practice permit indicated;

(b) An application fee and a temporary practice permit fee as specified in WAC 246-928-990;

(c) Written verification directly from all states or jurisdictions in which the applicant is or was licensed, attesting that the

applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment; and

(d) Verification of completion of the required education and examination requirements as specified in WAC 246-928-520 and 246-928-540.

(2) The department shall issue a one-time-only temporary practice permit unless the department determines a basis for denial of the license or issuance of a conditional license.

(3) The temporary permit shall expire upon the issuance of a license by the department, initiation of an investigation by the department, or within ((90)) 180 days, whichever occurs first. The permit shall not be extended beyond the expiration date.

(4) Issuance of a temporary practice permit does not ensure that the department will grant a full license. A temporary permit ((holders are)) holder is subject to the same education and examination requirements as ((set forth)) required in WAC 246-928-520 and ((246-928-550)) 246-928-540.

~~((5) The following situations are not considered substantially equal for Washington state licensure:~~

~~(a) Certification of persons credentialed out-of-state through a state-constructed examination; or~~

~~(b) Legacy provisions where proof of education and examination was not required.))~~

NEW SECTION

WAC 246-928-575 Applicants currently holding national certification. An applicant who holds national certification as a registered respiratory therapist from the National Board of Respiratory Care, or its predecessor organization, may be granted Washington licensure upon proof of current national certification in good standing that meets all of the requirements in RCW 18.130.077(3). The applicant shall submit to the department:

(1) An application on forms provided by the department;

(2) Proof of national certification;

(3) Proof of compliance with RCW 18.130.077(3); and

(4) The appropriate licensing fees required under WAC 246-928-990.

WSR 24-18-029

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed August 26, 2024, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-043.

Title of Rule and Other Identifying Information: Changing the scope of practice for optometrists. The board of optometry (board) is proposing amendments to WAC 246-851-400, 246-851-410, 246-851-570 through 246-851-600; and establishing new WAC 246-851-515 to implement SSB 5389 (chapter 400, Laws of 2023), which expands the optometrist scope of practice to include certain advanced procedures and establishes requirements for a license endorsement.

Hearing Location(s): On October 11, 2024, at 9:20 a.m., at the Department of Labor and Industries, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. Join on your computer, mobile app or room device [https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_ZDB1njIyZDYtNzU4Ny00MDYxLWE3ZDctZGJmM2IzODJlOTBk%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%2522ff9584b4-58d6-48a3-bb6f-a317987e6178%2522%257d&data=05%7C02%7CMegan.Maxey%40doh.wa.gov%7C64c3215839b94c248e9608dcaff9d0c5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638578734690938419%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=CCr0uiIk2FsquguhGFVOTtuEYslTbiY1RRMnkJnSYD10%3D&reserved=](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_ZDB1njIyZDYtNzU4Ny00MDYxLWE3ZDctZGJmM2IzODJlOTBk%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%2522ff9584b4-58d6-48a3-bb6f-a317987e6178%2522%257d&data=05%7C02%7CMegan.Maxey%40doh.wa.gov%7C64c3215839b94c248e9608dcaff9d0c5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638578734690938419%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=CCr0uiIk2FsquguhGFVOTtuEYslTbiY1RRMnkJnSYD10%3D&reserved=;); or call in (audio only) 564-999-2000, 833-322-1218 (Toll-free), Phone Conference ID 988 501 129#.

Date of Intended Adoption: October 11, 2024.

Submit Written Comments to: Kristina Bell, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, beginning date and time of this filing, by October 3, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kristina Bell, phone 360-236-4841, fax 360-236-2901, TTY 711, email kristina.bell@doh.wa.gov, by October 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing new WAC 246-851-515 and amendments to WAC 246-851-400, 246-851-410, and 246-851-570 through 246-851-600. The proposed changes are in response to the statutory changes created by SSB 5389 codified in RCW 18.54.010. The bill expands optometrist scope of practice to include advanced procedures an optometrist may perform with a license endorsement. The expanded scope is further defined through a list of prohibited ophthalmic surgical procedures. The board is required to adopt rules for education, training, and exams to qualify for an advanced procedures license endorsement.

By December 1, 2024, and annually thereafter, the board, in coordination with the department of health, must analyze and report on the outcomes of the advanced procedures authorized in RCW 18.53.010 during the previous year. The reporting period expires December 31, 2028.

Reasons Supporting Proposal: SSB 5389 expands the scope of practice for optometrists, including allowing certain advanced procedures with a license endorsement. The new law requires the board to adopt

rules for education, training, and exams to qualify for a license endorsement. The board will also examine rules establishing adverse reporting requirements regarding the advanced procedures performed under the license endorsement.

Statutory Authority for Adoption: RCW 18.54.070; and SSB 5389 (chapter 400, Laws of 2023), codified in RCW 18.53.010.

Statute Being Implemented: RCW 18.53.010 and 18.54.070.

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

Name of Proponent: Board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Bell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4841.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kristina Bell, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 711, email kristina.bell@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only apply to credential holders and not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 26, 2024
Melissa Dacumos, OD, Chair
Board of Optometry

OTS-5565.3

AMENDATORY SECTION (Amending WSR 91-22-061, filed 11/1/91, effective 12/2/91)

WAC 246-851-400 Certification required for use of pharmaceutical agents. (1) Licensed optometrists using pharmaceutical agents in the practice of optometry shall have a minimum of (~~sixty~~) 60 hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for therapeutic purposes an additional minimum (~~seventy-five~~) 75 hours of didactic and clinical instruction, and certification from an institution of higher learning, accredited by those agencies recognized by the United States (~~Office~~) Department of Education or the Council on (~~Post-Secondary Accreditation~~) Higher Education to qualify for certification by the optometry board to use drugs for diagnostic and therapeutic purposes.

(2) Optometrists must obtain the required instructions in both diagnostic and therapeutic categories in order to be eligible to qualify for certification to use drugs for therapeutic purposes.

(3) The instruction in ocular therapeutics must cover the following subject area in order to qualify for certification training:

(a) Ocular pharmacology.

- (i) Corneal barrier, blood-aqueous, /-retinal barrier.
- (ii) Routes of drug administration for ocular disease.
- (iii) Prescription writing and labeling.
- (iv) Ocular side-effects of systemic drugs.
- (b) Anti-infectives.
 - (i) General principles of anti-infective drugs.
 - (ii) Antibacterial drugs.
 - (iii) Treatment of ocular bacterial infections.
 - (iv) Antiviral drugs.
 - (v) Treatment of ocular viral infections.
 - (vi) Antifungal drugs.
 - (vii) Treatment of ocular fungal infections.
 - (viii) Antiparasitic drugs.
 - (ix) Treatment of parasitic eye disease.
- (c) Anti-inflammatory drugs.
 - (i) Nonsteroidal anti-inflammatory drugs (NSAIDS).
 - (ii) General principles of mast-cell stabilizers.
 - (iii) Antihistamines.
 - (iv) Ocular decongestants.
 - (v) Treatment of allergic disease.
 - (vi) Treatment of inflammatory disease.
 - (vii) Cycloplegic drugs.
 - (viii) Treatment of ocular trauma.
 - (ix) Ocular lubricants.
 - (x) Hypertonic agents.
 - (xi) Antiglaucoma drugs.

Each subject area shall be covered in sufficient depth so that the optometrist will be informed about the general principles in the use of each drug category, drug side effects and contra indications, and for each disease covered the subjective symptoms, objective signs, diagnosis and recommended treatment and programs.

AMENDATORY SECTION (Amending WSR 91-06-025, filed 2/26/91, effective 3/29/91)

WAC 246-851-410 Drug formulary. Pursuant to RCW 18.53.010(3) the optometry board adopts the following drug formulary of topically applied drugs administered for ~~((diagnostic and))~~ diagnosis, treatment, or mitigation purposes.

(1) Drugs for diagnostic or therapeutic purposes.

(a) Mydriatics.

(b) Cycloplegics.

(c) Miotics.

(d) Anesthetics.

(2) Drugs for therapeutic purposes only.

(a) Anti-infectives.

(b) Antihistamines and decongestants.

(c) Ocular lubricants.

(d) Antiglaucoma and ocular hypotensives.

(e) Anti-inflammatories.

(f) Hyperosmotics.

(g) ~~((Other topical drugs approved for ocular use by the FDA.))~~

Anti-parasitics.

(h) All other topical drugs and compounds used for the diagnosis, treatment or mitigation of conditions of the eye and adnexa approved by the FDA (both on-label and off-label).

NEW SECTION

WAC 246-851-515 License endorsement to perform advanced procedures. A licensed optometrist may perform advanced procedures as provided by RCW 18.53.010 only after being issued a license endorsement to perform advanced procedures by the secretary. The secretary shall issue an endorsement to perform advanced procedures to a licensed optometrist who provides evidence in a manner acceptable to the board, to include the following:

- (1) A completed application on forms provided by the secretary;
- (2) Provide evidence of:

- (a) A course that contains supervised hands-on experience, with live patients, in the categories of procedures listed in RCW 18.53.010 (2) or is supplemented by residency, internship, or other supervised program that offers hands-on experience with patients. The course must:

- (i) Be offered by an institution of higher education accredited by those agencies recognized by the United States Department of Education or the Council on Higher Education; and

- (ii) Approved by the Washington state board of optometry.

- (b) Successful completion of one of the following examinations for advanced procedures:

- (i) National examination for advanced procedures as defined by the National Board of Examiners in Optometry; or

- (ii) Examination provided by the course offered by an institution that meets (a)(i) of this subsection;

- (3) Enter into an agreement with a qualified physician licensed under chapter 18.71 RCW or an osteopathic physician licensed under chapter 18.57 RCW for rapid response if complications occur during an advanced procedure:

- (a) For the purpose of this section, a qualified physician means a physician who is actively licensed under chapter 18.71 or 18.57 RCW and who is trained in and capable of responding to complications which may arise from the optometric advanced procedures defined in RCW 18.53.010(2);

- (b) The optometrist shall maintain the completed and signed documentation and have it available upon request by the board if audited;

- (4) A licensed optometrist shall report every advanced procedure authorized under RCW 18.53.010(2) and include any complications or adverse events during their annual reporting period. The reporting period ends December 31, 2028;

- (5) Optometrists are excluded from performing the procedures listed in RCW 18.53.010(3). The performance of these procedures would be considered professional misconduct and would be subject to disciplinary action by the board of optometry.

AMENDATORY SECTION (Amending WSR 10-21-067, filed 10/15/10, effective 11/15/10)

WAC 246-851-570 Certification required for use or prescription of drugs administered orally for diagnostic or therapeutic purposes.

(1) To qualify for certification to use or prescribe drugs administered orally for diagnostic or therapeutic purposes, a licensed optometrist must provide documentation that he or she:

(a) Is certified to use or prescribe topical drugs for diagnostic and therapeutic purposes under WAC 246-851-400 and has successfully completed a minimum of (~~sixteen~~) 16 hours of didactic and eight hours of supervised clinical instruction from an institution of higher learning, accredited by those agencies recognized by the United States (~~Office~~) Department of Education or the Council on (~~Postsecondary Accreditation~~) Higher Education; or

(b) Holds a current active optometry license in another state that has licensing standards substantially equivalent to those in Washington state. The licensee's level of licensure must also be substantially equivalent to the licensing standards in Washington state.

(2) The didactic instruction must include a minimum of (~~sixteen~~) 16 hours in the following subject area:

(a) Basic principles of systemic drug therapy;
 (b) Side effects, adverse reactions and drug interactions in systemic therapy;

(c) Review of oral pharmaceuticals:

(i) Prescription writing;

(ii) Legal regulations in oral prescription writing;

(iii) Systemic antibacterials in primary eye care;

(iv) Systemic antivirals in eye care;

(v) Systemic antifungal in eye care;

(vi) Systemic antihistamines and decongestants and their uses in eye care;

(vii) Oral dry eye agents;

(viii) (~~Anti-emetic~~) Antiemetic and their use in eye care;

(ix) Systemic diuretics and their management of elevated IOP;

(x) Systemic epinephrine;

(d) Review of systemic medication in ocular pain management:

(i) Legal regulations with scheduled medication;

(ii) Systemic nonsteroidal anti-inflammatory drugs (NSAIDS);

(iii) Systemic noncontrolled analgesics;

(iv) Systemic controlled substances;

(e) Review of oral medications used for sedation and anti-anxiety properties in eye care:

(i) Controlled anti-anxiety/sedative substances;

(ii) Legal ramifications of prescribing anti-anxiety drugs;

(f) Review of systemic medications used during pregnancy and in pediatric eye care:

(i) Legal ramifications in prescribing to this population;

(ii) Dosage equivalent with pregnancy and pediatrics;

(iii) Medications to avoid with pregnancy and pediatrics;

(g) Applied systemic pharmacology:

(i) Eyelid and adnexal tissue;

(ii) Lacrimal system and peri-orbital sinuses;

(iii) Conjunctival and corneal disorders;

(iv) Iris and anterior chamber disorders;

(v) Posterior segment disorders;

(vi) Optic nerve disease;

- (vii) Peripheral vascular disease and its relationship with ocular disease;
 - (viii) Atherosclerotic disease;
 - (ix) Other/course review.
- (3) The supervised clinical instruction must include at least eight hours in the following subject areas:
- (a) Vital signs;
 - (b) Auscultation;
 - (c) Ear, nose and throat;
 - (d) Screening neurological exam.
- (4) Written examination to cover required curriculum.

AMENDATORY SECTION (Amending WSR 19-04-071, filed 2/1/19, effective 3/4/19)

WAC 246-851-580 Drug list. Pursuant to RCW 18.53.010 ~~((+4))~~ (2) and (7), the optometry board adopts the following drug formulary of oral Schedule II hydrocodone combination products, Schedule III through V controlled substances, ~~((and))~~ legend drugs, and injectable drugs for diagnostic ~~((and))~~, therapeutic, or mitigation purposes in the practice of optometry. No licensed optometrist may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. This section includes the approved oral and injectable drug formulary. Optometrists must consult WAC 246-851-590 for specific guidelines on these drugs or drug categories.

(1) Approved nonscheduled oral drugs include:

- ~~(a) ((Antibiotic agents excluding those listed in WAC 246-851-590(1)).~~
- ~~(b) Antiviral agents.~~
- ~~(c) Antifungal agents listed under WAC 246-851-590(2).~~
- ~~(d) Antihistamine agents.~~
- ~~(e) Decongestant agents.~~
- ~~(f) Dry eye agents.~~
- ~~(g) Anti-emetic agents listed under WAC 246-851-590(3).~~
- ~~(h) Diuretic agents listed under WAC 246-851-590(4).~~
- ~~(i) Nonsteroidal anti-inflammatory agents excluding those listed in WAC 246-851-590(5).~~
- ~~(j)) Analgesics and adjuvant analgesics agents.~~
- (b) Antibiotic agents excluding those listed in WAC 246-851-590(1).
- (c) Antiemetic agents listed under WAC 246-851-590(3).
- (d) Antifungal agents listed under WAC 246-851-590(2).
- (e) Antihistamine agents.
- (f) Antiparasitic agents.
- (g) Antiviral agents.
- (h) Corticosteroid agents.
- (i) Decongestant agents.
- (j) Diagnostic dye agents.
- (k) Diuretic agents listed under WAC 246-851-590(4).
- (l) Dry eye agents.
- (m) Nonsteroidal anti-inflammatory agents excluding those listed in WAC 246-851-590(5).

(2) Approved oral controlled substances limited to Schedule II hydrocodone combination products and Schedules III, IV, and V.

- (a) Schedule II hydrocodone combination products.
- (b) Schedule III controlled substances.
- (c) Schedule IV controlled substances.
- (d) Schedule IV anti-anxiety/sedative ((agents)) substances.
- (e) Schedule V controlled substances.

(3) Approved injectable substances ((Administration of)). Local injections with the exception of, vitreous, subtenon, retrobulbar, intraorbital, or botulinum toxin.

(a) Local anesthetic agents, with or without epinephrine, with or without buffer.

(b) Local antibiotic agents excluding those listed in WAC 246-851-590(1).

(c) Local antifungal agents listed under WAC 246-851-590(2).

(d) Local corticosteroid agents.

(e) Local and IV diagnostic dye agents.

(f) IM epinephrine ((by injection)) for the treatment of anaphylactic shock.

AMENDATORY SECTION (Amending WSR 19-04-071, filed 2/1/19, effective 3/4/19)

WAC 246-851-590 Guidelines for the use of oral and injectable Schedule II hydrocodone combination products and Schedule III through V controlled substances and legend drugs. Nothing in these guidelines should be construed to restrict the recommendation of over-the-counter medications, vitamins, or supplements, nor restrict the ordering of any radiologic or laboratory testing necessary to the diagnosis of any eye related disease that is within the scope of practice of optometry.

(1) All ~~((oral))~~ forms and dosages of antibiotic agents will be available for use excluding: Vancomycin.

(2) Antifungal agents used in eye care shall fall into the following categories:

(a) All ~~((oral))~~ forms ~~((and dosages))~~ of polyene antifungals.

(b) All ~~((oral))~~ forms and dosages of imidazole antifungals.

(c) All ~~((oral))~~ forms and dosages of triazole antifungals.

(3) ~~((Anti-emetic))~~ Antiemetic agents used in eye care shall be the following medications:

(a) All oral forms and dosages of prochlorperazine.

(b) All oral forms and dosages of metoclopramide.

(c) All oral forms and dosages of promethazine.

(4) Diuretic agents used in eye care shall fall into the following categories:

(a) All oral forms and dosages of carbonic anhydrase inhibitors.

(b) All oral forms and dosages of osmotic diuretics. ~~((Osmotic diuretics shall be used only in the case of acute angle closure glaucoma administered in office, outpatient, and/or ambulatory procedures only.))~~

(5) All oral forms and dosages of nonsteroidal anti-inflammatory agents will be available for use. Excluding: Ketorolac tromethamine.

(6) Benzodiazepines prescribed, as anti-anxiety agents, shall be used for in-office, outpatient, and/or ambulatory procedures. This family of medications will be utilized as one dosage unit per prescription.

(7) Schedule II controlled substance will only include hydrocodone combination products.

(8) Schedules III and IV controlled substances will have a maximum quantity count of ~~((thirty))~~ 30 dosage units per prescription.

(9) Specific dosage for use and appropriate duration of treatment of oral medications listed in WAC 246-851-580(1) will be consistent with Food and Drug Administration on- and off-label indications.

(10) Notation of purpose shall be included on all prescriptions.

(11) An optometrist may not:

(a) ~~((Use, prescribe, dispense, or administer oral corticosteroids; or~~

~~(b)))~~ Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

~~((c) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist.))~~ (b) If treatment exceeding the time limitation ~~((is))~~ indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(12) To prescribe oral corticosteroids for more than seven days, an optometrist must consult with a licensed physician.

(13) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized.

~~((13))~~ (14) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance with the exception of Schedule II hydrocodone combination products.

AMENDATORY SECTION (Amending WSR 10-21-067, filed 10/15/10, effective 11/15/10)

WAC 246-851-600 Certification required for administration of epinephrine by injection for treatment of anaphylactic shock. (1) To qualify for certification to administer epinephrine by injection for anaphylactic shock, licensed optometrists must provide documentation that he or she:

(a) Is certified to use or prescribe topical drugs for diagnostic and therapeutic purposes under WAC 246-851-400 and has successfully completed a minimum of four hours of didactic and supervised clinical instruction from an institution of higher learning, accredited by those agencies recognized by the United States ~~((Office))~~ Department of Education or the Council on ~~((Postsecondary Accreditation))~~ Higher Education to qualify for certification by the optometry board to administer epinephrine by injection; or

(b) Holds a current active license in another state that has licensing standards substantially equivalent to those in Washington state. The licensee's level of licensure must also be substantially equivalent to the licensing standards in Washington state.

(2) The didactic instruction must include the following subject area:

- (a) Review of urgencies, emergencies and emergency-use agents;
- (b) Ocular urgencies:

(i) Thermal burns-direct and photosensitivity-based ultraviolet burn;

(ii) Electrical injury;

(iii) Cryo-injury and frostbite;

(iv) Insect stings and bites;

(v) Punctures, perforations, and lacerations;

(c) General urgencies and emergencies:

(i) Anaphylaxis;

(ii) Hypoglycemic crisis;

(iii) Narcotic overdose.

(3) The supervised clinical instruction must include the following subject areas:

(a) Instrumentation;

(b) Informed consent;

(c) Preparation (patient and equipment);

(d) All routes of injections.

~~((4) With the exception of the administration of epinephrine by injection for treatment of anaphylactic shock, no injections or infusions may be administered by an optometrist.))~~

WSR 24-18-030
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Optometry)
[Filed August 26, 2024, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-033.

Title of Rule and Other Identifying Information: Licensed optometrist continuing education (CE) and licensure requirements—Reducing barriers.

In order to comply with section 8 of 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077, and reduce barriers for optometrists to enter and remain in the health care workforce, the board of optometry (board) is proposing to remove the jurisprudence (JP) exam requirement from initial licensure in WAC 246-851-490, and add the JP exam as a requirement for a licensed optometrist's first full CE reporting period in WAC 246-851-090 to be included within the existing CE hour requirement. As a result of this proposed amendment, out-of-state optometrists applying under WAC 246-851-500 will no longer have to complete the JP exam prior to licensure by endorsement.

Additionally, the board is proposing amendments to the CE rule to clarify the minimum number of CE credit hours that must be obtained through synchronous and in-person learning and the maximum number of CE hours that may be earned through asynchronous learning.

Hearing Location(s): On October 11, 2024, at 9:05 a.m., at the Department of Labor and Industries, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. Join on your computer, mobile app or room device https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_ZDB1NjIyZDYtNzU4Ny00MDYxLWE3ZDctZGJmM2IzODJlOTBk%2540thread.v2%2F0%3FContext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522ff9584b4-58d6-48a3-bb6f-a317987e6178%2522%257d&data=05%7C02%7CMegan.Maxey%40doh.wa.gov%7C64c3215839b94c248e9608dcaff9d0c5%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638578734690938419%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=CCr0uiIk2FsqguhGFVOTtuEYslTbiY1RRMnkJnSYD10%3D&reserved=0; or call in (audio only) 564-999-2000, 833-322-1218 (Toll-free), Phone Conference ID 988 501 129#.

Date of Intended Adoption: October 11, 2024.

Submit Written Comments to: Kristina Bell, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, beginning date and time of this filing, by October 3, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kristina Bell, phone 360-236-4841, fax 360-236-2901, TTY 711, email kristina.bell@doh.wa.gov, by October 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement RCW 18.130.077, the board is proposing to remove the JP exam requirement from initial licensure in WAC 246-851-490, and add the JP exam as a requirement for a licensed optometrist's first full CE reporting period in WAC 246-851-090. As a result of this proposed amendment, out-of-state optometrists applying under WAC 246-851-500 will no longer have to complete the JP exam prior to licensure by endorsement. The board is pro-

posing a maximum of three hours be allotted for the JP exam within the existing CE hour requirement.

The board is also proposing to clarify how CE credit hours may be obtained, setting a maximum number of CE credit hours that may be obtained through asynchronous learning and a minimum number of CE credit hours that must be obtained through synchronous and in-person learning.

Reasons Supporting Proposal: RCW 18.130.077 directs all disciplining authorities for licensed professionals to waive education, training, experience, and exam requirements for applicants who have been credentialed in another state or states with substantially equivalent standards for at least two years immediately preceding their application with no interruption in licensure for longer than 90 days.

The intent of the bill is to make disciplining authorities review and adjust licensure requirements to remove barriers to entering and remaining in the health care workforce, and to streamline and shorten the credentialing process. Rule making is necessary to amend licensure requirements in WAC 246-851-490 to align and comply with RCW 18.130.077.

Additionally, the current CE rule has contradicting language in regards to the number of CE credit hours that may be completed through asynchronous learning. The proposed language will clarify the maximum number of CE credit hours that may be obtained through asynchronous learning and the minimum number of CE credit hours that must be obtained through synchronous and in-person learning.

Statutory Authority for Adoption: RCW 18.54.070; and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Statute Being Implemented: RCW 18.130.077.

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

Name of Proponent: Board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Bell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4841.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kristina Bell, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 711, email kristina.bell@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed changes only apply to the credential holder, not the business.

Scope of exemption for rule proposal:

Is fully exempt.

August 26, 2024
Melissa Dacumos, OD, Chair
Board of Optometry

OTS-5564.2

AMENDATORY SECTION (Amending WSR 23-22-068, filed 10/25/23, effective 11/25/23)

WAC 246-851-090 Continuing education requirement. (1) The definitions in this subsection apply throughout this section:

(a) "Asynchronous" means the course instructor and learner are not together at the same time, have no real-time communications, and the content is learner-paced.

(b) "Synchronous in-person" means the instructor is in the same room and face-to-face with the learner, even if other formats are used as audiovisual aids for teaching the course.

(c) "Synchronous virtual" means the course instructor is not physically present but is meeting with learners in real time and can provide immediate feedback.

(2) A licensed optometrist must complete and document 50 total hours of continuing education every two years in compliance with WAC 246-12-170 through 246-12-235. Of the 50 total credit hours:

(a) A licensed optometrist shall complete and successfully pass the board-approved jurisprudence examination during their first full continuing education reporting period after initial licensure. Three hours of continuing education will be granted toward the 50-hour requirement.

(b) A minimum of 10 credit hours must be completed through synchronous in-person learning;

~~((b))~~ (c) A maximum of 25 credit hours may be completed through asynchronous learning;

~~((e))~~ (d) The remaining credit hours may be completed through any combination of synchronous virtual ~~((learning and asynchronous))~~ or synchronous in-person learning; and

~~((d))~~ (e) In the event of a declaration of emergency for the state of Washington or federal declaration of emergency affecting the state of Washington, all credit hours may be completed through synchronous virtual or asynchronous learning for the duration of the declared emergency.

(3) Documentation of continuing education credit hours is a certificate of completion, letter, or other document which must:

(a) Verify or confirm attendance or completion of continuing education hours, with the exception of hours earned under WAC 246-851-170 category 5;

(b) Be provided by the organization providing the education activity; and

(c) Contain at least the following information:

(i) Date of attendance or completion;

(ii) Hours earned; and

(iii) Course title or subject.

(4) A licensed optometrist may alternatively meet the continuing education requirements of this section by providing proof that the licensee:

(a) Holds a current certification by the American Board of Optometry or other certification program deemed substantially equivalent to American Board of Medical Specialties' programs; or

(b) Is practicing solely outside of Washington state and meets the continuing education requirements of the state or territory in which the licensee practices.

(5) Nothing in this section exempts a licensed optometrist from the education and training requirements for:

- (a) Suicide prevention in WAC 246-851-245; ~~((e))~~
- (b) Health equity in WAC 246-851-225; or
- (c) Jurisprudence examination in this section.

AMENDATORY SECTION (Amending WSR 06-22-104, filed 11/1/06, effective 12/2/06)

WAC 246-851-490 Examination and licensure. To qualify for licensure in this state a candidate must:

(1) Successfully complete Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) examinations; the Part III having been administered and successfully completed after January 1, 1993.

(2) Applicants who completed the NBEO Part II examination prior to January 1, 1993, must successfully complete the International Association of Examiners in Optometry (IAB) examination in treatment and management of ocular disease.

(3) ~~((Successfully complete a jurisprudence questionnaire.~~

~~(4))~~ Be a graduate of a state accredited high school or equivalent.

~~((5))~~ (4) Be a graduate of a school or college of optometry accredited by the Council on Optometric Education of the American Optometric Association and approved by the Washington state board of optometry.

~~((6))~~ (5) Be of good moral character.

~~((7))~~ (6) Effective January 1, 2007, all applicants who receive their initial (first) license in Washington state must meet all the certification requirements of RCW 18.53.010 (2) (a), (b), (c), and (d).

~~((8))~~ (7) Effective January 1, 2009, all optometrists licensed in Washington state must be certified under RCW 18.53.010 (2) (a) and (b).

~~((9))~~ (8) Effective January 1, 2011, all optometrists licensed in Washington state must be certified under RCW 18.53.010 (2) (a), (b), (c), and (d).

WSR 24-18-038
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 26, 2024, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-124.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

Hearing Location(s): On October 8, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than October 9, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on September 4, 2024, by 5:00 p.m. on October 8, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on September 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to align aged, blind, or disabled (ABD) program rules with Social Security Administration's revision of the definition of "past relevant work," by reducing the relevant work period from 15 to five years. Related emergency rules are currently in place under WSR 24-13-110.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, 74.62.030.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorri Burns, P.O. Box 45470, Olympia, WA 98504-5470, 509-385-9020.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

August 26, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5038.1

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

(1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~fifteen~~) five years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

WSR 24-18-041

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed August 27, 2024, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-19-029.

Title of Rule and Other Identifying Information: Military spouse temporary practice permits; WAC 246-918-076 (physician assistants) and 246-919-397 (physicians) How to obtain a temporary practice permit— Military spouse proposed updates to incorporate RCW 18.340.020.

Hearing Location(s): On October 11, 2024, at 9:15 a.m., virtual. Register for this virtual meeting to be held via Teams <https://tinyurl.com/ycxn37ve>; or in person at the Department of Health, 111 Israel Road S.E., Room 166, Tumwater, WA 98501. To join the Washington medical commission's (WMC) rules interested parties email list, please visit https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153.

Date of Intended Adoption: October 11, 2024.

Submit Written Comments to: Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview/>, beginning on the date and time of this filing, by October 4, 2024 at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Amelia Boyd, program manager, phone 1-800-525-0127, TTY 711, email medical.rules@wmc.wa.gov, by October 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WMC is amending WAC 246-918-076 and 246-919-397 to align with the provisions of 2SHB 1009 (chapter 165, Laws of 2023), also known as the Military Spouse Employment Act, codified under RCW 18.340.020. These amendments are intended to streamline the permit process for military spouses, ensuring consistency with the new state legislation and improving overall clarity and efficiency in the application process.

The proposed language clarifies the requirements, emphasizes the expedited nature of the license process, aligns the terminology by changing "permit" to "license" in accordance with the bill, refines the terminology, removes outdated requirements, and updates the definitions.

The anticipated effects of the proposed language include:

- Clearer requirements will reduce confusion for applicants and ensure a smoother application process.
- Emphasizing the expedited nature of the license process will likely lead to quicker approval times, benefiting military spouses needing timely access to employment.
- Aligning the terminology with the bill by changing "permit" to "license" will create consistency and reduce potential misunderstandings.
- Refining terminology and removing outdated requirements will ensure the regulations are up-to-date and relevant.
- Updated definitions will provide greater precision and accuracy in interpreting the rules, ensuring they are correctly applied to eligible individuals.

Reasons Supporting Proposal: By clarifying the requirements, the proposal ensures that applicants understand the necessary steps, re-

ducing errors and rejections in the application process. Aligning the terminology by changing "permit" to "license" creates consistency with the legislative language, enhancing legal coherence and interpretation. Refining terminology and removing outdated requirements keep the regulations current and relevant, ensuring they meet present-day standards and needs. Updating definitions provides clearer guidelines for eligibility and application, ensuring that the rules are applied accurately and effectively to all relevant parties.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: 2SHB 1009 (chapter 165, Laws of 2023), codified under RCW 18.340.020.

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

Name of Proponent: WMC, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Kyle Karinen, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4810.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the proposed rules incorporate the military spouse licensure requirements from RCW 18.340.020.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only impact individual licenses, not small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 26, 2024

Kyle Karinen

Executive Director

Washington Medical Commission

OTS-5594.1

AMENDATORY SECTION (Amending WSR 17-18-097, filed 9/6/17, effective 10/7/17)

WAC 246-918-076 How to obtain ((a)) an expedited temporary ((practice permit)) license—Military spouse. A military spouse (~~(or state registered domestic partner of a military person)~~) may receive ((a)) an expedited temporary ((practice permit)) license while completing any specific additional requirements that are not related to training or practice standards for physician assistants under the following conditions.

(1) ((A)) An expedited temporary ((practice permit)) license may be issued to an applicant who is a military spouse (~~(or state registered domestic partner of a military person)~~) and:

(a) Is moving to Washington as a result of the military person's transfer to the state of Washington;

~~(b) ((Left employment in another state to accompany the military person to Washington;~~

~~(e-))~~ Holds an unrestricted, active license in another state or United States territory that ((has)) the commission currently deems to have substantially equivalent licensing standards for a physician assistant ~~((to those))~~ in the state of Washington; and

~~((d))~~ (c) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body ~~((of the))~~ in any other state or ((states)) United States territory in which the applicant holds a license.

(2) ((A)) An expedited temporary ((practice permit)) license grants the ~~((individual))~~ applicant the full scope of practice for the physician assistant.

(3) ((A)) An expedited temporary practice ((permit)) license expires when any one of the following occurs:

(a) ((The)) A full or limited license is ((granted)) issued to the applicant;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the expedited temporary ((practice permit)) license; or

(c) One hundred eighty days after the expedited temporary ((practice permit)) license is issued.

(4) To receive ((a)) an expedited temporary ((practice permit)) license, the applicant must:

~~(a) ((Submit to the commission the necessary application, fee(s), fingerprint card if required, and documentation for the license;~~

~~(b) Attest on the application that the applicant left employment in another state to accompany the military person;~~

~~(e-))~~ Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for physician assistants;

~~((d) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards as a physician assistant in Washington;~~

~~(e-))~~ (b) Submit a written request for a temporary practice permit; and

(c) Submit a copy of the military person's orders and a copy of one of the following:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) A state registered domestic partnership ~~((; and~~

~~(f) Submit a written request for a temporary practice permit)).~~

(5) For the purposes of this section the following definitions shall apply:

(a) "Military spouse" ~~((means the husband, wife,))~~ is someone married to or in a registered domestic ((partner of)) partnership with a military person((-)) who is serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States; and

(b) "Military person" means a person serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States.

OTS-5595.1

AMENDATORY SECTION (Amending WSR 20-22-003, filed 10/21/20, effective 11/21/20)

WAC 246-919-397 How to obtain ((a)) an expedited temporary ((practice permit)) license—Military spouse. A military spouse ((~~or state registered domestic partner of a military person~~)) may receive ((a)) an expedited temporary ((practice permit)) license while completing any specific additional requirements that are not related to training or practice standards for physicians under the following conditions.

(1) ((A)) An expedited temporary ((practice permit)) license may be issued to an applicant who is a military spouse ((~~or state registered domestic partner of a military person~~)) and:

(a) Is moving to Washington as a result of the military person's transfer to the state of Washington;

(b) ((~~Left employment in another state to accompany the military person to Washington;~~

~~(c)~~) Holds an unrestricted, active license in another state or United States territory that ((has)) the commission currently deems to have substantially equivalent licensing standards for a physician ((~~to those~~)) in the state of Washington; and

((~~d~~)) (c) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body ((~~of the~~)) in any other state or ((states)) United States territory in which the applicant holds a license.

(2) ((A)) An expedited temporary ((practice permit)) license grants the ((~~individual~~)) applicant the full scope of practice for the physician.

(3) ((A)) An expedited temporary ((practice permit)) license expires when any one of the following occurs:

(a) ((The)) A full or limited license is ((~~granted~~)) issued to the applicant;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the expedited temporary ((practice permit)) license; or

(c) One hundred eighty days after the expedited temporary ((practice permit)) license is issued.

(4) To receive ((a)) an expedited temporary ((practice permit)) license, the applicant must:

(a) ((~~Submit to the commission the necessary application, fee(s), fingerprint card if required, and documentation for the license;~~

~~(b) Attest on the application that the applicant left employment in another state to accompany the military person;~~

~~(c)~~) Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for physicians;

((~~d~~)) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for physicians in Washington;

~~(e)~~) (b) Submit a written request for a temporary practice permit; and

(c) Submit a copy of the military person's orders and a copy of one of the following:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) Documentation of a state registered domestic partnership.

~~((f) Submit a written request for a temporary practice permit.)~~

(5) For the purposes of this section the following definitions shall apply:

(a) "Military spouse" ~~((means the husband, wife,))~~ is someone married to or in a registered domestic ((partner of)) partnership with a military person((-)) who is serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States; and

(b) "Military person" means a person serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States.

WSR 24-18-075

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 29, 2024, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-017.

Title of Rule and Other Identifying Information: WAC 182-532-001 Reproductive health services—Definitions, and 182-532-510 Family planning only programs—Eligibility.

Hearing Location(s): On October 8, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_qh1B4dZXSpOc-MUfgriFCQ. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 9, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning August 30, 2024, 8:00 a.m., by October 8, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email Johanna.Larson@hca.wa.gov, by September 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 74.09.830 provides full-scope coverage for 12 months postpartum for pregnant or postpartum persons. This coverage is more generous and thus replaces the limited scope "Family planning only—Pregnancy related program." HCA intends to remove language related to this superseded program from chapter 182-532 WAC.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 74.09.830.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Sheldon Prante, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1425.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 29, 2024

OTS-5473.1

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

WAC 182-532-001 Reproductive health services—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

340B dispensing fee - The medicaid agency's established fee paid to a registered and medicaid-participating 340B drug program provider under the public health service (PHS) act for expenses involved in acquiring, storing and dispensing prescription drugs or drug-containing devices (see WAC 182-530-7900). A dispensing fee is not paid for non-drug items, devices, or supplies (see WAC 182-530-7050).

"Complication" - A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

"Comprehensive preventive family planning visit" - For the purposes of this program, a comprehensive, preventive, contraceptive visit that includes evaluation and management of an individual, such as: Age appropriate history, examination, counseling/anticipatory guidance, risk factor reduction interventions, and laboratory and diagnostic procedures that are covered under the client's respective agency program.

"Contraception" - Prevention of pregnancy through the use of contraceptive methods.

"Contraceptive" - Food and Drug Administration (FDA)-approved prescription and nonprescription methods, including devices, drugs, products, methods, or surgical interventions used to prevent pregnancy, as described in WAC 182-530-2000.

~~("Family planning only - Pregnancy related program" - The program that covers family planning only services for eligible clients for ten months following the sixty-day post pregnancy period.)~~

"Family planning only program" - The program that covers family planning only services for eligible clients for ~~((twelve))~~ 12 months from the date the agency determines eligibility. This program was formerly referred to as TAKE CHARGE.

"Family planning services" - Medically safe and effective medical care, educational services, and contraceptives that enable individuals to plan and space the number of their children and avoid unintended pregnancies.

"Natural family planning" (also known as fertility awareness method) - Methods to identify the fertile days of the menstrual cycle and avoid unintended pregnancies, such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle.

"Over-the-counter (OTC)" - Drugs, devices, and products that do not require a prescription to be sold or dispensed. (See WAC 182-530-1050)

"Reproductive health" - The prevention and treatment of illness, disease, and disability related to the function of reproductive systems during all stages of life and includes:

- (a) Related, appropriate, and medically necessary care;
- (b) Education of clients in medically safe and effective methods of family planning; and
- (c) Pregnancy and reproductive health care.

"Reproductive health care services" - Any medical services or treatments, including pharmaceutical and preventive care service or treatments, directly involved in the reproductive system and its processes, functions, and organs involved in reproduction, in all stages of life. Reproductive health care services does not include infertility treatment.

"Reproductive system" - Includes, but is not limited to: Genitals, gonads, the uterus, ovaries, fallopian tubes, and breasts.

"Sexually transmitted infection (STI)" - A disease or infection acquired as a result of sexual contact.

AMENDATORY SECTION (Amending WSR 20-21-024, filed 10/9/20, effective 11/9/20)

WAC 182-532-510 Family planning only program(s)—Eligibility.

~~((To be eligible for one of the family planning only programs listed in this section, a client must meet the qualifications for that program.))~~ For the purposes of this section, "full-scope coverage" means coverage under either the categorically needy (CN) program, the broadest, most comprehensive scope of health care services covered or the alternative benefits plan (ABP), the same scope of care as CN, applicable to the apple health for adults program.

~~(1) ((**Family planning only - Pregnancy related program.**~~

~~(a) To be eligible for family planning only - Pregnancy related services, as defined in WAC 182-532-001, a client must be determined eligible for the Washington apple health for pregnant women program during the pregnancy, or determined eligible for a retroactive period covering the end of a pregnancy. See WAC 182-505-0115.~~

~~(b) A client is automatically eligible for the family planning only - Pregnancy related program when the client's pregnancy ends.~~

~~(c) A client may apply for the family planning only program in subsection (2) of this section up to sixty days before the expiration of the family planning only - Pregnancy related program.~~

~~(2) **Family planning only program.**~~

~~(a)) To be eligible for family planning only services, as defined in WAC 182-532-001, a client must:~~

~~((i)) (a) Provide a valid Social Security number (SSN) or proof of application to receive an SSN, be exempt from the requirement to provide an SSN as provided in WAC 182-503-0515, or meet good cause criteria listed in WAC 182-503-0515(2);~~

~~((ii)) (b) Be a Washington state resident, as described under WAC 182-503-0520;~~

~~((iii)) (c) Have an income at or below ((two hundred sixty)) 260 percent of the federal poverty level, as described under WAC 182-505-0100;~~

~~((iv)) (d) Need family planning services; and~~

~~((v))~~ (e) Have been denied apple health coverage within the last ~~((thirty))~~ 30 days, unless the applicant:

~~((A))~~ (i) Has made an informed choice to not apply for full-scope coverage as described in WAC 182-500-0035 and 182-501-0060, including family planning;

~~((B))~~ (ii) Is age ~~((eighteen))~~ 18 or younger and seeking services in confidence;

~~((C))~~ (iii) Is a domestic violence victim who is seeking services in confidence; or

~~((D))~~ (iv) Has an income of ~~((one hundred fifty))~~ 150 percent to ~~((two hundred sixty))~~ 260 percent of the federal poverty level, as described in WAC 182-505-0100.

~~((b))~~ (2) A client is not eligible for family planning only medical if the client is:

~~((i))~~ (a) Pregnant;

~~((ii))~~ (b) Sterilized;

~~((iii))~~ (c) Covered under another apple health program that includes family planning services; or

~~((iv))~~ (d) Covered by concurrent creditable coverage, as defined in RCW 48.66.020, unless they meet criteria in ~~((a)-(v) of this)~~ subsection (1)(e) of this section.

~~((e) A client may reapply for coverage under the family planning only program up to sixty days before the expiration of the twelve-month coverage period.)~~ (3) The agency does not limit the number of times a client may reapply for coverage.

WSR 24-18-090
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 30, 2024, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-141.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-492-0070 How are my WASHCAP food benefits calculated?

Hearing Location(s): On October 8, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than October 9, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on September 4, 2024, by 5:00 p.m. on October 8, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on September 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments maintain alignment between Washington combined application project (WASHCAP) rules and federal requirements. As a means of maintaining cost neutrality, the United States Department of Agriculture's Food and Nutrition Service periodically adjusts WASHCAP program standards.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Per letter from USDA Food and Nutrition Service.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

August 29, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5046.1

AMENDATORY SECTION (Amending WSR 19-03-023, filed 1/4/19, effective 2/4/19)

WAC 388-492-0070 How are my WASHCAP food benefits calculated?

We calculate your Washington state combined application project (WASHCAP) food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA) unless you report a change as described under WAC 388-492-0080.
 - (a) If you pay more than (~~three hundred twenty dollars~~) \$320 a month for shelter, we use (~~four hundred twenty five dollars~~) \$460 as your shelter cost.
 - (b) If you pay (~~three hundred twenty dollars~~) \$320 or less a month for shelter, we use (~~two hundred ten dollars~~) \$210 as your shelter cost.
 - (c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either (a) or (b) of this subsection to determine your total shelter cost.
 - (4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.
 - (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up

from (~~fifty~~) 50 cents and down from (~~forty-nine~~) 49 cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by (~~thirty~~) 30 percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

WSR 24-18-091

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed August 30, 2024, 2:24 p.m.]

Supplemental notice to WSR 24-07-106.

Preproposal statement of inquiry was filed as WSR 23-17-094.

Title of Rule and Other Identifying Information: General provisions for opioid prescribing and tapering rules for allopathic physicians and physician assistants. The Washington medical commission (commission) is proposing amendments to the commission's opioid prescribing rules to exclude patients with sickle cell disease, to clarify tapering considerations and, in this supplemental, to clarify the use of biological specimen testing. The proposed rules amend WAC 246-918-801 Exclusions, 246-918-870 Periodic review—Chronic pain, and 246-918-900 Tapering considerations—Chronic pain for physician assistants, as well as WAC 246-919-851 Exclusions, 246-919-920 Periodic review—Chronic pain, and 246-919-950 Tapering considerations—Chronic pain for allopathic physicians.

Hearing Location(s): On October 11, 2024, at 9:45 a.m., virtually. Register for this virtual meeting to be held via Microsoft Teams webinar <https://tinyurl.com/ycxn37ve>; or in person at the Department of Health, 111 Israel Road S.E., Room 166, Tumwater, WA 98501. To join the commission's rules interested parties email list, please visit https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153.

Date of Intended Adoption: October 11, 2024.

Submit Written Comments to: Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview/>, medical.rules@wmc.wa.gov, beginning on the date and time of this filing, by October 4, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Amelia Boyd, program manager, phone 1-800-525-0127, TTY 711, email doh.information@doh.wa.gov, by October 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On November 3, 2022, the Center for Disease Control and Prevention (CDC) released the Clinical Practice Guideline for Prescribing Opioids for Chronic Pain (<https://www.cdc.gov/opioids/healthcare-professionals/prescribing/guideline/index.html>) (Guideline). This guideline updated the CDC Guideline for Prescribing Opioids for Chronic Pain—United States, 2016 (2016 Guideline). Since the release of the 2016 guideline, new evidence has emerged on the benefits and risks of prescription opioids for both acute and chronic pain as compared to nonopioid treatments, dosing strategies, opioid dose dependent effects, risk mitigation strategies, and opioid tapering and discontinuation. The update expands the 2016 guideline to provide evidence-based recommendations for prescribing opioid pain medication for acute, subacute, and chronic pain for outpatients aged ≥18 years, excluding pain management related to sickle cell disease, cancer-related pain treatment, palliative care, and end-of-life care. This update leverages new data to expand content on prescription opioids for acute and subacute pain throughout the recommendations.

RCW 18.71.800 and 18.71A.800 directs the commission to consider the guidelines from the CDC when developing opioid prescribing rules. As such, when the new guideline was released in 2022, the commission

contracted with Gregory Terman, MD, to do a comprehensive comparison of the commission's opioid prescribing rules covering physicians (WAC 246-919-850 through 246-919-990) and physician assistants (WAC 246-918-800 through 246-918-835) to the guideline. Dr. Terman is a former pro tempore commissioner of the commission, as well as a professor of anesthesiology and pain medicine at the University of Washington in Seattle. Dr. Terman was asked to recommend changes to the commission's opioid prescribing rules based on the differences found between the commission's opioid prescribing rules and the guideline. Dr. Terman provided the commission with a report, titled "Comparing and Contrasting the 2022 CDC Opioid Prescribing Guideline and the 2019 Washington State Prescribing Rules" (report). Based on the recommendations in the report, the commission is proposing amending the rules as follows:

- (1) Exempting patients with sickle cell disease;
- (2) Stating in rule that not all chronic pain patients need to be tapered off opioids;
- (3) Stating in rule that decisions regarding patient treatment should not be based solely on one aberrant biological specimen test; and
- (4) As a result of the previous public rules hearing, reinstating language requiring biological testing at certain intervals for chronic pain patients.

Reasons Supporting Proposal: The commission is proposing rules based on the following recommendations from Dr Terman's report:

(1) Exempting patients with sickle cell disease: The guideline exempts sickle cell disease along with cancer and patients receiving palliative or end-of-life care and states that these patients "can be at risk for inadequate pain treatment." The commission's rules already exclude patients with cancer and the provision of palliative, hospice, or other end-of-life care because those patients typically need a different level of care than a patient with chronic pain that is not related to cancer, palliative, or end-of-life care.

(2) Stating in rule that not all chronic pain patients need to be tapered off opioids: Since their opioid rules were updated in 2018, the commission has seen a number of complaints from chronic pain patients who have been tapered too rapidly or their opioid regimen has been discontinued completely. The department of health released a statement on September 20, 2019, that spoke to this issue:

"Neither the Washington State opioid prescribing rules nor the CDC opioid prescribing guideline support rapidly tapering or discontinuing opioids for patients on existing opioid doses exceeding 90 mg MME per day under most circumstances. Abruptly tapering or discontinuing opioids in a patient who is physically dependent may cause serious patient harms including severe withdrawal symptoms, uncontrolled pain, psychological distress, and in rare instances, suicide."

In the Report, Dr. Terman notes: "The CDC states that one of the primary reasons for updating the rules, was 'misapplication of the 2016 CDC Opioid Prescribing Guideline (66), benefits and risks of different tapering strategies and rapid tapering associated with patient harm (68, 71-73), challenges in patient access to opioids (6), patient abandonment and abrupt discontinuation of opioids (71)' (page 4). In perhaps the clearest example of the CDC attempting to avoid inflexible interpretations of this version of the Guideline, CDC removed all specific doses and durations from all 12 of the 2022 recommendations - relegating the same doses seen in the 2016 recommendations (based largely on the same data) to the supporting text. The rules (commis-

sion's rules) attempted to avoid dose-focused inflexibility of care by reassuring prescribers that the 'commission will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration" (WAC 246-919-850). Whether this has been successful in avoiding opioid treatment related patient stigma, abandonment and inappropriate discontinuation of opioids is a matter of discussion beyond the scope of this document but the desire to avoid these patient punishments is clearly a similarity between the CDC and the Rules." The commission believes that including in the rule a statement that tapering is not always necessary would be beneficial for achieving this objective.

(3) Stating in rule that decisions regarding patient treatment should not be based solely on one aberrant biological specimen test: In the Report, Dr. Terman highlights that both the commission's rules and the guideline recognize biological specimen testing, such as urine toxicology testing, as an effective risk mitigation strategy for subacute and chronic opioid prescribing. He goes on to say that the guideline describes the correct utilization of biological specimen testing involves applying it universally to prevent bias, emphasizing discussions over punishment for unexpected results, and integrating results into broader clinical assessments to formulate action plans following unexpected outcomes. The commission's rules do not address how to handle an unexpected result. Additionally, the commission has received reports that physicians and physician assistants have stopped prescribing opioids and, in some cases, dismissed patients solely based on a single abnormal biological specimen test. This abrupt change in a patient's care greatly raises the risk of patient harm. By providing some guidance in rule regarding biological specimen testing, the commission is working toward reducing patient harm.

RCW 18.71.800 and 18.71A.800 require that the commission consider the Agency Medical Directors Group (AMDG) and CDC guidelines when adopting rules regarding opioid prescribing. The proposed rules implement the statute's goals and objectives by:

(1) Revising the established rules to be consistent with the CDC's guideline; and

(2) Supporting the overarching goals of RCW 18.71.015 by protecting and promoting public health, safety, and welfare.

On April 26, 2024, a rule hearing was held, during which concerns were raised about the proposed removal of "biological testing" from subsection (1) of both the Periodic review—Chronic pain sections: WAC 246-918-870 and 246-919-920. Due to these concerns, a follow-up workshop was held on June 4, 2024. At this workshop, interested parties, staff and commissioners worked together to refine the draft language. The revised proposal now includes "biological testing" once again, necessitating this supplemental proposal.

Statutory Authority for Adoption: RCW 18.71.017, 18.71.800, 18.71A.800, and 18.130.050.

Statute Being Implemented: RCW 18.71.800 and 18.71A.800.

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Kyle Karinen, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4810.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, TTY 711, email medical.rules@wmc.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules do not impact businesses, they only impact providers.

Scope of exemption for rule proposal:

Is fully exempt.

August 29, 2024

Kyle S. Karinen

Executive Director

Washington Medical Commission

OTS-5085.2

AMENDATORY SECTION (Amending WSR 22-22-039, filed 10/25/22, effective 11/25/22)

WAC 246-918-801 Exclusions. WAC 246-918-800 through 246-918-935 do not apply to:

(1) The treatment of patients with cancer-related pain;

(2) The treatment of patients with sickle cell disease;

(3) The provision of palliative, hospice, or other end-of-life care;

~~((3))~~ (4) The provision of procedural medications;

~~((4))~~ (5) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:

(a) Acute care hospitals licensed under chapter 70.41 RCW;

(b) Psychiatric hospitals licensed under chapter 71.12 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;

(d) Long-term acute care hospitals as defined in RCW 74.60.010;

or

(e) Residential treatment facilities as defined in RCW 71.12.455;

or

~~((5))~~ (6) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection ~~((4))~~ (5) of this section.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-870 Periodic review—Chronic pain. (1) The physician assistant shall periodically review the course of treatment for

chronic pain. The frequency of visits, biological testing, and PMP queries in accordance with the provisions of WAC 246-918-935, must be determined based on the patient's risk category:

- (a) For a high-risk patient, at least quarterly;
- (b) For a moderate-risk patient, at least semiannually;
- (c) For a low-risk patient, at least annually;
- (d) Immediately upon indication of concerning aberrant behavior;

and

- (e) More frequently at the physician assistant's discretion.

(2) During the periodic review, the physician assistant shall determine:

- (a) The patient's compliance with any medication treatment plan;
- (b) If pain, function, and quality of life have improved, diminished, or are maintained; and
- (c) If continuation or modification of medications for pain management treatment is necessary based on the physician assistant's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan.

(3) Periodic patient evaluations must also include:

- (a) History and physical examination related to the pain;
- (b) Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control; and

(c) Review of the Washington state PMP at a frequency determined by the patient's risk category in accordance with the provisions of WAC 246-918-935 and subsection (1) of this section.

(4) If the patient violates the terms of the agreement, the violation and the physician assistant's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

(5) Biological specimen testing should not be used in a punitive manner but should be used in the context of other clinical information to inform and improve patient care. Physician assistants should not dismiss patients from care on the basis of a biological specimen test result alone.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-900 Tapering considerations—Chronic pain. Not all chronic pain patients will need their opioid prescriptions tapered. Relying on medical decision making and patient-centered treatment, the physician assistant shall consider tapering or referral for a substance use disorder evaluation when:

- (1) The patient requests;
- (2) The patient experiences a deterioration in function or pain;
- (3) The patient is noncompliant with the written agreement;
- (4) Other treatment modalities are indicated;
- (5) There is evidence of misuse, abuse, substance use disorder, or diversion;
- (6) The patient experiences a severe adverse event or overdose;
- (7) There is unauthorized escalation of doses; or
- (8) The patient is receiving an escalation in opioid dosage with no improvement in their pain or function.

OTS-5086.2

AMENDATORY SECTION (Amending WSR 22-22-039, filed 10/25/22, effective 11/25/22)

WAC 246-919-851 Exclusions. WAC 246-919-850 through 246-919-985 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The treatment of patients with sickle cell disease;
- (3) The provision of palliative, hospice, or other end-of-life care;
- ~~((3))~~ (4) The provision of procedural medications;
- ~~((4))~~ (5) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:
 - (a) Acute care hospitals licensed under chapter 70.41 RCW;
 - (b) Psychiatric hospitals licensed under chapter 71.12 RCW;
 - (c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;
 - (d) Long-term acute care hospitals as defined in RCW 74.60.010;
- or
- (e) Residential treatment facilities as defined in RCW 71.12.455;
- or
- ~~((5))~~ (6) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection ~~((4))~~ (5) of this section.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

- WAC 246-919-920 Periodic review—Chronic pain.** (1) The physician shall periodically review the course of treatment for chronic pain. The frequency of visits, biological testing, and PMP queries in accordance with the provisions of WAC 246-919-985, must be determined based on the patient's risk category:
- (a) For a high-risk patient, at least quarterly;
 - (b) For a moderate-risk patient, at least semiannually;
 - (c) For a low-risk patient, at least annually;
 - (d) Immediately upon indication of concerning aberrant behavior;
- and
- (e) More frequently at the physician's discretion.
- (2) During the periodic review, the physician shall determine:
- (a) The patient's compliance with any medication treatment plan;
 - (b) If pain, function, and quality of life have improved, diminished, or are maintained; and
 - (c) If continuation or modification of medications for pain management treatment is necessary based on the physician's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan.
- (3) Periodic patient evaluations must also include:
- (a) History and physical examination related to the pain;

(b) Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control; and

(c) Review of the Washington state PMP at a frequency determined by the patient's risk category in accordance with the provisions of WAC 246-919-985 and subsection (1) of this section.

(4) If the patient violates the terms of the agreement, the violation and the physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

(5) Biological specimen testing should not be used in a punitive manner but should be used in the context of other clinical information to inform and improve patient care. Physicians should not dismiss patients from care on the basis of a biological specimen test result alone.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-950 Tapering considerations—Chronic pain. Not all chronic pain patients will need their opioid prescriptions tapered. Relying on medical decision making and patient-centered treatment, the physician shall consider tapering or referral for a substance use disorder evaluation when:

- (1) The patient requests;
- (2) The patient experiences a deterioration in function or pain;
- (3) The patient is noncompliant with the written agreement;
- (4) Other treatment modalities are indicated;
- (5) There is evidence of misuse, abuse, substance use disorder, or diversion;
- (6) The patient experiences a severe adverse event or overdose;
- (7) There is unauthorized escalation of doses; or
- (8) The patient is receiving an escalation in opioid dosage with no improvement in their pain or function.

WSR 24-18-095
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 3, 2024, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-063.

Title of Rule and Other Identifying Information: Monetary penalties and appeals; chapter 296-900 WAC, Administrative rules.

Hearing Location(s): On October 9, 2024, at 9:30 a.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/84561146952?pwd=TOg0gp7W5v0nfrAmT6jxGxSYmjSsyZ.1>; or join by phone (audio only) 253-215-8782, Meeting ID 845 6114 6952, Passcode 9309637529. A prehearing overview will begin at 9:00 a.m. The hearing will start at 9:30 a.m. and will continue until all oral comments are received; and

On October 10, 2024, at 3:00 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/84650759832?pwd=y8Qu8GbIBg593CHGryDnK6urbhmLWG.1>; or join by phone (audio only) 253-215-8782, Meeting ID 846 5075 9832, Passcode 8256498162. A prehearing overview will begin at 2:30 p.m. The hearing will start at 3:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: December 17, 2024.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@lni.wa.gov, fax 360-902-5619, beginning September 4, 2024, 8:00 a.m., by November 1, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Carmyn Shute, administrative regulations analyst, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov, by October 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DOSH initiated this rule making to update how the base penalties are calculated in order to make penalties more effective and address concerns raised through the federal Occupational Safety and Health Administration (OSHA). State Activities Mandated Measures (SAMM) report that Washington penalties continue to be below the national average. OSHA uses the SAMM report to determine whether state plans are as-effective-as OSHA.

The proposed changes include:

- The base penalty rate will be adjusted for inflation every year based on the consumer price index for all urban consumers (CPI-U).
- The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by OSHA.
- Numbering definitions to aid in education and research.
- Removing the terms "you" and "we" and replacing with "employee" and "employer" to provide clarity.
- Removing the term "Washington Industrial Safety and Health Act" or "WISHA" and replacing with "DOSH" where the term is meant to refer to DOSH.
- Removing outdated fax number information.
- Updating USPS mail and email resources for contacting L&I.

Reasons Supporting Proposal: The proposed rule making is needed in order to be at-least-as-effective-as OSHA under the Washington state plan and make needed housekeeping adjustments.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.180, and 49.17.190.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: OSHA, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes are either exempt under RCW 34.05.328 (5)(b)(iv) as housekeeping updates that do not change the substance or effect of the rule or as changes that do not place any new obligations on employers and they do not require employers to incur additional costs of compliance as related to enforcement.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Except for proposed changes to WAC 296-900-14010 Base penalties, all proposed changes are exempt under RCW 34.05.310 (4)(d) as housekeeping updates that do not change the substance or effect of the rule.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Proposed changes under WAC 296-900-14010 Base penalties, have no costs as the penalty calculation rules interpret the penalty provisions that the legislature wrote in chapter 49.17 RCW. Additionally, the changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs of compliance as related to enforcement.

September 3, 2024

Joel Sacks
Director

OTS-5776.3

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-099 Definitions. (1) Affected employees. Employees who could be one of the following:

(a) Exposed to unsafe conditions or practices.

(b) Affected by a request for, or change in, a variance from ((WISHA)) DOSH requirements.

(2) **Applicant.** The entity submitting an application and formal proposal for a safety and health investment projects award.

(3) **Assistant director.** The assistant director for the division of occupational safety and health (DOSH) at the department of labor and industries or ((his/her)) their designated representative.

(4) **Base penalty.** The penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

(5) **Board or BIIA.** The board of industrial insurance appeals.

(6) **Certification.** An employer's written statement describing when and how a citation violation was corrected.

(7) **Citation.** See citation and notice.

(8) **Citation and notice.** Issued to an employer for any violation of ((WISHA safety and health)) DOSH requirements. Also known as a citation and notice of assessment, or simply citation.

(9) **Correction action plans.** Your written plans for correcting a ((WISHA)) DOSH violation.

(10) **Correction date.** The date by which you must meet the ((WISHA)) DOSH requirements listed on either a:

(a) Citation and notice (C&N); or

(b) A corrective notice of redetermination (CNR).

(11) **Corrective notice of redetermination (CNR).** Notice issued ((by WISHA)) after ((WISHA)) DOSH has reassumed jurisdiction over an appealed citation and notice.

(12) **Department.** The department of labor and industries.

(13) **Designated representative.** Any of the following:

(a) Any individual or organization to which an employee gives written authorization.

(b) A recognized or certified collective bargaining agent without regard to written employee authorization.

(c) The legal representative of a deceased or legally incapacitated employee.

(14) **Division or DOSH.** The division of occupational safety and health ((, Washington state department of labor and industries)).

(15) **Documentation.** Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

(16) **Failure to abate (FTA).** A DOSH violation that was cited previously which the employer has not fixed.

(17) **Final order.** Any of the following (unless an employer or other party files a timely appeal):

(a) Citation and notice.

(b) Corrective notice of redetermination.

(c) Decision and order from the board of industrial insurance appeals.

(d) Denial of petition for review from the board of industrial insurance appeals.

(e) Decision from a Washington state superior court, court of appeals, or the state supreme court.

(18) **Final order date.** The date a final order is issued.

(19) **Funding cycle.** How frequently safety and health investment project (SHIP) awards are given.

(20) **Gravity.** For purposes of calculating a penalty means the amount calculated by multiplying a violation's severity rate by its probability rate.

(21) Hazard. Any condition, potential or inherent, which can cause injury, death, or occupational disease.

(22) Imminent danger violation. Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

(23) Inpatient hospitalization. Formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

(24) Interim order. An order allowing an employer to vary from ((WISHA)) DOSH requirements until a permanent or temporary variance is granted.

(25) Medical aid fund. Industrial insurance funds established in chapter 51.44 RCW.

(26) Milestones. Critical points of achievement for the safety and health investment projects, showing progress toward project completion. Milestones are interim accomplishments that define project progress.

(27) Monetary penalties. Fines assessed against an employer for violations of safety and health requirements.

(28) Movable equipment. A hand-held or nonhand-held machine or device that:

(a) Is powered or nonpowered.

(b) Can be moved within or between worksites.

(29) Must. Means mandatory.

(30) Permanent variance. Allows an employer to vary from ((WISHA)) DOSH requirements when an alternate means, that provides equal protection to workers, is used.

(31) Probability. A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 3 (highest).

(32) Product. Any of the following that are developed as the result of a safety and health investment project: Written materials; manufactured materials; designs; equipment; programs; services; workplace changes; or other results of any kind, tangible or intangible.

(33) Reassume jurisdiction. ((WISHA)) DOSH has decided to provide the employer with an informal conference to discuss their appeal.

(34) Recipient. An agency, firm, organization, individual or other legal entity receiving project award funds from the safety and health investment projects.

(35) Repeat violation. A DOSH violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

(36) Serious violation. A DOSH violation when there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

(a) A condition that exists.

(b) One or more practices, means, methods, operations, or processes that have been adopted or are in use.

(37) Severity. For purposes of calculating a penalty means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

(38) **Temporary variance.** Allows an employer to vary from ((WI-SHA)) DOSH requirements under certain circumstances.

(39) **Variance.** Provides an approved alternative to ((WISHA)) DOSH requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

(40) **WAC.** An acronym for Washington Administrative Code, which are rules developed to address state law.

(41) **WISHA.** This is an acronym for the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

~~((You. An employer.))~~

Sample Tag for Cited Moveable Equipment

<p>WARNING: EQUIPMENT HAZARD</p> <p>Cited by the Department of Labor and Industries</p>	Equipment cited:
	Hazard cited:
	For detailed information, see L&I citation posted at:

<p>WARNING: EQUIPMENT HAZARD</p> <p>See reverse side</p>	<p>This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met.</p> <p>The tag/citation copy must not be altered, defaced, or covered by other material.</p>
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AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-100 Scope. This chapter applies to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW:

(1) Employer requests for using an alternative to ((WISHA)) DOSH requirements.

(2) Workplace inspections conducted by ((WISHA)) DOSH.

- (3) Citations and penalties for violations of ((WISHA safety and health)) DOSH requirements.
- (4) How to respond to actions that ((WISHA)) DOSH may take when requirements have been violated.
- (5) Employer correction of cited violations, and notification to ((WISHA)) DOSH when the corrections are made.
- (6) Employer obligations to inform employees.
- (7) Reporting alleged safety and health hazards.
- (8) Appeal and hearing processes for employers and employees.
- (9) Safety and health investment projects (SHIP).

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-110 Variances.

**Summary:
Employer responsibility.**

((You)) <u>Employer</u> must meet the requirements...	in this section:
Applying for a variance	WAC 296-900-11005
Interim orders	WAC 296-900-11010
Renewing a temporary variance	WAC 296-900-11015
Changing a variance	WAC 296-900-11020
Variance hearings	WAC 296-900-11025

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11005 Applying for a variance.

IMPORTANT :

1. A variance provides an approved alternative to ((WISHA)) DOSH requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

2. Variances will **not** be retroactive. Employers are obligated to follow ((WISHA)) DOSH requirements until the variance is granted.

(1) ((You)) The employer must follow steps 1-5 to apply for a variance when ((you)) they wish to use an alternative to ((WISHA)) DOSH requirements as a means to protect ((you)) employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

Note: A form, Variance Application (((F414-021-000)) F414-157-000), is available for requesting variances:
 1. From any L&I office.
 2. On our website under Safety Forms, Variance Application (<http://www.lni.wa.gov/FormPublications/TablesForms/Safety/SafetyHealth.asp>)
<https://lni.wa.gov/forms-publications/F414-157-000.pdf>.

Reference: For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

Step 3: Notify employees before submitting any type of variance request by doing all of the following:

- Posting a copy of the request on ~~((your))~~ the safety bulletin board or where employees will easily access the information such as a break or lunch room.
- Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:

- Mail to:

~~((Assistant Director))~~ Department of Labor & Industries
~~((WISHA Services))~~ Division of Occupational Safety and Health
 P.O. Box 44650
 Olympia, WA 98504-4650

- ~~((Fax to: 360-902-5438))~~ Email to:
DOSHVarianceProgram@Lni.wa.gov
- Take to any L&I office.

Step 5: After receiving a written decision from ~~((WISHA about your request))~~ DOSH, immediately notify affected employees of the decision by using the methods in Step 3.

(2) You must follow the specific requirements of the variance that ~~((WISHA))~~ DOSH has granted.

Notes:

1. If employers fail to follow Steps 1-5 above, the variance cannot be granted.
2. Citations may be issued for failing to follow a variance.
3. Employers can always follow the original ~~((WISHA))~~ DOSH requirements instead of the variance requirements.
4. If your variance is no longer necessary and ~~((you))~~ the employer decide to follow the ~~((WISHA))~~ DOSH requirements instead, please advise ~~((WISHA))~~ DOSH in writing.

Table 1
Requesting a Variance

For this type of variance:	Include the following on ((your)) written application:
<p>Permanent variance</p> <p>– Request a permanent variance if ((you can show that you)) <u>it can be shown that the employer will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements ((from which you are)) the variance is requesting relief.</u></p> <p>Note:</p>	<ul style="list-style-type: none"> • Employer name and address • Employer or employer representative signature • Work locations and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees. • How employees will be notified:

For this type of variance:	Include the following on ((your)) written application:
<ul style="list-style-type: none"> • A permanent variance remains in effect unless ((WISHA)) <u>DOSH</u> modifies or revokes it. Examples of reasons a variance might be revoked include: <ul style="list-style-type: none"> – An employer requests the variance be revoked – Requirements that existed when the variance was approved are modified – The work location is changed 	<ul style="list-style-type: none"> – About the variance request, as required in Step 2 – That they may request a hearing • The following notice on the first page of your posted application, written in large and clear enough print to be easily read: "Attention Employees: Your employer is applying to ((WISHA)) <u>DOSH</u> for a variance from safety and health requirements. You have a right to ask ((WISHA)) <u>DOSH</u> for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, ((WISHA)) <u>DOSH</u> will act on the variance request without a hearing." *This date must be 21 calendar days after the variance request is mailed or delivered.
<p>Temporary variance Request a temporary variance if both of the following apply:</p> <ul style="list-style-type: none"> • New ((WISHA)) <u>DOSH</u> requirements cannot be met for any of the following reasons: <ul style="list-style-type: none"> – Professional or technical people are not available – Materials or equipment are not available – Construction or alteration of facilities cannot be completed by the effective date of the requirements 	<ul style="list-style-type: none"> • Provide all the information required above for permanent variances • Also provide all of the following: <ul style="list-style-type: none"> – An explanation of why ((WISHA)) <u>DOSH</u> requirements cannot be met, including documentation that supports this belief – Steps that will be taken to protect employees until ((WISHA)) <u>DOSH</u> requirements can be met – When ((WISHA)) <u>DOSH</u> requirements will be met

For this type of variance:	Include the following on ((your)) written application:
<ul style="list-style-type: none"> • ((You have)) <u>Employer</u> has an effective plan for meeting ((WISHA)) <u>DOSH</u> requirements as soon as possible. <p>Note:</p> <ul style="list-style-type: none"> • Temporary variances remain in effect: <ul style="list-style-type: none"> - Until current ((WISHA)) <u>DOSH</u> requirements are met - No longer than one year, unless extended 	<ul style="list-style-type: none"> - A statement that this request is from a qualified person who has first hand knowledge of the facts represented

What to expect from ((WISHA)) DOSH:

(3) A review of all variance requests.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact ((you)) the employer or others who may have the needed information.

(b) Visit ((your)) the workplace after contacting ((you)) the employer to make arrangements.

(c) Deny ((your)) the request if ((you do not provide)) information needed to make a decision on it is not provided.

(4) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.

The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) a variance application. See Variance hearings, WAC 296-900-11025.

(5) A written decision either granting or denying the variance.

(a) If granted, the written decision will include all of the following:

(i) The requirement for which the variance applies.

(ii) The locations where the variance applies.

(iii) What ((you)) the employer must do as an alternative means of protecting employees.

(iv) The effective date of the variance.

(v) An expiration date for the variance, if applicable.

(vi) The requirement to post the decision.

(b) If denied, the written decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

(6) ((WISHA)) DOSH will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.

Note: If there is an appealed ((WISHA)) DOSH citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11010 Interim orders.

(Definition:

An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.)

(1) ~~((You))~~ Employers must request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.

Note: An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

What to expect from ((WISHA)) DOSH:

(2) A review of the request for an interim order.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact the employer or others who may have the needed information.

(b) Visit the workplace after contacting the employer to make arrangements.

(c) Deny the request if the employer does not provide information needed to make a decision.

(3) A decision at least ~~((twenty-one))~~ 21 calendar days from when the request was posted for employees.

The ~~((twenty-one))~~ 21-day period allows employees time to request a hearing on ~~((year))~~ the temporary variance renewal. See Variance hearings, WAC 296-900-11025.

(4) A written decision either granting or denying the interim order request.

(a) If granted, the decision will include all of the following:

(i) The requirement for which the interim order applies.

(ii) The locations where the interim order applies.

(iii) What ~~((you))~~ the employer must do as an alternative means of protecting employees.

(iv) The effective date of the interim order.

(v) An expiration date for the interim order.

(vi) The requirement to post the decision.

(b) If denied, the decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

Notes:

1. ((WISHA's)) DOSH's decision to grant or deny an interim order request will not affect the decision on a permanent or temporary variance request.
2. ((WISHA)) DOSH may choose to issue an interim order in response to a variance request, even when the interim order was not specifically requested.
3. Interim orders are effective until they are revoked, or until the variance request is granted or denied.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11015 Renewing a temporary variance.**IMPORTANT :**

Temporary variances can be renewed up to two times, for up to ~~((one hundred eighty))~~ 180 days each time.

(1) ~~((You))~~ The employer must apply for a temporary variance renewal at least ~~((ninety))~~ 90 days before the temporary variance expires.

(2) ~~((You))~~ The employer must send a letter, explaining why more time is needed to fulfill the current requirements.

What to expect from ((WISHA)) DOSH:

(3) A review of the temporary variance renewal request.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact ((you)) the employer or others who may have the needed information.

(b) Visit your workplace after contacting ((you)) the employer to make arrangements.

(c) Deny ((your)) the request if ((you do not provide)) information needed to make a decision is not provided.

(4) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.

The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) a temporary variance renewal. See Variance hearings, WAC 296-900-11025.

(5) A written decision either granting or denying the temporary variance renewal request.

(a) If granted, the written decision will include all of the following:

(i) The requirements for which the temporary variance applies.

(ii) The locations where the temporary variance applies.

(iii) What ((you)) the employer must do as an alternative means of protecting employees.

(iv) The effective date of the temporary variance.

(v) An expiration date for the temporary variance.

(vi) The requirement to post the decision.

(b) If denied, the written decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11020 Changing a variance. (1) ((You)) An employer, ((your)) employees, or their representatives may request changes to variances in writing as follows:

(a) For a permanent variance only after it has been in effect for at least six months.

(b) For a temporary variance, only when renewing it.

Notes:

1. After six months, ((WISHA)) DOSH may initiate changes to a variance if ((they appear to be)) warranted.
2. Employers can decide at any time to follow the original requirement, instead of the requested variance.

What to expect from ((WISHA)) DOSH:

(2) A review of your request to change a variance.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact ((you)) the employer or others who may have the needed information.

(b) Visit ((your)) the workplace after contacting you to make arrangements.

(c) Deny ((your)) the request for a change if ((you do not provide)) information needed to make a decision is not provided.

(3) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.

The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) the request to change a variance. See Variance hearings, WAC 296-900-11025.

(4) A written decision either granting or denying the change in variance.

(a) If granted, the written decision will include all of the following:

- (i) The requirements for which the variance applies.
 - (ii) The locations for which the variance applies.
 - (iii) What ~~((you))~~ the employer must do as an alternative means of protecting employees.
 - (iv) The effective date of the change in variance.
 - (v) An expiration date of the variance, if applicable.
 - (vi) The requirement to post the decision.
- (b) If denied, the written decision will include:
- (i) A brief statement with reasons for the denial.
 - (ii) The requirement to post the decision.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11025 Variance hearings.

IMPORTANT :

Employers, affected employees, or employee representatives may request a hearing on any of the following:

1. Permanent or temporary variance requests.
2. Changes to existing variances.

(1) ~~((You))~~ The employer and ~~((your))~~ affected employees must do all of the following if requesting a variance hearing:

- (a) Put the request in writing and sign it.
- (b) Make sure the request is posted or delivered to the ~~((department))~~ DOSH within ~~((twenty-one))~~ 21 calendar days from the variance application date, or renewal request date.
- (c) Send the written request to ~~((WISHA))~~ DOSH, using one of the following means:

Mail to:

~~((Assistant Director~~
~~WISHA Services))~~ Department of Labor & Industries
Division of Occupational Safety and Health
 P.O. Box 44650
 Olympia, WA 98504-4650

~~((Fax to: 360-902-5438))~~ Email to: DOSHVarianceProgram@Lni.wa.gov
 Take to any L&I office.

(2) ~~((You))~~ The employer must immediately do all of the following when ~~((you))~~ they receive a notice of the hearing from ~~((WISHA))~~ DOSH:

- (a) Post a copy of the notice on the safety bulletin board.
- (b) Give a copy of the notice to affected employees and employee representatives.
- (c) Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

What to expect from ~~((WISHA))~~ DOSH:

(3) ~~((WISHA))~~ DOSH will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:

(a) Within (~~ten~~) 10 days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.

(b) Provide (~~you~~) the employer with a notice of the hearing at least (~~twenty~~) 20 calendar days before the hearing date.

(4) A hearing for the variance or variance change will be conducted as follows:

(a) A (~~WISHA~~) DOSH representative will explain (~~WISHA's~~) DOSH's view of the request for a variance or any proposed change to a variance.

(b) Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.

(5) Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.

- Notes:**
1. (~~WISHA~~) DOSH may record a variance hearing.
 2. Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-120 Inspections.
Summary.**

(You) The employer must meet the requirements...	in this section:
(WISHA) <u>DOSH</u> inspections	WAC 296-900-12005
Inspection techniques	WAC 296-900-12010
Complaints	WAC 296-900-12015

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-12005 (~~WISHA~~) DOSH inspections. (1) (~~WISHA~~) DOSH conducts the following types of **programmed** inspections:

(a) Hazardous workplaces.

(~~WISHA~~) DOSH identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may include any of the following factors:

- (i) Type of industry.
- (ii) Injury and illness data that identifies hazards.
- (iii) Employer's industrial insurance experience.
- (iv) Number, type, and toxicity of contaminants in the workplace.
- (v) Degree of exposure to hazards.
- (vi) Number of employees exposed.
- (vii) Other factors, such as history of employee complaints.

Note: (~~WISHA~~) DOSH periodically reviews the scheduling systems and may adjust the type or significance of each criteria.

(b) High hazard industries that include the following:

- (i) Agriculture.
- (ii) Asbestos renovation and demolition.
- (iii) Construction.

- (iv) Electrical utilities and communications.
- (v) Logging.
- (vi) Maritime.

(2) ((WISHA)) DOSH conducts the following types of **unprogrammed** inspections of workplaces that may be in violation of ((WISHA)) DOSH safety or health requirements or chapter 49.17 RCW, Washington Industrial Safety and Health Act. These inspections may focus only on certain areas or processes in a workplace or, depending on initial findings, may be expanded to include the entire workplace. Unprogrammed inspections may occur because of:

- (a) Complaints from current employees or employee representatives who believe they have been exposed to a hazard because of a violation.
- (b) Referrals from anyone, including former employees, who reasonably believes that workers under ((WISHA)) DOSH jurisdiction are being, or have been, exposed to a hazard because of a violation.
- (c) Workplace deaths, catastrophic events, or serious injury or illness.
- (d) A reason to believe that employees may be in imminent danger of serious injury or death.
- (e) Follow-up inspections to verify that hazards identified in a previous inspection have been corrected.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-12010 Inspection techniques. During an inspection, ((WISHA)) DOSH staff may:

- (1) Take samples, photographs, videotapes, or audiotapes.
- (2) Conduct tests or interviews.
- (3) Ask employees to wear sampling devices.
- (4) Privately question, on or off the worksite, any:
 - (a) Employer.
 - (b) Employer representative.
 - (c) Owner.
 - (d) Operator.
 - (e) Employee.
 - (f) Employee representative.
- (5) Employ any other reasonable investigative techniques.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-12015 Complaints. (1) Employees or employee representatives may file a written complaint if they believe they have been exposed to a hazard that is a violation of ((WISHA safety and health)) DOSH requirements.

What to expect from ((WISHA)) DOSH:

(2) After receiving a written complaint from an employee or employee representative, ((WISHA)) DOSH reviews the allegations and responds according to Table 2, ((WISHA)) DOSH Responses to Employee Complaints.

Table 2

((WISHA)) DOSH Responses to Employee Complaints

For this determination:	((WISHA)) <u>DOSH</u> will take the following actions:
<p>The complaint is within ((WISHA)) <u>DOSH</u> jurisdiction and an inspection does not appear to be needed at this time</p>	<ul style="list-style-type: none"> • Call the employer to discuss the complaint • Set a deadline for the employer to respond in writing • ((Fax)) <u>Email</u> or mail a complaint notification letter to the employer. Before the complaint is ((faxed)) <u>emailed</u> or mailed, the following names will be removed unless specific permission is given to include them: <ul style="list-style-type: none"> – The name of the person submitting the complaint – The names of any employees identified in the complaint • Evaluate the employer's response, and do one of the following: <ul style="list-style-type: none"> – Close the complaint because the issues have been addressed, and send a copy of the employer's response to the person filing the complaint – Inspect the workplace <p>Note:</p> <ul style="list-style-type: none"> • If the complaint is closed and additional information is received from the person filing the complaint disputing the employer's written response, ((WISHA)) <u>DOSH</u> may schedule an inspection • If the person who filed the original complaint requests in writing that ((WISHA)) <u>DOSH</u> review a decision not to conduct an inspection, ((WISHA)) <u>DOSH</u> will review the decision and notify the person in writing of the results

For this determination:	((WISHA)) DOSH will take the following actions:
	<ul style="list-style-type: none"> If the person requesting the review is not satisfied with the results of the review, they may request a second review by the assistant director or designee
The complaint is within ((WISHA)) DOSH jurisdiction and an inspection needs to be conducted	<ul style="list-style-type: none"> Conduct an inspection Issue a citation and notice that shows one of the following: <ul style="list-style-type: none"> Violations found No violations were found Send a letter to the person filing the complaint with inspection results <p>Reference: For citation and notice information, turn to citation and notice, WAC 296-900-130</p>
The complaint is not within ((WISHA)) DOSH jurisdiction	<ul style="list-style-type: none"> Send a written response to the person filing the complaint explaining the matter is not within ((WISHA)) DOSH jurisdiction <p>Note: ((WISHA)) DOSH may make a referral to the proper authority</p>

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-130 Citation and notice.

Summary:

Employer responsibility:

To notify employees when a citation and notice is received.

((You)) The employer must meet the requirements...	in this section:
Citation and notice	WAC 296-900-13005
Copies of future citations and notices	WAC 296-900-13010
Posting citation and notices	WAC 296-900-13015

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13005 Citation and notice.

Definition:

- (1) A citation and notice is a document issued to an employer notifying them of:
- (a) Inspection results.
 - (b) Any specific violations of (~~(WISHA safety and health)~~) DOSH requirements.
 - (c) Any monetary penalties assessed.
 - (d) Employer certification of correction requirements.
 - (e) (~~(WISHA)~~) DOSH will mail or serve by electronic means a citation and notice to you as soon as possible but not later than six months following any inspection or investigation.
- (2) If violations are found, the citation and notice will include:
- (a) A description of violations found.
 - (b) The amount and type of assessed penalties.
 - (c) The length of time given to correct the violations not already corrected during the inspection.
- (3) If no violations are found, a notice of inspection results will be sent stating that no violations were found or penalties assessed.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13010 Copies of future citation and notices. Employees or their representatives wishing to receive copies of citation and notices during the next (~~twelve~~) 12 months must:

- (1) Submit a request for copy of citation and notice form to the following:

Department of Labor and Industries
(~~(Standards and Information)~~) Division of Occupational Safety and Health
P.O. Box 44638
Olympia, WA 98504-4638

Note: A request for copy of citation and notice form can be obtained by:
1. Calling 360-902-5553.
2. Contacting the local L&I office.

Reference: For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from (~~(WISHA)~~) DOSH:

- (2) (~~(WISHA)~~) DOSH may decide who will receive copies of the citation and notices if more than one employee or employee representative requests a copy.
- (3) (~~(WISHA)~~) DOSH may deny a request for copies of citation and notices if the person filing the request is not an employee or employee representative.
- (4) If (~~(WISHA)~~) DOSH grants the request for copies of citation and notices, the employee or employee representative will:
- (a) Receive an approval document from (~~(WISHA)~~) DOSH.
 - (b) Receive all citation and notices issued to that employer for the next (~~twelve~~) 12 months.

(c) Continue receiving citation and notices for an additional ((twelve)) 12 months if a one-year extension is requested and approved.

AMENDATORY SECTION (Amending WSR 21-22-089, filed 11/2/21, effective 12/3/21)

WAC 296-900-13015 Posting citation and notices. (1) ((You)) The employer must immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for seven working days, excluding weekends and holidays, or until all violations are corrected, whichever time period is longer. As an option, an employer may use electronic means to supplement the bulletin board, such as with telework employees.

(2) ((You)) The employer must use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

- (a) A designated employee representative.
- (b) Safety representatives.
- (c) The safety committee.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties

WAC 296-900-14005.

Base penalties

WAC 296-900-14010.

Base penalty adjustments

WAC 296-900-14015.

Increases to adjusted base penalties

WAC 296-900-14020.

((Definitions:))

• ~~"Base penalty" means that penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.~~

• ~~"Division" or "DOSH" means the division of occupational safety and health, Washington state department of labor and industries.~~

• ~~"Gravity" for purposes of calculating a penalty, means the amount calculated by multiplying a violation's severity rate by its probability rate.~~

• ~~"Inpatient hospitalization" means formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.~~

• ~~"Monetary penalties" are fines assessed against an employer for violations of safety and health requirements.~~

• ~~"Probability" means a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest).~~

• ~~"Severity" for purposes of calculating a penalty, means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.~~

• ~~"Standard penalty" means any penalty that does not have an otherwise designated minimum amount.~~

• ~~"WISHA" means the Washington Industrial Safety and Health Act.)~~

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14005 Reasons for monetary penalties.

• DOSH **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• DOSH **will** assess monetary penalties under the following conditions:

- When a citation and notice is issued for a serious, repeat, willful, or egregious violation.

- When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by ~~((WISHA))~~ DOSH under chapter 49.17 RCW, there are penalties specified by other statutes, such as:

- Asbestos construction projects, RCW 49.26.016.
- Right to know (RTK)—SDS, RCW 49.70.190.
- Right to know—Penalty for late payment, RCW 49.70.177.
- Fire-resistant material applicators, chapter 49.105 RCW.

• The minimum civil penalties assessed by DOSH are:

- ~~((One hundred dollars))~~ \$100 for any standard penalty.

- ~~((Two thousand five hundred dollars))~~ \$2,500 per violation for serious violations contributing to a fatality.

- ~~((Five thousand dollars))~~ \$5,000 per violation for all willful violations unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15, and ~~((this state))~~ Washington is required to equal the higher penalty amount to qualify as ~~((a))~~ an approved OSHA State Plan ~~((state))~~.

- ~~((Two hundred fifty dollars))~~ \$250 per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14010 Base penalties. The base penalty rate will be adjusted for inflation every year based on the consumer price index for all urban consumers (CPI-U). The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by the United States Occupational Safety and Health Administration (OSHA).

• DOSH calculates the base penalty for a violation by considering the following:

- Specific ~~((amounts))~~ factors that are dictated by statute;

OR

- By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

Note: Most base penalties are calculated by the gravity method.

- Severity and probability are established in the following ways:

Severity:

- Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

- Severity rates are expressed in whole numbers and range from 1 (lowest) to 3 (highest).

- Tables 3 and 4 are used to determine the severity rate for a violation.

**Table 3
Severity - Serious Violations**

3	<ul style="list-style-type: none"> • Death • Injuries involving permanent disability • Chronic, irreversible illness
2	<ul style="list-style-type: none"> • Disability of a limited nature • Injuries or reversible illnesses resulting in hospitalization
1	<ul style="list-style-type: none"> • Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery

**Table 4
Severity - General Violations**

General violation
<ul style="list-style-type: none"> • Conditions that could cause injury or illness to an employee but would not result in serious physical harm

Probability:

Definition:

A probability rate is a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest). See Table 5.

- When determining probability, DOSH considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.

- Number of employees exposed.

- Instances, or number of times, the hazard is identified in the workplace.

- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.

- Weather and other working conditions.

- Employee skill level and training.

- Employee awareness of the hazard.

- The pace, speed, and nature of the task or work.

- Use of personal protective equipment.

- Other mitigating or contributing circumstances.

**Table 5
Probability**

3	<ul style="list-style-type: none"> If the factors considered indicate the likelihood of injury or illness would be relatively high.
2	<ul style="list-style-type: none"> If the factors considered indicate the likelihood of injury or illness would be moderate.
1	<ul style="list-style-type: none"> If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.

- Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

**Table 6
Gravity-Based Penalty - Serious Violations
Severity x Probability = Gravity**

9 High	(((\$7,000)) \$7,140 + Inflation Factor + 2% catch up to national penalty average, if needed
6	(((\$6,000)) \$6,120 + Inflation Factor + 2% catch up to national penalty average, if needed
4	(((\$4,000)) \$4,080 + Inflation Factor + 2% catch up to national penalty average, if needed
3	(((\$3,000)) \$3,060 + Inflation Factor + 2% catch up to national penalty average, if needed
2	(((\$2,000)) \$2,040 + Inflation Factor + 2% catch up to national penalty average, if needed
1 Low	(((\$1,000)) \$1,020 + Inflation Factor + 2% catch up to national penalty average, if needed

Note: Inflation factor will be adjusted each year based on the consumer price index for all urban consumers (CPI-U). The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by the United States Occupational Safety and Health Administration (OSHA).

The minimum penalty for a standard serious violation = (~~one hundred dollars~~) \$100.

(A penalty is required by statute for a serious violation; where adjustments would result in a penalty below the minimum, the minimum will be applied.)

The maximum statutory penalty for a serious violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seven thousand dollars~~) \$7,000, whichever is more.

Links:

- Occupational Safety and Health Administration—OSHA penalties.
- Occupational Safety and Health Administration 29 C.F.R. 1903.15 Proposed penalties.
- RCW 49.17.180 Violations—Civil penalties.

**Table 7
General Violations Penalty**

General violation (first time nonstatutory)	\$0
General violation base penalty	\$200

A penalty is not applied to first time general violations. The base penalty is used to calculate the penalty for willful, repeat, or failure to abate general violations.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14015 Base penalty adjustments.

• Tables 8 through 11 describe the various factors DOSH considers when adjusting a base penalty, and the effect on the fine.

- The minimum adjusted base penalty for any standard violation carrying a penalty is (~~one hundred dollars~~) \$100.

- The minimum adjusted penalty for serious violations contributing to a fatality is (~~two thousand five hundred dollars~~) \$2,500.

- The minimum penalty for willful violations is (~~five thousand dollars~~) \$5,000 per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

- The maximum adjusted base penalty for a violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seven thousand dollars~~) \$7,000, whichever is more.

• No adjustments are made to minimum penalty amounts specified by statute.

**Table 8
Employer Inspection History**

History Assessment	Penalty Adjustment
Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.	-10%
Average: No previous inspections or inspections with less than two serious violations on average.	None
Below Average: Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.	+10%

• History is based on the prior three years statewide.

• No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9 or any violations contributing to a fatality.

**Table 9
Good Faith**

Good Faith	Penalty Adjustment
Good	-20%
Average	None
Below Average	+20%

Based on:

- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.
- Efforts to fully communicate safety and health policies.
- Employees are clearly involved in the safety and health programs.
- Management's commitment at all levels is apparent.
- Employer's injury and illness rate.

No reduction is given for violations classified as willful, repeat, or failure to abate.

**Table 10
Abatement Quick-Fix Reduction**

Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial	-15%
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No reduction is given for:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employees.
- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

**Table 11
Size of Workforce**

Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

Based on workforce size nationwide.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14020 Increases to adjusted base penalties.

- Tables 12 through 14 describe circumstances where an increase may be applied by DOSH to an adjusted base penalty.

**Table 12
Repeat Violations
(~~(increases the adjusted base penalty, after willful assessment)~~)**

1 st time x 2
2 nd time x 5
3 rd time x 8
4 th time x 12
5 th time x 15

History is based on the prior three years.

The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seventy thousand dollars~~) \$70,000, whichever is more.

Note: For repeat willful violations the repeat adjustment is applied after the willful assessment.

**Table 13
Willful Violations**

Multiply the adjusted based penalty by 10.
<ul style="list-style-type: none"> No reduction is given for good faith, history, or abatement quick-fix.

The minimum statutory penalty for willful violations is (~~five thousand dollars~~) \$5,000 per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

The maximum statutory penalty will be the maximum civil penalty established under the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seventy thousand dollars~~) \$70,000, whichever is more.

**Table 14
Failure to Abate**

Increases the adjusted base penalty:
Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.
<ul style="list-style-type: none"> No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seven thousand dollars~~) \$7,000, whichever is more, per day if violation is not corrected.

**Table 15
Egregious Violation**

If the violation was willful and at least one of the following: <ul style="list-style-type: none"> The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses. The violation resulted in persistently high rates of worker injuries or illnesses. 	<ul style="list-style-type: none"> The adjusted base penalty may be increased as follows: <ul style="list-style-type: none"> With a separate penalty issued for each instance, the employer fails to follow a specific requirement.
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- The employer has an extensive history of prior violations.
- The employer has intentionally disregarded its safety and health responsibilities.
- The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties.
- The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.

**Table 16
Penalty Calculation Method**

- All penalty adjustments factors are summed.
- History: Up to a 10% reduction
 - Good Faith: Up to a 20% reduction
 - Quick-Fix: Up to a 15% reduction
 - Size: Up to a 70% reduction

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-150 Certifying violation corrections.

Summary:

Employer responsibility:

- (1) To certify that violations to safety and health requirements have been corrected.
- (2) To submit, if required:
 - (a) Additional information.
 - (b) Correction action plans.
 - (c) Progress reports.
- (3) To comply with correction due dates.
- (4) To tag cited moveable equipment to warn employees of a hazard.
- (5) To inform affected employees that each violation was corrected.

(You) The employer must meet the requirements...	in this section:
Certifying violation correction	WAC 296-900-15005
Violation correction action plans	WAC 296-900-15010
Progress reports	WAC 296-900-15015

((You)) The employer must meet the requirements...	in this section:
Timeliness of violation correction documents	WAC 296-900-15020
Inform employees about violation correction	WAC 296-900-15025
Tag moveable equipment	WAC 296-900-15030

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15005 Certifying violation correction.

Definition:

A correction date is the date by which you must meet the (~~(WI-SHA))~~ DOSH requirements listed on either a: Citation and notice (C&N) or a corrective notice of redetermination (CNR).

(1) (~~((You))~~) The employer must certify in writing within (~~(ten))~~ 10 calendar days following the correction date shown on the C&N that each violation has been corrected. Include the following:

- (a) Employer name and address.
- (b) The inspection number involved.
- (c) The citation and item numbers which have been corrected.
- (d) The date each violation was corrected and the method used to correct them.

(e) A statement that both:

- (i) Affected employees and their representatives were informed that each violation was corrected; and
- (ii) The information submitted is accurate.

(f) Employer's signature or the signature of employer's designated representative.

Note: Certification is not required if the (~~(WISHA))~~ DOSH compliance officer indicates in the C&N, or a reassumption hearings officer indicates in a CNR, that they have already been corrected.

(2) (~~((You))~~) The employer must submit additional documentation for willful or repeated violations, demonstrating that (~~(they))~~ the violations were corrected. This documentation may include, but is not limited to:

- (a) Evidence of the purchase or repair of equipment.
- (b) Photographic or video evidence of corrections.
- (c) Other written records.

(3) (~~((You))~~) The employer must submit additional documentation for serious violations when required in the C&N or CNR.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15010 Violation correction action plans. (1)

(~~((You))~~) The employer must submit a written violation correction action plan within (~~((twenty-five))~~) 25 calendar days from the final order date when the citation and notice or corrective notice of redetermination requires it. Include all of the following in the violation correction action plan:

- (a) Identification of the violation.

- (b) The steps that will be taken to correct the violation.
- (c) A schedule to complete the steps.
- (d) A description of how employees will be protected until the corrections are completed.

What to expect from ((WISHA)) DOSH:

- (2) ((WISHA)) DOSH will notify you in writing only if your plan is not adequate, and describe necessary changes.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15015 Progress reports. (1) ((~~You~~)) The employer must submit written progress reports on corrections when required in the citation and notice (C&N) or corrective notice of redetermination (CNR), and briefly explain the:

- (a) Status of each violation.
- (b) Action taken to correct each violation.
- (c) Date each action has or will be taken.

What to expect from ((WISHA)) DOSH:

- (2) ((WISHA)) DOSH will state in the C&N or CNR if progress reports are required, including:

- (a) Items that require progress reports.
- (b) Date when an initial progress report must be submitted. The initial progress report is due no sooner than ((~~thirty~~)) 30 calendar days after you submit a correction action plan.
- (c) Whether additional progress reports are required, and the dates by which they must be submitted.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15020 Timeliness of violation correction documents.

What to expect from ((WISHA)) DOSH:

((WISHA)) DOSH will determine the timeliness of violation correction documents by reviewing the following:

- (1) The postmark date for documents sent by mail.
- (2) The date received by other means, such as personal delivery, email or fax.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15025 Inform employees about violation correction.

(1) ((~~You~~)) The employer must inform employees about violation corrections by doing the following:

- (a) Post a copy of each violation correction document submitted to ((WISHA)) DOSH, or a summary, near the place where the violations occurred, if practical.

If posting near the place where the violation occurred is not practical, such as with a mobile work operation, post in a place read-

ily accessible to affected employees or take other steps to fully communicate actions taken to affected employees or their representatives.

(b) Keep violation correction information posted for at least three working days after submitting the correction documents to ((WISHA)) DOSH.

(c) Give notice to employees and their representatives on or before the date you submit correction information to ((WISHA)) DOSH.

(d) Make sure that all posted correction documents are not altered, defaced, or covered by other materials.

(2) ((You)) The employer must inform employees and their representatives of their right to examine and copy all correction documents submitted to ((WISHA)) DOSH.

If they ask to examine or copy documents within three working days of receiving notice that the documents were submitted to ((WISHA)) DOSH, provide access or copies no later than five days after receiving their request.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15030 Tag moveable equipment. (1) ((You)) The employer must tag moveable equipment that has been cited to warn employees if a hazard has not been corrected, as follows:

(a) Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component.

(b) For hand-held equipment, tag it immediately after you receive a citation.

(c) For other equipment, tag it before moving it within the work-site or between worksites.

Note: The tag should warn employees about the nature of the violation and tell them where the citation is posted.

Reference: For a sample tag that meets this requirement, go to helpful tools, sample tag for cited moveable equipment, in the resources section of this chapter.

(2) ((You)) The employer must make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials.

(3) ((You)) The employer must keep the tag or copy of the citation attached to movable equipment until one of the following occurs:

(a) Violations have been corrected and all certification documents have been submitted to ((WISHA)) DOSH.

(b) Cited equipment is permanently removed from service.

(c) The final order from an appeal vacates (voids) the violation.

Note: Safety standards for construction work, chapter 296-155 WAC, has information on warning tags. ((You)) The employer can use warning tags that meet those requirements instead of the warning tags required by this rule.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-160 More time to comply.

Summary:

((Your)) Employer responsibility:

To submit timely requests when more time is needed to correct violations. To post requests for more time for employees.

((You)) Employer must meet the requirements...	in this section:
Requesting more time to comply	WAC 296-900-16005
Post ((WISHA's)) DOSH's response to requests for more time	WAC 296-900-16010
Correction date hearing requests	WAC 296-900-16015
Post ((WISHA's)) DOSH's violation correction hearing notice	WAC 296-900-16020
Violation correction hearing procedures	WAC 296-900-16025
Post the violation correction hearing decision	WAC 296-900-16030

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16005 Requesting more time to comply.

IMPORTANT:

~~((You))~~ The employer can request more time to correct violations if they:

1. Have made a good faith effort to correct the violation.

2. Have not corrected the violation because of factors beyond their control.

(1) ~~((You))~~ The employer must submit any requests for more time to correct violations in writing. Requests must be received or post-marked before midnight of the correction date shown on the citation and notice (C&N) or corrective notice of redetermination (CNR), and include:

(a) The business name.

(b) The address of the workplaces.

(c) The citation and the correction dates to be extended.

(d) The new correction date and length of correction period being requested.

(e) A description of the actions that have been, and are being, taken to meet the correction dates in the C&N or CNR.

(f) Factors preventing correction of violations by the date required.

(g) The means that will be used to protect employees while the violation is being corrected.

(h) Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.

(i) Employer's signature or the signature of the employer's representative.

(j) Date.

(2) ~~((You))~~ The employer must submit requests by one of the following methods:

(a) First class mail, postage prepaid to any L&I office.

(b) Take to any L&I office.

~~((c) Fax to the number shown in the C&N.))~~

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from ((WISHA)) DOSH:

(3) ((WISHA)) DOSH may accept late requests if they are both:

(a) Received within five days following the related correction date; and

(b) Accompanied by ((~~you~~)) a written statement explaining the exceptional circumstances that caused the delay.

Note: ((WISHA)) DOSH does not accept late requests when compliance activity has already started.

(4) ((WISHA)) DOSH may respond to telephone requests or personal conversations asking for more time to comply if timely, and followed up in writing within ((~~twenty-four~~)) 24 hours.

(5) ((WISHA)) DOSH may conduct an investigation before making a decision whether to grant a request for more time.

(6) ((WISHA)) DOSH will make a decision whether or not to grant the employer more time. Once made, the decision remains in effect unless an employee or employee representative requests a hearing.

(7) ((WISHA)) DOSH will keep the original correction date in effect unless a notice granting more time is sent.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16010 Post ((WISHA's)) DOSH's response to requests for more time. (1) ((~~You~~)) The employer must post notices from ((WISHA)) DOSH approving additional time to correct citations, with the related citation, immediately upon receipt.

(2) ((~~You~~)) The employer must keep the notices posted until one of the following occur:

(a) The correction date has passed.

(b) A hearing notice is requested and posted.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16015 Correction date hearing requests.**IMPORTANT :**

1. Affected employees or their designated representatives may request a hearing if they disagree with ((WISHA's)) DOSH's decision to grant an employer more time to correct a violation.

2. Employers may request a hearing if ((WISHA)) DOSH denies their request for more time to correct a violation.

((~~You, you~~)) Employers, employees, or their representatives must send requests for hearings, if desired, in writing no later than ((~~ten~~)) 10 calendar days after the issue date of the notice granting more time to correct a violation to:

Mail to:

((~~Assistant Director for WISHA Services~~))

Department of Labor & Industries

Attn: ((WISHA)) DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

Fax to: 360-902-5581

Email to: DOSHappeals@Lni.wa.gov

Take to any department service location.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16020 Post ((WISHA's)) DOSH's violation correction hearing notice. ((You)) The employer must post ((WISHA's)) DOSH's hearing notice or a complete copy until the hearing is held, along with the:

(1) Citation containing the correction date for which more time was requested.

(2) ((Department)) DOSH notices issued in response to the employer's request for more time.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16025 Violation correction hearing procedures.

What to expect from ((WISHA)) DOSH:

(1) After receiving a hearing request, the assistant director for ((WISHA)) DOSH services will appoint someone from ((WISHA)) DOSH to act as a hearings officer.

(2) The hearings officer:

(a) Will send a hearing notice to the employer and employee at least ((twenty)) 20 days before the hearing date that includes all of the following:

(i) A statement that all interested parties can participate in the hearing.

(ii) The time, date, and place of the hearing.

(iii) A short and clear explanation why a hearing was requested.

(iv) The nature of the proceeding, including the specific sections of the statute or rule involved.

(v) The legal authority and jurisdiction under which the hearing will be held.

(b) May discuss the material to be presented to determine how the hearing will proceed.

(3) An assistant attorney general may be present at the hearing to give legal advice to the hearings officer.

(4) The hearing will be conducted by either:

(a) The hearings officer; or

(b) The assistant attorney general, if requested by the hearings officer.

(5) After the hearing, ((WISHA)) DOSH will issue an order that either affirms or modifies the correction date that caused the hearing.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16030 Post the violation correction hearing decision. ~~((You))~~ The employer must post a complete, unedited copy of the order affirming or modifying the correction date as soon as it is received, along with the applicable citation.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-170 Appeals.

Summary:

Employer responsibility:

To post information regarding appeals in a conspicuous area where notices to employees are normally posted.

((You)) <u>Employer</u> must meet the requirements...	in this section:
Appealing a citation and notice (C&N)	WAC 296-900-17005
Stay of abatement date request	WAC 296-900-17006
Appealing a corrective notice of redetermination (CNR)	WAC 296-900-17010
Posting appeals	WAC 296-900-17015

AMENDATORY SECTION (Amending WSR 17-22-117, filed 10/31/17, effective 1/1/18)

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT :

1. Employers may appeal C&Ns.
2. Employees of the cited employer, or their designated representatives, may only appeal abatement dates.
3. The filing of an appeal does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. Employers may request a stay of abatement date for these classifications of violations when they appeal a C&N.

(1) ~~((You))~~ The employer must, when appealing, submit a written appeal to DOSH within ~~((fifteen working))~~ 15 business days after receiving the C&N. Include the following information:

- (a) Business name, address, and telephone number.
- (b) Name, address, and telephone number of any employer representative.
- (c) C&N number.
- (d) What you believe is wrong with the C&N and any related facts.
- (e) What you believe should be changed, and why.
- (f) Requests for stay of abatement date according to WAC 296-900-17006.
- (g) A signature and date.

(2) ~~((You))~~ The employer must send appeals in any of the following ways:

- Mail to:

((Assistant Director for DOSH Services))
Department of Labor & Industries
 Attn: DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604

((Fax to: 360-902-5581))
 - Electronically to: DOSHAppeals@Lni.wa.gov
 - Take to any department service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

(3) Employees or their designated representatives must, when appealing C&N abatement dates, submit a written request to DOSH within ((fifteen)) 15 working days after the C&N is received. Include the following information:

(a) Name of employee, address, telephone number.

(b) Name, address, and telephone number of any designated representative.

(c) C&N number.

(d) What is believed to be wrong with the abatement date.

(e) A signature and date.

(4) Employees or their designated representatives must send appeals in any of the following ways:

- Mail to:

((Assistant Director for DOSH Services))
Department of Labor & Industries
 Attn: DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604

((Fax to: 360-902-5581))
 - Electronically to: DOSHAppeals@Lni.wa.gov
 - Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

What to expect from DOSH:

(5) After receiving an appeal, DOSH will do one of the following:

(a) Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

(b) Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction. DOSH has decided to provide the employer with an informal conference to discuss their appeal.

(6) When reassuming jurisdiction over a C&N, DOSH has ((thirty)) 30 working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

(a) Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the ((thirty)) 30 days will begin on the following Monday unless it's a state holiday.

(b) May be extended up to ((forty-five)) 45 additional working days, if everyone involved agrees and signs an extension agreement within the initial ((thirty)) 30-day period.

(c) Will include an informal conference about the appeal that is an opportunity for interested parties to:

(i) Briefly explain their positions.

(ii) Provide any additional information they would like DOSH to consider when reviewing the C&N.

(iii) Provide any additional information they would like DOSH to consider when reviewing stay of abatement date requests.

Note: DOSH might reassume jurisdiction over a C&N to do any of the following:

1. Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.
2. Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.
3. Educate employers about the C&N, the DOSH appeals process, and DOSH compliance.
4. Review citations, penalties, and abatement dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.
5. Review requests to stay abatement dates.

(7) On or before the end of the (~~(thirty working))~~ 30 business day review period, or up to (~~(seventy-five working))~~ 75 business days if everyone involved agrees to the extension of up to (~~(forty-five))~~ 45 additional ((working)) business days, DOSH will issue and send a corrective notice to the employer, employees, and employee representatives participating in the appeal process of redetermination that:

(a) Reflects any changes made to the C&N.

(b) Grants or denies requests to stay abatement dates and includes the basis of the decision.

~~((c) Is sent to the employer, employees, and employee representatives participating in the appeal process.))~~

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).

IMPORTANT :

1. Employers may appeal CNRs.

2. Employees who could be affected by a CNR, or their designated representatives, may appeal abatement dates.

3. Employers must renew requests to stay abatement dates if a stay request is denied when they appeal CNRs.

(1) You must appeal a CNR, if desired, in writing within (~~(fifteen))~~ 15 working days after it was received (~~(to the))~~:

Electronically to: BIIA.wa.gov

Via mail to:

Board of Industrial Insurance Appeals

2430 Chandler Court S.W.

P.O. Box 42401

Olympia, WA 98504-2401

(2) You must send a copy of the appeal to the CNR to the:

~~((Assistant Director for DOSH Services))~~

Department of Labor & Industries

Attn: DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

~~((Fax to: 360-902-5581))~~

Email to: DOSHAppeals@Lni.wa.gov

Take to any department service location.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-17015 Posting appeals. (~~(You)~~) The employer must immediately post notices and information related to any appeal or stay of abatement date request in the same place where DOSH citation and notices (C&Ns) are posted. These notices and information include:

- (1) The notice of appeal, until the appeal is resolved.
- (2) Notices about DOSH reassuming jurisdiction, and any extension of the review period until the end of review period.
- (3) A notice of an informal conference until after the conference is held.
- (4) A corrective notice of redetermination for as long as C&Ns are to be posted.

Reference: For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-17505 Scope and purpose. (1) The program for safety and health investment projects (SHIP) was established during the 2011 legislative session to provide funding for safety and health projects for workplaces insured for workers' compensation through the department's state fund. The purpose of these projects shall be to: Prevent workplace injuries, illnesses, and fatalities; create early return to work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives.

(2) Funds for awards shall be distributed as follows:

- (a) At least (~~(twenty-five)~~) 25 percent for projects designed to develop and implement innovative and effective return-to-work programs for injured workers;
- (b) At least (~~(twenty-five)~~) 25 percent for projects that specifically address the needs of small businesses; and
- (c) At least (~~(fifty)~~) 50 percent for projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the (~~(Washington Industrial Safety and Health Act)~~) WISHA advisory committee and the workers' compensation advisory committee.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

WAC 296-900-17520 Advisory committee. (1) The department will create a SHIP advisory committee (SAC) that will be a subcommittee of the WISHA advisory committee and will advise the department on program policy issues and participate in the grant application review process. The SAC will have eight to (~~(ten)~~) 10 members, including equal numbers of employer and employee representatives, and others with relevant experience and expertise. Members will be appointed to serve three-year

renewable terms by the assistant director of (~~the division of occupational safety and health~~(-))DOSH((+)). The initial term for half of the first group of appointees will be (~~eighteen~~) 18 months. SAC membership will include:

(a) At least one employer representative from the WISHA advisory committee or an employer representative recommended by the WISHA advisory committee employer representatives; and

(b) At least one employee representative from the WISHA advisory committee or an employee representative recommended by the WISHA advisory committee employee representatives.

(2) The SAC will be supplemented by ad hoc grant review committees consisting of selected members of the SAC together with other individuals with experience and expertise in the specific topic areas under review. Members of such ad hoc grant review committees will be appointed by the assistant director for DOSH, taking into consideration recommendations from the SAC and WISHA advisory committee.

(3) All meetings of the SAC will be convened and chaired by the assistant director for DOSH or designee.

(4) The SAC will provide the following assistance:

(a) Advice on SHIP policy issues to DOSH and the WISHA advisory committee;

(b) Make recommendations to DOSH and the WISHA advisory committee regarding funding priority areas;

(c) Review and comment on funding recommendations made by grant review committees to the assistant director of DOSH;

(d) Keep records of the SACs decisions;

(e) Develop and maintain communication networks in the community.

(5) SAC and grant review committee members will disclose to the department any potential conflicts of interest with specific project applications, whether direct or indirect. The department will determine whether a member's connection to a project should result in recusal from voting on the project. The department's decision and reasons supporting the decision will be documented in the meeting minutes.

(6) SAC and grant review committee members will not disclose any information about applications to anyone not authorized access to the information by law or regulation.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

WAC 296-900-17525 Application. (1) The department will periodically prepare grant application packets that will be available on the department's website.

(2) Applicants must complete the entire application to be considered for project funding. Incomplete applications or those submitted after a posted deadline will not be considered for funding.

(3) Some funding cycles may include limitations on the maximum amount that will be awarded for any proposal. Limitations, if any, will be posted on the department's website or in current application packets.

(4) All products developed as a result of an approved SHIP project belong in the public domain and their dissemination and use shall not be restricted in any way. Such products may not be copyrighted, patented, claimed as trade secrets, or otherwise restricted in any other way. The department retains the right to publish or other-

wise disseminate these products as the department in its sole discretion deems appropriate.

(5) The department will not use information contained in submitted application packets as the basis for the initiation of compliance inspections or the issuance of citations and/or penalties to applicants, (~~under WISHA,~~) chapter 49.17 RCW. However, employers are not exempt from compliance inspections initiated for other reasons because they submitted an application packet.

(6) Projects may include, but are not limited to:

(a) The development and implementation of innovative and effective return-to-work programs for injured workers;

(b) The development of technical innovation and engineering controls for the recognition and control of workplace hazards;

(c) Best practices for workplace safety and health programs;

(d) Education and training;

(e) Efforts that address the needs of small businesses;

(f) Priorities identified by DOSH in cooperation with the WISHA advisory committee and the workers' compensation advisory committee;

(g) Initiatives intended to build organizational capacity in workplace safety and health; and

(h) Other projects that foster injury and illness prevention through cooperation between employers and employees or their representatives.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

WAC 296-900-17535 Monitoring. DOSH staff will monitor projects for compliance with award terms and achievement of approved project milestones and(~~or~~) outcomes.

(1) Milestones are intermediate targets or goals that are defined in the project applications. Ongoing funding will be tied to the achievement of approved milestones (including, but not limited to, accounting for grant funds).

(2) Outcomes are the final products that will be produced by the project.

WSR 24-18-099
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 3, 2024, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-016.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-60B-0015 What definitions apply to this chapter?, 388-60B-0025 What is the purpose of this chapter?, 388-60B-0105 Application process—How must a program apply for certification or recertification to provide domestic violence assessments or intervention treatment services?, 388-60B-0110 Required documentation for certification and recertification—What must be included in an application to provide domestic violence assessments or treatment?, 388-60B-0120 Facility requirements—What facility requirements must a program meet for the space where domestic violence intervention assessments or treatment services are provided?, 388-60B-0125 Quality management—What are the minimum treatment outcomes for participants and how must a program measure staff and treatment effectiveness?, 388-60B-0130 Adding to existing certification—How must a program add assessments or a level of treatment to an existing certification?, 388-60B-0140 Change of address—What must be sent to the department when a program changes the physical location of where they provide assessments or groups?, 388-60B-0210 Minimum staff qualifications—What staff qualifications must a program document for direct service staff?, 388-60B-0260 Supervisor responsibilities—What responsibilities must the supervisor document for the program?, 388-60B-0280 Adding direct treatment staff—What documentation must a program submit to the department to add a new direct service staff person, or request designation as a staff or supervisor for existing direct service staff during a certification period?, 388-60B-0315 Group treatment—What standards must programs follow regarding the provision of group treatment?, 388-60B-0320 Treatment practices—How must a program approach treatment and what must happen if it is determined that a participant should move into a different level of treatment?, 388-60B-0325 Victim safety—What steps must programs take in order to help increase victim safety?, 388-60B-0345 Participant requirements—What must the program require of participants accepted into a domestic violence intervention treatment program?, 388-60B-0400 Behavioral assessment and interview criteria—Who may conduct the interview and assessment and what must it include?, 388-60B-0500 On-site reviews and plans of correction—How does the department review certified programs for compliance with the regulations of this chapter?, and 388-60B-0510 Complaint investigations—How must an investigation get initiated and what is the process of the investigation?

Hearing Location(s): On October 22, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than October 23, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax

360-664-6185, beginning noon on September 4, 2024, by 5:00 p.m. on October 22, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by 5:00 p.m. on October 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments will allow domestic violence intervention treatment (DVIT) programs to provide services via Health Insurance Portability and Accountability Act (HIPAA) compliant live video sessions when certain standards are met. This filing is in response to a rule-making petition received from a consortium of DVIT providers seeking to preserve the ability to provide treatment through virtual platforms, which began during pandemic-related shut-downs. As applicable, these amendments make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.20A.735.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, 360-790-1483.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, phone 360-790-1483, email amie.roberts@dshs.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DSHS' domestic violence perpetrator treatment program analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs:

- The consideration of starting or continuing to use HIPPA compliant web-based software to conduct assessments and DVIT treatment online.
- The consideration of allowing DVIT programs to serve participants of treatment in all counties of the state.
- The consideration of DVIT programs needing to be informed of the DV coalitions and procedures in each of the areas where they serve participants.
- The consideration of the costs and savings of providing these services online.

DSHS solicited input from DVIT programs through an email inquiry and a survey. Out of 60 currently certified DVIT programs, 27 responded to the survey.

Costs: Domestic violence perpetrator treatment program analysis revealed that any new costs imposed by the proposed amendments would only be minor.

The cost of maintaining software to provide HIPAA compliant DVIT services online, and the cost to attend one to three meetings online, per month, of domestic violence coalitions in the areas where programs provide services, are considered to be minor costs when taken collectively.

Benefits: Many DVIT programs express a financial benefit to providing DVIT services online, and a savings in their brick and mortar costs of doing business. Additionally, online services allow DVIT programs to reach more participants throughout the state, and could increase their participant numbers substantially.

Conclusion: DSHS' domestic violence perpetrator treatment program concludes that the benefits of these regulations exceed any possible costs.

DSHS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

A copy of the detailed cost calculations may be obtained by contacting Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, phone 360-790-1483, email amie.roberts@dshs.wa.gov.

August 29, 2024
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [24-19](#) issue of the Register.

WSR 24-18-107

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed September 3, 2024, 2:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-013.

Title of Rule and Other Identifying Information: Updating WAC 194-26-020 to decrease the average available greenhouse gas emissions output for the emissions performance standard.

Hearing Location(s): On October 8, 2024, at 10 a.m., via Zoom meeting. This hearing will be virtual only. Please check the emissions performance standard (EPS) web page for meeting information <https://www.commerce.wa.gov/growing-the-economy/energy/emission-performance-standards/>.

Date of Intended Adoption: October 25, 2024.

Submit Written Comments to: Aaron Tam, 2001 6th Avenue, #2600, Seattle, WA 98121, email aaron.tam@commerce.wa.gov, by October 8 by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nick Manning, phone 360-725-2901, email nick.manning@commerce.wa.gov, by October 1.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule updates the average rate of emissions of greenhouse gas emissions of new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States based on a survey of these turbines, as required under RCW 80.80.050. The proposed rule decrease the average available greenhouse gas emissions output of from 925 pounds per megawatt hour (MWh) to 863 pounds per MWh. The updated average rate of emissions of greenhouse gas emissions will be used by the department of ecology (DOE) and energy facility site evaluation council (EFSEC) to implement Washington's baseload electric generation performance standard as provided for under chapter 80.80 RCW.

Reasons Supporting Proposal: The rules are proposed to comply with RCW 80.80.050, which requires the department of commerce (commerce) update every five years its survey of the average rate of emissions of greenhouse gas emissions of new combined-cycle natural gas thermal electric generation turbines commercially available, offered for sale by manufactures, and purchased in the United States.

Statutory Authority for Adoption: RCW 80.80.050.

Statute Being Implemented: RCW 80.80.050.

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

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Aaron Tam, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 206-454-2251; Implementation and Enforcement: EFSEC, 621 Woodland Square Loop S.E., Olympia, WA 98504, 360-664-1345 and DOE, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-6000.

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

A cost-benefit analysis is not required under RCW 34.05.328. Commerce is not a listed agency in RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.
 Is exempt under RCW 19.85.025(4).
 Scope of exemption for rule proposal:
 Is fully exempt.

September 3, 2024
 Amanda Hathaway
 Legislative and Rules Coordinator

OTS-5723.1

AMENDATORY SECTION (Amending WSR 18-19-105, filed 9/19/18, effective 10/20/18)

WAC 194-26-020 Average available greenhouse gases emissions output. (1) The energy division of the department of commerce has surveyed new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States, and finds the average available greenhouse gases emissions output to be (~~nine hundred twenty five~~) 863 pounds per megawatt-hour as of the effective date of this section.

(2) The purpose of this subsection is to provide current and historical values for the average available greenhouse gases emissions output established in WAC 194-26-020.

Average available greenhouse gases emissions output (lb GHG/MWh) - Current and Historical Values	Start date	End date
<u>863</u>	<u>Effective date of this section</u>	
<u>925</u>	<u>10/28/18</u>	<u>Effective date of this section</u>
970	4/6/13	((<u>Effective date of this section</u>)) <u>10/28/18</u>

WSR 24-18-110
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 3, 2024, 4:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-023.

Title of Rule and Other Identifying Information: Labor standards for adult entertainment establishments; creating new sections in chapter 296-128 WAC.

Hearing Location(s): On October 14, 2024, at 11:00 a.m., at the Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168. A prehearing overview will begin at 10:00 a.m. The hearing will start at 11:00 a.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's division of occupational safety and health (DOSH); and

On October 15, 2024, at 2:00 p.m., virtual/telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/87075679462?pwd=ePBjQ2wvAbvYdydgkD0fFPMVb4YIx7.1>; or join by phone (audio only)

253-205-0468 or 253-215-8782, Meeting ID 870 7567 9462, Passcode 140340150. A prehearing overview will begin at 1:00 p.m. The hearing will start at 2:00 p.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's DOSH.

Date of Intended Adoption: December 2, 2024.

Submit Written Comments to: Bridget Osborne, L&I, Fraud Prevention and Labor Standards (FPLS), P.O. Box 44510, Olympia, WA 98504-4510, email AERules@Lni.wa.gov, fax 360-902-5300, beginning September 4, 2024, 8:00 a.m., by October 18, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bridget Osborne, phone 360-902-5552, fax 360-902-5300, email Aerules@Lni.wa.gov, by October 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature passed ESSB 6105, chapter 250, Laws of 2024, during the 2024 legislative session. ESSB 6105, codified under RCW 49.46.360, establishes the following protections for entertainers at adult entertainment establishments:

- Leasing or other fees must apply equally to all entertainers in an establishment, be stated in a written contract, and continue for at least three months;
- Establishments may not charge an entertainer any fees or interest for late or nonpayments, for failure to appear at a scheduled time, or that result in the entertainer carrying forward an unpaid balance from any previously incurred leasing fee;
- Establishments may not charge a leasing fee in an amount greater than the entertainer receives during the period of access or usage; or within an eight-hour period, any leasing fee that exceeds the lesser of \$150 or 30 percent of amounts collected by the entertainer for nonprivate performance areas and 30 percent of amounts collected by the entertainer for private performance areas;
- If establishments charge a leasing fee, the contract must include a method for estimating the total amounts collected by the entertainer in any eight-hour period;
- Establishments must display signage in designated areas on forbiddance of entertainers surrendering any tips or gratuities;

- Establishments may not take adverse action against an entertainer in response to the entertainer's use or collection of tips or gratuities; and
- Establishments must provide an entertainer with written notice of the reason or reasons for any termination or refusal to rehire the entertainer within 10 business days.

L&I's FPLS division is proposing rules to clarify and implement the requirements of ESSB 6105. The proposed rules also describe FPLS's enforcement of ESSB 6105 including the complaint, investigation, citation, and appeals processes.

Other requirements related to adult entertainment establishments under chapter 49.17 RCW are enforced by L&I's DOSH. DOSH is conducting simultaneous rule making for the provisions of chapter 49.17 RCW enforced by the division in chapter 296-831 WAC.

Reasons Supporting Proposal: Rules are required to clarify and enforce the labor standards for adult entertainers established under ESSB 6105, codified in chapter 49.46 RCW.

Statutory Authority for Adoption: RCW 49.46.360.

Statute Being Implemented: RCW 49.46.360.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Bridget Osborne, Tumwater, Washington, 360-902-5552; Implementation and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-5310.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bridget Osborne, L&I, FPLS, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5300, email AERules@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is <i>not</i> exempt (in whole or in part). Analysis is required	This proposed rule section is exempt (in whole or in part). Provide RCW to support this exemption.
1.	WAC 296-128-90010 Definitions.	X	RCW 34.05.310 (4)(e) - Rules adopting or incorporating by reference without material change.
2.	WAC 296-128-90020 Leasing fee and other fee requirements.	X	
3.	WAC 296-128-90030 Tips and gratuities.	X	
4.	WAC 296-128-90040 Written contracts of leasing fees— Administrative requirements.	X	
5.	WAC 296-128-90050 Required signage— Administrative requirements.	X	

	Proposed WAC Sections and Title	This proposed rule section is <i>not exempt (in whole or in part)</i>. Analysis is required	This proposed rule section is <i>exempt (in whole or in part)</i>. Provide RCW to support this exemption.
6.	WAC 296-128-90060 Written notice of reason for termination or refusal to rehire—Administrative requirements.	X	
7.	WAC 296-128-90070 Retaliation.	X	
8.	WAC 296-128-90080 Enforcement—Compensation.	X	
9.	WAC 296-128-90090 Enforcement—Administrative violations.	X	
10.	WAC 296-128-90100 Enforcement—Retaliation.	X	
11.	WAC 296-128-90110 Administrative appeals.	X	
12.	WAC 296-128-90120 Collection procedures.	X	
13.	WAC 296-128-90130 Severability clause.	X	

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. As outlined in the chart below, there are no anticipated costs to comply with the rule.

WAC 296-128-90010 (3), (4), and (7)	These definitions are explanatory and provide L&I's interpretation for the term in chapter 49.46 RCW used in and throughout the rules and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90020	This section is explanatory and provides L&I's interpretation of RCW 49.46.360(3) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90030	This section provides L&I's interpretation of RCW 49.46.360 (5) and (7). The rule could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90040 (1), (3), and (5)	These subsections provide L&I's interpretation of RCW 49.46.360 (2)(b) and (3)(e)(ii) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90040(2)	This subsection provides L&I's interpretation of RCW 49.46.360 (2)(b) and (3)(e)(ii) and could impose a penalty on an establishment. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90040(5)	This subsection provides recordkeeping requirements that could impose a penalty on an establishment. The subsection creates no cost for establishments because written contracts are required by statute. Creating additional documents for estimating the total amounts is optional, therefore there is no cost associated with compliance for establishments to also maintain such records.
WAC 296-128-90050	This section provides L&I's interpretation of RCW 49.46.360 (5) and (7) and does not independently impose a penalty or sanction on a person or entity.

WAC 296-128-90060(1)	This subsection provides L&I's interpretation of RCW 49.46.360 (6) and (7) and does not independently impose a penalty or sanction on a person or entity and does not impose costs to employers for the inclusion of applicable date(s) on the written notices because such notices are already required by RCW 49.46.360(6). Establishments are not required to establish corrective action records, the establishment must simply maintain and provide any corrective action records they chose to create, so there is no additional cost.
WAC 296-128-90060 (2), (3), and (4)	These subsections provide L&I's interpretation of RCW 49.46.360 (6) and (7) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90070	This section provides L&I's interpretation of RCW 49.46.360 (5) and (7). The rule could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The section does not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90080 (1), (2), (4), (6), (7), and (9)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90080 (3) and (5)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90080(8)	This subsection provides L&I's interpretation of RCW 49.46.360(7), including the enforcement capability for the department to request an establishment perform a self audit. The self-audit process is intended to reduce the cost and burden of an investigation thus, there is no cost associated with the rule.
WAC 296-128-90090 (1), (2), (3), (4), (7), (8), (9), and (11)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and do not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90090 (5) and (6)	These subsections provide L&I's interpretation of RCW 49.46.360(7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. The subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90090(10)	This subsection provides L&I's interpretation of RCW 49.46.360(7), including the enforcement capability for the department to request an establishment perform a self audit. The self-audit process is intended to reduce the cost and burden of an investigation thus, there is no cost associated with the rule.
WAC 296-128-90100 (1), (2), (3), (4), (6), (7) and (8)	These subsections provide L&I's interpretation of RCW 49.46.360 (5) and (7) and do not independently impose a penalty or sanction on a person or entity. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules.
WAC 296-128-90100 (5) and (9)	These subsections provides L&I's interpretation of RCW 49.46.360 (5) and (7) and could impose a penalty on an establishment. RCW 49.46.360(7) allows the department to enforce subsection (5) under the provisions of the chapter and any applicable rules. These subsections do not create an additional cost of compliance for employers, as payments are only required in the event of a violation.
WAC 296-128-90110	This section provides L&I's interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90120	This section provides L&I's interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.
WAC 296-128-90120	This section provides L&I's interpretation of RCW 49.46.360(7) and does not independently impose a penalty or sanction on a person or entity.

September 3, 2024

OTS-5769.3

ADULT ENTERTAINMENT ESTABLISHMENTSNEW SECTION

WAC 296-128-90010 Definitions. (1) "Adult entertainment" has the same meaning as in RCW 49.17.470.

(2) "Adult entertainment establishment" or "establishment" has the same meaning as in RCW 49.17.470.

(3) "Amounts collected" means an establishment's designated charges for private performance areas and any individual performance in a private or nonprivate area, based on the establishment's designation of what those services cost, whether presumed, contractual, or posted.

(4) "Director" means the director of the department of labor and industries, or the director's designated representative.

(5) "Entertainer" means any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.46.010.

(6) "Leasing fee" means a fee, charge, or other request for money from an entertainer by an establishment in exchange for the entertainer's access or use of the establishment premises or for allowing an entertainer to conduct entertainment on the premises.

(7) "Tips or gratuities" or "tips and gratuities" means any amount freely given by a customer to an entertainer. Tips and gratuities are in addition to, and do not count towards an entertainer's amounts collected.

NEW SECTION

WAC 296-128-90020 Leasing fee and other fee requirements. (1) An establishment is not required to collect leasing fees or other fees from an entertainer. If an establishment charges an entertainer any leasing fee or other fee including, but not limited to, entertainment fees or room charges, such fee(s) must:

(a) Apply equally to all entertainers in a given establishment;

(b) Apply due dates or required timing of fee payment equally to all entertainers in a given establishment;

(c) Be stated in a written contract, including a method for estimating the total amount collected by the entertainer in any eight-hour

period for the purposes of calculating maximum leasing fee rates in accordance with WAC 296-128-90040; and

(d) Continue to apply for a period of not less than three months.

(2) An establishment may not charge an entertainer fees or interest:

(a) For late payments or nonpayment of any fee;

(b) For an entertainer's failure to appear at a scheduled time;

(c) That result in the entertainer carrying forward an unpaid balance from any previously incurred leasing fee;

(d) In an amount greater than the entertainer receives during the applicable period of access to or usage of the establishment premises; or

(e) Within an eight-hour period, any leasing fee that exceeds:

(i) The lesser of \$150 or 30 percent of amounts collected by the entertainer in a nonprivate performance area; plus

(ii) 30 percent of amounts collected by the entertainer for adult entertainment provided in a private performance area.

(iii) "30 percent of amounts collected" should be calculated based on the estimated amount determined by the establishment in the written contract, and not based on the exact amounts collected by an entertainer during their shift.

(3) This section does not prevent an establishment from providing leasing fee discounts or credits to encourage scheduling or charge leasing fees that vary based on the time of day, so long as these are applied uniformly.

(4) This section does not require an establishment to count exact amounts collected by an entertainer at the end of a period of work.

NEW SECTION

WAC 296-128-90030 Tips and gratuities. (1) Entertainers are not required to surrender any tips or gratuities including, but not limited to, participating in any tip pool.

(2) Entertainers are not required to disclose tip or gratuity amounts to an establishment.

(3) Tips and gratuities are in addition to, and do not count towards, amounts collected by the entertainer.

(4) An establishment may not take adverse action against an entertainer in response to the entertainer's use of, collection of, or refusal to surrender tips or gratuities.

NEW SECTION

WAC 296-128-90040 Written contracts of leasing fees—Administrative requirements. (1) Any leasing fee or other fee including, but not limited to, entertainment fees or room charges, charged by an establishment to an entertainer must be stated in a written contract.

(2) If the establishment charges leasing fees, the written contract must include:

(a) A method for estimating the total amount collected by the entertainer in any eight-hour period;

(b) The effective dates of the contract;

(c) The duration of the contract, to be a period of not less than three months;

(d) Leasing fee discounts or credits offered to the entertainer; and

(e) Designated costs of services considered to be amounts collected by the entertainer. If designated costs vary based on the time of day or the day of the week, the varied rates must be reflected in the contract.

(3) An establishment's recorded tally of the number of dances performed by an entertainer multiplied by amounts collected by the entertainer, as designated in the written contract, may be considered a method for estimating the total amounts collected by the entertainer in any eight-hour period for the purposes of calculating maximum leasing fee rates in WAC 296-128-90020 (2)(e). Leasing fee or other fee violations caused by inaccurate tallies of the number of dances is considered a compensation violation and enforced under WAC 296-128-90080.

(4) An establishment must keep copies of written contracts and documents used in estimating the total amounts collected by an entertainer, including records of dance tallies, for three years from the contract end date.

(5) Failing to comply with this section is an administrative violation.

NEW SECTION

WAC 296-128-90050 Required signage—Administrative requirements.

(1) All establishments must display signage in areas designated for entertainers that communicate:

(a) Entertainers are not required to surrender any tips or gratuities; and

(b) An establishment may not take adverse action against an entertainer in response to the entertainer's use or collection of tips or gratuities.

(2) Failing to comply with this section is an administrative violation.

NEW SECTION

WAC 296-128-90060 Written notice of reason for termination or refusal to rehire—Administrative requirements.

(1) An establishment must provide an entertainer, or former entertainer, with written notice of the reason(s) for any termination or refusal to rehire that includes any applicable date(s) of events or corrective action that led to the termination or rehire refusal.

(2) An establishment must provide the written notice of reason(s) to the entertainer, or former entertainer, upon termination or refusal to rehire or within 10 business days of the termination or refusal to rehire the entertainer.

(3) An establishment is not required to provide an entertainer with written notice of reason(s) for any refusal to rehire an individ-

ual who last worked at the establishment more than three years from the request for rehire.

(4) Failing to comply with this section is an administrative violation.

NEW SECTION

WAC 296-128-90070 Retaliation. (1) It is unlawful for an establishment to interfere with, restrain, or deny the exercise of any entertainer right provided under or in connection with RCW 49.46.360 or associated rules.

(2) It is unlawful for an establishment to adopt or enforce any policy that may lead to or result in any termination or other adverse action against an entertainer for exercising their rights under RCW 49.46.360 and associated rules.

(3) It is unlawful for an establishment to take any adverse action against an entertainer because the entertainer has exercised their rights provided under chapter 49.46 RCW or associated rules. Such rights include, but are not limited to: The use or collection of tips or gratuities; filing an action, or instituting or causing to be instituted any proceeding under or related to RCW 49.46.360; or testifying or intending to testify in any such proceeding related to any rights provided under RCW 49.46.360 or associated rules.

(4) Adverse action means any action taken or threatened by an establishment against an entertainer for the entertainer's exercise of rights under RCW 49.46.360 or associated rules, that may include, but is not limited to:

(a) Denying, reducing, or delaying payment of amounts collected, tips and gratuities, or any other amounts owed;

(b) Threatening to take, or taking, action based upon the immigration status of an entertainer or an entertainer's family member;

(c) Terminating, suspending, or limiting reasonable access to the establishment;

(d) Altering order of performances or stage time of an entertainer;

(e) Not playing an entertainer's requested music list during their performance;

(f) Denial or delay of an entertainer's access to security services;

(g) Moving an entertainer from a private performance area to a nonprivate performance area, or otherwise interrupting, preventing, or delaying an entertainer's opportunity for higher income; or

(h) Preventing an entertainer from working in any other lawful occupation or business.

NEW SECTION

WAC 296-128-90080 Enforcement—Compensation. (1) The department may enforce any amounts owed including, but not limited to, amounts collected and tips or gratuities under RCW 49.46.360 and associated rules as a wage payment requirement under RCW 49.48.082.

(2) If an entertainer files a complaint with the department alleging amounts owed as a result of a violation of RCW 49.46.360 and associated rules, the department will investigate the complaint. Alleged violations include, but are not limited to, improper leasing fees or other fees, improper deductions, or the improper collection of amounts owed to an entertainer, including tips or gratuities.

(3) If the department determines that an establishment has violated a requirement of RCW 49.46.360 or associated rules, the department may order the establishment to pay entertainers all amounts owed, including interest of one percent per month on all amounts owed. The amounts and interest owed must be calculated from the first date amounts were owed to the entertainer, except that the department may not order the establishment to pay any amounts and interest that were owed more than three years before the date the complaint was filed with the department.

(4) Unless the complaint is otherwise resolved or withdrawn by the entertainer, the department shall issue either a citation and notice of assessment or a determination of compliance. The department may not investigate any alleged violation that occurred more than three years before the date that the entertainer filed the complaint.

(5) If the department determines that the violation of rights under RCW 49.46.360 or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be \$1,000 or an amount equal to 10 percent of the total amount of unpaid amounts owed, whichever is greater, for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than \$2,000, but no greater than \$20,000 for each repeat willful violation.

(b) The department may not assess a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(6) During any investigation under RCW 49.46.360, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.360 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.360 or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(7) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.360 or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(8) The department may, for the purposes of enforcing RCW 49.46.360 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents and records, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(9) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under RCW 49.46.360, and all associated rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

NEW SECTION

WAC 296-128-90090 Enforcement—Administrative violations. (1)

If an entertainer files a complaint with the department alleging a violation of any administrative requirement of RCW 49.46.360 or any associated rules, the department will investigate the complaint under RCW 49.46.360. Alleged violations include, but are not limited to, failure of an establishment to comply with: Written contract requirements of RCW 49.46.360 (2) and (3), signage requirements of RCW 49.46.360(5), notice requirements of RCW 49.46.360(6), and associated rules.

(2) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the entertainer filed the complaint.

(3) If an entertainer files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter, unless the complaint is otherwise resolved.

(4) If the department's investigation finds that an entertainer's allegation cannot be substantiated, the department will issue a closure letter to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment violated an administrative requirement, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to 30 days after the date of such notification for the establishment to take corrective action to remedy the violation. If the complaint is not otherwise re-

solved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to provide written notices of reasons for the termination or refusal to rehire an entertainer;

(b) Order the establishment to cease using any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(c) Order the establishment to update and correct any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(d) For the first violation, order the establishment to pay the department a civil penalty; and

(e) For a repeat violation, order the establishment to pay the department up to double the last civil penalty issued.

(6) If the department determines that the violation of rights under RCW 49.46.360 or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be \$1,000 for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than \$2,000, but no greater than \$20,000 for each repeat willful violation.

(b) The department may not assess a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(7) The department will send notice of a citation assessing a civil penalty or the closure letter to both the establishment and the entertainer.

(8) During any investigation under RCW 49.46.360 or associated rules, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.360 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.360 or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(9) The department may conduct a consolidated investigation for any alleged administrative violations identified under RCW 49.46.360 or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(10) The department may, for the purposes of enforcing RCW 49.46.360 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents and records, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(11) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under RCW 49.46.360, and all associated rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

NEW SECTION

WAC 296-128-90100 Enforcement—Retaliation. (1) An entertainer who believes that they were subject to retaliation by their establishment, as defined in WAC 296-128-90010, for the exercise of any entertainer rights under RCW 49.46.360 or associated rules, may file a complaint with the department within 180 days of the alleged retaliatory action. The department may, at its discretion, extend the 180-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the 180-day period when there is evidence that the establishment may have concealed or misled the entertainer regarding the alleged retaliatory action.

(2) If an entertainer files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance, unless the complaint is otherwise resolved.

(3) The department may consider a complaint to be otherwise resolved when the entertainer and the establishment reach a mutual agreement to remedy any retaliatory action, or the entertainer voluntarily withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, and payment of amounts due.

(4) If the department's investigation finds that the entertainer's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment retaliated against the entertainer, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to 30 days after the date of such notification for the establishment to take corrective action to remedy the retaliatory action. If the complaint is not otherwise

resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to make payable to the entertainer earnings or other amounts that the entertainer did not receive due to the establishment's retaliatory action, including interest of one percent per month on all amounts owed. The amounts and interest owed will be calculated from the first date amounts were owed to the entertainer;

(b) Order the establishment to restore the entertainer to the position held by the entertainer when the retaliation occurred, or restore the entertainer to an equivalent position with equivalent hours, schedule, benefits, pay, and other terms and conditions of entertainer's position;

(c) Order the establishment to cease using any policy that may lead to or result in discipline against the entertainer for exercising their rights under RCW 49.46.360 or associated rules;

(d) Order the establishment to update and correct any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(e) For the first violation, order the establishment to pay the department a civil penalty as specified in WAC 296-128-790; and

(f) For a repeat violation, order the establishment to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the establishment and entertainer.

(7) During an investigation of the entertainer's retaliation complaint, if the department discovers information suggesting alleged violations by the establishment of the entertainer's other rights under chapter 49.46 RCW, and all associated rules, the department may investigate and take appropriate enforcement action without requiring the entertainer to file a new or separate complaint. If the department determines that the establishment violated additional rights of the entertainer under chapter 49.46 RCW or any associated rules, the establishment may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the establishment retaliated against or otherwise violated rights of other entertainers under chapter 49.46 RCW or any associated rules, the department may launch further investigation under chapter 49.46 RCW or any associated rules, without requiring additional complaints to be filed.

(8) Nothing in WAC 296-128-90010 through 296-128-90100 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(9) Nothing in WAC 296-128-90010 through 296-128-90100 precludes an entertainer's right to pursue private legal action.

NEW SECTION

WAC 296-128-90110 Administrative appeals. (1) A person, firm, or corporation aggrieved by a citation or determination of compliance issued by the department under WAC 296-128-90090 through 296-128-90100 may appeal the citation or determination of compliance to the director by filing a notice of appeal with the director within 30 days of the

department's issuance of the citation. A citation or determination of compliance not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation or determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation or determination of compliance will be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An establishment that fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-90090 through 296-128-90100 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department of amounts due and penalties assessed.

NEW SECTION

WAC 296-128-90120 Collection procedures. Collections of unpaid citations will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

WAC 296-128-90130 Severability clause. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

WSR 24-18-118

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed September 4, 2024, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-139.

Title of Rule and Other Identifying Information: Chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): On October 8, 2024, at 4:00 p.m. Join Zoom meeting from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/95469684029?pwd=9XJMnXCfYasJlmlQEaTR8EhX6FJobw.1&from=addon>, Meeting ID 954 6968 4029, Passcode 461531; or join by telephone: In the US +1 253 215 8782 or +1 669 900 9128 or +1 646 558 8656, or One-tap mobile call +12532158782,,95469684029# or +16699009128,,95469684029#. (Enter meeting ID and passcode when prompted.) No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: November 15, 2024.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, by October 8, 2024.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by October 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington State university (university) is updating the rules regarding standards of conduct for students, chapter 504-26 WAC.

Reasons Supporting Proposal: The university is modifying, clarifying, and updating standards of conduct for students to comply with Title IX regulations and improve the university's conduct and academic integrity violation processes.

The United States Department of Education (DOE) promulgated regulations updating the requirements regarding university hearings related to students that went into effect on August 1, 2024. Among the changes, the new rules codified in 34 C.F.R. § 106.46 (f)(3) change how complainants, respondents, and universities are allowed to question all witnesses in cases that involve sexual harassment and discrimination. Specifically, all parties to a case must provide the question to the decision maker who must make a determination regarding its relevance and permissibility under the new regulations before that question is posed to the witness. The university can lose federal funding from DOE if it does not comply with the new regulations.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is necessary because of federal law, Education Amendments Act of 1972, 20 U.S.C. §§ 1681 - 1688 (2018).

Name of Proponent: Public.

Name of Agency Personnel Responsible for Karen Metzner, Director, Center for Community Standards, French Administration 130, Pullman, WA 99164-1013, 509-335-4532; Implementation: Romando Nash, Washington State University Pullman Vice Chancellor of Student Affairs, Lighty 360, Pullman, WA 99164-1066, 509-335-2643; and Enforcement: Chris Riley-Tillmant, Provost and Executive Vice President, French Administration 432, Pullman, WA 99164-1046, 509-335-8915.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider these rules to be significant legislative rules.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Title IX (Education Amendments Act of 1972, 2018).

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: These rule changes relate to agency hearings which are not subject to violation by a nongovernment party. Title IX rules require the university to initiate investigations and conduct hearings related to allegations of sexual discrimination and harassment. The rules are intended to comply with the university's obligations under Title IX.

Scope of exemption for rule proposal:

Is fully exempt.

September 4, 2024

Deborah L. Bartlett

Director, Procedures, Records, and Forms
and University Rules Coordinator

OTS-5764.1

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-001 Preamble. Students have the responsibility to read and be familiar with the standards of conduct, to abide by them, and to understand that violations of these standards, if the student is found responsible, will result in educational sanctions and/or remedies for cases in which executive policy 15 is implicated. The dean of students or designee is the person designated by the university president to be responsible for the administration of the standards of conduct.

Washington State University has a long-standing commitment to providing students with a holistic learning experience both in and out of the classroom. Students are expected to uphold and be accountable to our standards of conduct to foster a safe, healthy, and inclusive campus community. The basic philosophy behind the standards of conduct and processes is one of education, centered on student learning through personal development and accountability. Therefore, the student conduct process is designed to support students, guide and cor-

rect behaviors, challenge students to make better choices, protect the rights of all students, and support a safe environment for students, the university, and the community at large.

The university strives to provide a fair process for every student without bias or favor regardless of socioeconomic status, personal or social connections, sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity), race, ~~((sex and/or gender, sexual orientation, gender identity or expression,))~~ religion, age, color, creed, national or ethnic origin, marital status, genetic information, status as an honorably discharged or protected veteran or member of the military, physical, mental, or sensory disability, including the use of a trained service animal, or immigration or citizenship status, except as authorized by federal or state law, regulation, or government contract. It also has responsibility to inform and educate the university community, parents, and the public at large on these standards, uphold them, and exercise the authority to take educational and/or disciplinary action accordingly.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-010 Definitions. Words and phrases used in the standards of conduct regardless of their associated gender identity include all genders. Words and phrases used in the standards of conduct in the singular or plural encompass both the singular and the plural, unless the context clearly indicates otherwise. For purposes of the standards of conduct, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who are authorized by the university to review an instructor's ~~((determination))~~ decision that a student violated university academic integrity policies and whether or not the ~~((outcome proposed))~~ academic sanction assigned by the instructor is in keeping with the instructor's published policies.

~~(2) ((Academic integrity violation. A violation of the university's academic integrity expectations, which is defined as:~~

~~(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.~~

~~(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.~~

~~(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.~~

~~(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:~~

~~(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.~~

~~(ii) Counterfeiting a record of internship or practicum experiences.~~

~~(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.~~

~~(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.~~

~~(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by CCS. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.~~

~~(g) Unauthorized collaboration on assignments.~~

~~(h) Intentionally obtaining unauthorized knowledge of examination materials.~~

~~(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.~~

~~(j) Unauthorized multiple submission of the same work.~~

~~(k) Sabotage of others' work.~~

~~(l) Tampering with or falsifying records.~~

~~(m) Violating any other academic rule or standards specified in published course policies.~~

~~(3)) Appeals board. The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider appeals from a ((university conduct board's or conduct officer's)) decision maker's determination as to whether a student or registered student organization has violated the standards of conduct and any sanctions and/or remedies assigned.~~

~~((4)) (3) Brief adjudication.~~

~~(a) The process by which a conduct officer or conduct board may adjudicate student conduct matters ((that are not resolving allegations)). Brief adjudication is not permissible for matters that:~~

~~(i) Would constitute ((Title IX sexual)) sex discrimination or sex-based harassment ((within the university's Title IX jurisdiction, and)) as defined in the university's executive policy 15 (EP15); or~~

~~(ii) Where possible sanctions ((do not include suspension for more than 10 instructional days,)) include expulsion, loss of recognition, or revocation of degree.~~

~~(b) Also referred to as a "conduct officer hearing," "conduct board hearing," or "brief adjudicative proceeding."~~

~~((5)) (4) CCR. The university's office of compliance and civil rights.~~

~~((6)) (5) CCS. The university's center for community standards.~~

~~(6) Community standards boards. University conduct board, university appeals board, academic integrity hearing board, or any other~~

panel of individuals empowered to make community standards decisions on behalf of the university.

(7) Complainant. Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint.

(8) Conduct board. The group or individual authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.

(9) Conduct hearing. The process in which a decision is made regarding a student or registered student organization's responsibility for alleged behavior and assignment of applicable sanctions and/or remedies, where appropriate. (Remedies may be considered for matters implicating executive policy 15 part 15.B.) Conduct hearings include brief adjudications and full adjudications. Also referred to as "student conduct hearing" or "student conduct proceeding."

(10) Conduct officer. A university official authorized by the dean of students or their designee to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.

~~((10))~~ (11) Executive policy 15. The university's policy prohibiting discrimination and harassment. Also referred to as "EP15."

(12) Faculty member. For purposes of this chapter, any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

~~((11))~~ (13) Full adjudication.

(a) The process ~~((by which a conduct board adjudicates))~~ for adjudicating matters involving ((possible suspension of greater than 10 instructional days,)):

(i) Sex discrimination or sex-based harassment, or retaliation stemming from those as underlying complaint, as defined in EP15; and

(ii) Possible sanction including expulsion, loss of recognition, revocation of degree, or ((other matters as determined by the university)) otherwise utilized at the discretion of the CCS when deemed appropriate, in accordance with WAC 504-26-401(4).

(b) Also referred to as "formal adjudication," "formal ~~((or full))~~ adjudicative proceeding," or ((("conduct board hearing.")) "full adjudicative proceeding."

(c) In a full adjudication, the presiding officer is also the decision maker.

~~((12))~~ (14) Gender identity. Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

~~((13))~~ (15) Member of the university community. Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the dean of students or designee.

~~((14))~~ (16) Parties. The parties to a ~~((student))~~ conduct ((proceeding)) hearing must include the university and the respondent. ~~((The parties in a student conduct matter where the allegations, if true, would constitute Title IX sexual harassment within the university's Title IX jurisdiction must also include the complainant(s).))~~ Where the conduct hearing includes allegations that constitute viola-

tions of EP15, the parties may include the university, the respondent, and the complainant. The university may designate other complainants as parties to conduct proceedings including, but not limited to, harmed parties. The dean of students or their designee determines party status (~~for complainants~~).

~~((15) Recognized or)~~ (17) Registered student organization. A group of students, collectively, that has complied with the formal requirements for university recognition (~~or registration~~).

~~((16))~~ (18) Respondent. A student or (~~recognized or~~) registered student organization alleged to have violated these standards of conduct.

~~((17))~~ (19) Staff. Individuals employed by the university of any rank or classification who are not considered faculty members as defined in subsection (12) of this section.

(20) Standards of conduct. The standards of conduct for students outlined in this chapter.

~~((18))~~ (21) Student. For the purposes of this chapter, any person who:

(a) Is enrolled in at least one undergraduate, graduate, or professional studies course at the university;

(b) Has been notified of their acceptance for admission but has not yet registered for their course(s);

(c) Is eligible to reenroll in classes without reapplying.

~~((19))~~ (22) Title IX. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 and its implementing 34 C.F.R. Part 106.

~~((20))~~ (23) University. Washington State University.

~~((21))~~ (24) University official. Any person employed by the university, performing assigned administrative or professional responsibilities.

~~((22))~~ (25) University premises. All land, buildings, facilities, vehicles, websites, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

(a) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

(b) Negatively impacted the reputation of the university or its students;

(c) Occurred on the property of (~~recognized or~~) registered student organizations;

(d) Caused physical, mental, or emotional harm to another; or

(e) Was recognized by onlookers, complainants, or witnesses as being carried out by a student (~~or recognized~~) or registered student organization.

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual conferral of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards apply to a student's conduct during that time frame, even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. (~~Recognized or~~) Registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A (~~recognized or~~) registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a number of organization officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a (~~student~~) conduct (~~proceeding~~) hearing pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any (~~student~~) conduct (~~proceeding~~) hearing. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice, provided that person agrees to serve as an advisor, to be present during all stages of a conduct process. A list of university employees who are trained advisors is provided upon a party's request. Advisors can provide support at no cost to the party. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. Advisors may not be employed in CCS.

(2) Advisors in conduct (~~(meetings and conduct officer)~~) hearings. During any conduct meeting (~~(or conduct officer hearing)~~), brief adjudicative hearing, or full adjudicative hearing, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties (~~(-~~

~~(3) Advisors in conduct board hearings. As with all other conduct meetings and conduct officer hearings, advisors are not permitted to speak on behalf of parties),~~ except that in (~~(conduct board hearings)~~) full adjudicative proceedings, advisors are permitted to (~~(ask relevant cross-examination)~~) direct questions (~~(as instructed by a party)~~) for witnesses to the presiding officer.

(~~(4)~~) (3) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. Representatives are not permitted in (~~(conduct officer hearings)~~) brief adjudications; however, persons currently admitted to practice law may participate as advisors in (~~(conduct officer hearings)~~) brief adjudications.

(~~(5)~~) (4) As a condition of participation in the conduct process, CCS may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(~~(6)~~) (5) Questions regarding logistical and administrative issues are to be directed to the (~~(presiding officer or)~~) conduct officer, community standards board chair, or presiding officer, as applicable, who may impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-025 Confidentiality and participation in student conduct hearings. Student conduct meetings and hearings are closed to public observation. The parties and their advisors or representatives may attend the entire hearing, excluding deliberations. Admission of any other person to the hearing is at the discretion of the conduct officer, community standards board chair, or presiding officer, as applicable. For convenience, or to accommodate concerns for the personal safety, well-being, or fears of confrontation of any party or witness, the conduct officer, community standards board chair, or presiding officer may allow participation remotely, in separate rooms, or by other means.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-030 Consolidation. In any student conduct matter in which there are common issues or parties, the conduct officer (~~or presiding officer~~), community standards board chair, or presiding officer, as applicable, may decide to consolidate the proceedings. This decision is within the sole discretion of the conduct officer (~~or presiding officer~~), community standards board chair, or presiding officer.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-035 Service and notification. Service of all university notices under this chapter is sent by electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. (~~Recognized or~~) Registered student organizations are responsible for updating their mailing address on file with the center for fraternity and sorority life, university recreation, or student (~~involvement~~) engagement services. Deadlines described in this chapter begin the date the notification is sent via email, personally delivered, or placed in regular U.S. mail.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-045 Evidence. (1) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence.

(2) (~~The sexual history of~~) A complainant's sexual interests or prior sexual conduct is not relevant and not admissible in a (~~student~~) conduct (~~proceeding~~) hearing unless such evidence (~~about the complainant's sexual predisposition or prior sexual behavior~~) is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The fact of prior consensual sexual conduct between a complainant and a respondent does not by itself demonstrate or imply the complainant's

consent to the alleged conduct or preclude determination that the conduct occurred.

(3) For matters involving conduct implicating EP15, evidence that was provided to a confidential employee is not admissible, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.

(4) Parties may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No party must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a party's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the ~~((conduct officer or conduct board))~~ decision maker may resolve the matter based on the information available at the time of the hearing.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-050 Supportive measures. (1) While a student conduct matter is pending, the university may take a number of supportive measures on an interim basis to ensure the preservation of the educational experience and the overall university environment of the parties.

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

(i) A no-contact directive assigned to any party;

(ii) University housing room change for one or more involved parties; and/or

(iii) Changes in academic schedules or assignments for one or more involved parties.

(b) These actions for registered ~~((or recognized))~~ student organizations may include, but are not limited to:

(i) Loss of recognition;

(ii) Restriction of specified operational activities.

(2) University departments implementing supportive measures must coordinate with CCS or CCR, as applicable, which advises the parties of the supportive measures and the process for challenging them. For matters involving ~~((the university's executive policy 15, the departments must also consult with CCR regarding))~~ EP15, CCR or its designee facilities supportive measures. For all other alleged standards of conduct violations, CCS facilitates supportive measures. Supportive measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-100 Presiding officers. Full adjudicative proceedings are conducted by ~~((the conduct board and are presided over by an individual who is licensed to practice law in the state of Washington and has judicial training))~~ a presiding officer/decision maker who is designated by the university in accordance with WAC 504-04-020.

(1) The presiding officer's role is to:

(a) Ensure a fair and impartial process (~~(and is limited to making)~~);

(b) Make procedural and evidentiary rulings (~~(and handling)~~);

(c) Handle logistical and other matters related to facilitating the proceedings (~~(to)~~);

(d) Ensure compliance with legal requirements; and

(e) Deliver a decision letter to the parties in accordance with WAC 504-26-403.

(2) The presiding officer must transmit a full and complete record of the proceedings to CCS (~~(and the conduct board)~~), including such comments upon demeanor of witnesses as the presiding officer deems relevant, in accordance with RCW 34.05.461. (~~(The presiding officer does not vote.)~~)

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-105 Recruitment, appointment, and term of (~~conduct and appeals~~) community standards board members. A committee convened by the dean of students and comprised of students, staff, and/or faculty members (~~(and convened by the dean of students)~~) selects a pool of members of the university community to serve as (~~conduct board members and appeals~~) community standards board members.

(1) Pool members are (~~approved~~) appointed by the university president or designee and must be in good standing with the university. Pool members serve a maximum term of four calendar years but may apply to serve another four-year term after a break of two years. Terms of pool members are staggered. CCS is not involved in the selection processes for board members. CCS may assist in the recruitment process for board members.

(2) If a community standards board member fails to meet established expectations, their appointment may be terminated, in writing, by the university president or designee.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-110 Composition of conduct board. A conduct board may consist of one person or multiple persons selected from the pool of (~~approved~~) appointed university community members in accordance with WAC 504-26-105. (~~(The presiding officer is not a member of the conduct board.)~~) No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

NEW SECTION

WAC 504-26-112 Community standards board chairs. (1) The chair is responsible for ensuring:

(a) A fair and impartial process for all parties named in the hearing; and

(b) A written letter representing the decision of the board is provided to CCS for distribution to the parties.

(2) One member of the community standards board is designated as the chair of the board. The chair is a voting member of the community standards board.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-115 Composition of appeals board. (1) An appeals board (~~must~~) may consist of:

(a) The director of CCS or designee;

(b) The director of CCR or designee; or

(c) A panel of at least three members. (~~A quorum of three is needed to review a matter.~~)

(d) The appeals board is the university's reviewing officer as that term is defined under RCW 34.05.464(4).

(2) Where a panel is utilized, a minimum of one appeals board member hearing a matter must be a student. The remaining members may be students, (~~or full-time or part-time~~) faculty, or staff (~~of any rank or classification~~). No appeals board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent. (~~One member of the appeals board serves as the chair of the board. The chair is responsible for ensuring a fair and impartial process and is a voting member of the appeals board.~~)

NEW SECTION

WAC 504-26-117 Composition of academic integrity hearing board.

The academic integrity hearing board must consist of a minimum of one member. Where a panel is utilized, a minimum of one academic integrity board member hearing a matter must be a faculty member. The remaining members may be students or faculty. No academic integrity hearing board member may serve on a case if the member previously served on a board in a case involving the same student.

In hearings involving graduate respondents, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-120 Training. (1) Conduct and appeals board members. Conduct board members and appeals board members must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

(a) Diversity, equity, inclusion, and implicit bias;

(b) Student development and student conduct philosophies, including the educational component of the student conduct process;

(c) Fair and equitable decision making, including:

- (i) Due process;
- (ii) Standards of proof;
- (iii) Relevant and admissible evidence;
- (iv) Conflict of interest; and
- (v) Identifying bias;

(d) Sexual assault and gender-based violence;

(e) Alcohol and drug prevention;

(f) Sanctioning principles and guidelines; and

(g) Title IX regulatory definitions, jurisdiction, and grievance processes.

(2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

(a) Alternative dispute resolution;

(b) Restorative justice; and

(c) All training required of board members (see subsection (1) of this section).

(3) Presiding and reviewing officers. Presiding and reviewing officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

(a) Diversity, equity, inclusion, and implicit bias;

(b) Student development and student conduct philosophies, including the educational component of the student conduct process;

(c) Title IX regulatory definitions, jurisdiction, and grievance processes.

(4) Academic integrity hearing board members. Academic integrity hearing board members must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

(a) Diversity, equity, inclusion, and implicit bias;

(b) Student development and student conduct philosophies, including the educational component of the student conduct process;

(c) Fair and equitable decision making, including:

(i) Due process;

(ii) Standards of proof;

(iii) Relevant and admissible evidence;

(iv) Conflict of interest; and

(v) Identifying bias.

(5) Renewal of training. Training must be renewed on a biennial basis, except for decision makers who hear EP15 matters, who are required to take Title IX regulatory training annually.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-125 Recusal. (1) Notification of names of conduct officers and board members. All parties must be notified of the names of conduct officers (~~(, conduct board members,)~~) and/or (~~(appeals)~~) community standards board members assigned to their case no later than seven calendar days prior to the hearing (~~(or appeals board meeting)~~) date.

(2) Requesting recusal of conduct officers and board members. A party requesting recusal of a conduct officer or ~~((conduct/appeals))~~ community standards board member must demonstrate good cause including, but not limited to, conflict of interest or bias. For ~~((conduct board members, the presiding officer is responsible for granting or denying requests. For conduct officers and appeals board members))~~ brief adjudicative proceedings, the dean of students or designee is responsible for granting or denying requests.

(3) Presiding officer. Requests for recusal of the presiding officer are governed by the model rules of procedure, WAC 10-08-050(2).

(4) Reviewing officer. A party requesting recusal of a reviewing officer must demonstrate good cause including, but not limited to, conflict of interest or bias. The dean of students or designee is responsible for granting or denying requests.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or ~~((recognized or))~~ registered student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in WAC 504-26-425.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty are defined as:

(1) Academic integrity violations.

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Research misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of research misconduct are managed according to the university's policy for responding to allegations of research misconduct, executive policy 33. A finding of research misconduct is subject to sanctions by CCS.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(m) Violating any other academic rule or standards specified in published course policies.

(n) Unauthorized use of artificial intelligence to complete course requirements including, but not limited to, papers, homework assignments, and tests.

(2) Knowingly furnishing false information, knowingly omitting relevant information, or knowingly misrepresenting information to any person, including university officials, faculty members, or administrators. It is not a violation of this section to refuse to give self-incriminating evidence to a university official, faculty member, or administrator. (See WAC 504-26-045.)

(3) Forgery, alteration, or misuse of any university document or record, or instrument of identification whether issued by the university or other state or federal agency.

(4) Fraud.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-204 Physical harm or ((direct)) threat. (1) Physical harm ((, direct threats, and/or other conduct that undermines the safety of the university community or any person.)) includes, but is not limited to, any injury, damage, or impairment to the body caused to another person.

(2) Threat includes, but is not limited to, a statement of an intention to inflict pain, injury, damage, or other hostile action to another person. Threat can come in the form of actions or words.

Threat does not include speech that is protected under the first amendment.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-206 Hazing. (1) Hazing includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a (~~recognized or~~) registered student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or psychological or emotional harm, regardless of the person's willingness to participate.

(2) Hazing activities may include, but are not limited to:

- (a) Use of alcohol during activities targeted towards new members;
- (b) Striking another person whether by use of any object or one's body;
- (c) Creation of excessive fatigue;
- (d) Physical and/or psychological shock;
- (e) Morally degrading or humiliating games or activities;
- (f) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance regardless of the person's willingness to participate;
- (g) Unreasonable or unnatural physical activity.

(3) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions.

(4) Hazing is prohibited both on and off campus.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-207 Failure to comply with university officials or law enforcement officers. Failure to:

- (1) Comply with lawful directions of university officials and/or law enforcement officers acting in performance of their duties; and/or (~~failure to~~)
- (2) Identify oneself to these persons when requested to do so; and/or
- (3) Comply with an informal resolution facilitated under EP15.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university website or in hard copy in-

cluding, but not limited to, the university's alcohol and drug policy, (~~(executive policy 15)~~) EP15, and housing and residence life policy.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-213 (~~(Firearms and dangerous)~~) Weapons. (1) No student may possess or use any firearm (~~((including airsoft guns))~~), explosive (including fireworks), dangerous chemicals (excluding pepper spray), or other dangerous weapons or instrumentalities (including tasers and airsoft guns) on university premises.

(2) This prohibition does not apply to possession of such items for authorized university purposes; possession of such items by authorized law enforcement officers; or individuals who have obtained prior written approval from the university chief of police, president, or designee.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system is defined as:

(1) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.

(2) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(3) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any (~~(university)~~) conduct (~~(board)~~) proceeding.

(4) Harassment (verbal, written, or physical) and/or intimidation of a member of a (~~(university conduct)~~) community standards board, any individual involved in the conduct process, any CCR investigator or CCR informal resolution facilitator during a CCR investigation, or any conduct officer before, during, and/or after any university conduct proceeding.

~~((5) Failure to comply with or failure to complete any sanction(s) assigned under the standards of conduct.~~

~~(6) Violation of probation or any probationary conditions.))~~

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-220 Discriminatory harassment. (1) Unwelcome, intentional conduct on the basis of race; (~~((sex and/or gender; sexual orientation; gender identity or expression;))~~) religion; age; color; creed; national or ethnic origin; marital status; genetic information; status as an honorably discharged veteran, protected veteran, or member of the military; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); or immigration or citizenship status, except as authorized by federal or state law, regulation, or government (~~(practice)~~) contract, which is

so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

- (a) Interferes with, or has the potential to interfere with, an individual's ability to participate in university employment, education, programs, or activities;
- (b) Adversely alters the condition of an individual's university employment, education, or participation status;
- (c) Creates an objectively abusive employment, program, or educational environment; or
- (d) Results in a material or substantial disruption of the university's operations or the rights of students, staff, faculty, visitors, or program participants.

(2) In determining if conduct is harassing, the totality of the circumstances are assessed including, but not limited to, the following factors:

- (a) Severity;
- (b) Frequency of the discrimination;
- (c) Status of the ~~((reporting and responding))~~ complainant and respondent parties and their relationship to each other;
- (d) Physicality, threats, or endangerment; and
- (e) Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-221 Sexual ~~((misconduct))~~ assault. (1) Sexual ~~((misconduct))~~ assault is an egregious form of ~~((sex discrimination/sexual))~~ sex-based harassment. Sexual ~~((misconduct))~~ assault is defined as~~((+))~~ follows. (Note: The following sexual assault definitions are updated in the National Incident-Based Reporting System (NIBRS) User Manual which is available online on the Federal Bureau of Investigation (FBI) UCR Technical Specifications website at <https://le.fbi.gov/informational-tools/ucr/>. Where the definitions are updated in the NIBRS User Manual, the updated definitions apply.)

(a) Sex offense. Any sexual act directed against another person, without the consent of the ~~((victim))~~ complainant, including instances where the ~~((victim))~~ complainant is incapable of giving consent.

(b) Rape (except statutory rape). ~~((The carnal knowledge of a person))~~ Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, without the consent of the ~~((victim))~~ complainant, including instances where the ~~((victim))~~ complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(c) ~~((Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.~~

~~((d) Sexual assault with an object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.~~

~~(e-))~~ Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the ~~((victim))~~ complainant, including instances where the ~~((victim))~~ complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

~~((f-))~~ (d) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

~~((g-))~~ ~~Sexual exploitation, which occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:~~

~~(i-)~~ Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person.

~~(ii-)~~ Invading another person's sexual privacy.

~~(iii-)~~ Prostituting another person.

~~(iv-)~~ Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where they have a reasonable expectation of privacy.

~~(v-)~~ Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection.

~~(vi-)~~ Exposing one's intimate parts in nonconsensual circumstances.

~~(h-))~~ (e) Statutory rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

~~((i-))~~ ~~Sexually based stalking and/or bullying.~~

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that

incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-222 Harassment (other than ((sexual)) sex-based harassment or discriminatory harassment). Harassment is conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would cause a reasonable person in the ((victim's)) complainant's position substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the university, and/or actually does cause the ((victim)) complainant substantial emotional distress and undermines the ((victim's)) complainant's ability to work, study, or participate in the ((victim's)) complainant's regular life activities or participate in the activities of the university.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-223 Stalking. (1) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (a) Fear for their safety or the safety of others; or
- (b) Suffer substantial emotional distress.

(2) Course of conduct means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(3) Reasonable person means a reasonable person under similar circumstances and with similar identities to the ((victim)) complainant.

(4) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(5) The use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-224 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property and/or other conduct that undermines the safety of the university community or any person. Reckless endangerment may include((s)), but is not limited to(~~(r)~~):

- (1) Operating a ((motor)) vehicle while intoxicated;
- (2) Operating a vehicle with blatant disregard for the safety of other people and/or property;
- (3) Placing hazards in a public right of way;
- (4) Throwing objects at moving vehicles or out of buildings;
- (5) Tampering with or removing safety equipment and/or signage.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-227 ((Sexual)) Hostile environment sex-based harassment. Unwelcome, ~~((intentional))~~ sex-based conduct ~~((, on the basis of sex and/or gender, which))~~ (including conduct based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity/expression) that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive((, and objectively offensive,)) that ~~((it substantially and unreasonably))~~:

- ~~(1) ((Interferes with, or has the potential to interfere with, an individual's ability to participate in university employment, education, programs, or activities;~~
- ~~(2) Adversely alters the condition of an individual's university employment, education, or participation status;~~
- ~~(3) Creates an objectively abusive employment, program, or educational environment; or~~
- ~~(4) Results in a material or substantial disruption of the university's operations or the rights of students, staff, faculty, visitors, or program participants))~~ It limits or denies a person's ability to participate in or benefit from WSU's education programs or activities (i.e., creates a hostile environment); or
- (2) Enduring the offensive conduct becomes a condition of continued employment.

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-231 Intimate partner violence. Intimate partner violence is defined as:

- (1) Dating violence, which is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the ~~((victim))~~ complainant. The existence of such a relationship is determined based on the:
 - (a) Length of the relationship;
 - (b) Type of relationship; and

(c) Frequency of interaction between the persons involved in the relationship.

(2) Domestic violence, which is defined as a felony or misdemeanor crime of violence committed by:

(a) A current or former spouse or intimate partner of the ~~((victim))~~ complainant or a person similarly situated to a spouse of the complainant;

(b) A person with whom the ~~((victim))~~ complainant shares a child in common;

(c) A person who is cohabitating with, or has cohabitated with, the ~~((victim))~~ complainant as a spouse or intimate partner;

(d) A person similarly situated to a spouse of the ~~((victim))~~ complainant under the domestic or family violence laws of Washington; or

(e) Any other person against an adult or youth ~~((victim))~~ complainant who is protected from that person's act under the domestic or family violence laws of Washington.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-401 Initiating conduct proceedings. (1) Complaints. Any member of the university community may submit a complaint that a student or ~~((recognized or))~~ registered student organization violated the standards of conduct. In matters that would constitute a violation of ~~((executive policy 15))~~ EP15, the complaint must be ~~((initiated through))~~ submitted to CCR or initiated by CCR pursuant to EP15. In addition, CCS may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to ~~((initiate the community standards process))~~ refer the matter to a hearing. Except as provided below, ~~((after reviewing the initial information, if the conduct officer determines that additional action from CCS is not warranted, the conduct officer dismisses the matter.))~~ if the conduct officer decides not to ((initiate a conduct proceeding)) refer the matter to a hearing, the conduct officer must notify the reporting party in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known. A conduct officer cannot dismiss a matter received from CCR where CCR completed ~~((a formal))~~ an investigation implicating ~~((Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, regardless of the investigation's outcome))~~ EP15. In such cases, the ~~((conduct officer must refer the))~~ matter must be referred to a conduct ~~((board))~~ hearing, which must be held within 60 days of the date the CCR ~~((formal))~~ investigation ~~((report was received))~~ is completed, unless good cause exists to extend the date of the hearing or the matter is resolved through agreement or alternative dispute resolution.

(3) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution including, but not limited to, shuttle diplomacy or mediation. Parties involved in matters implicating EP15 also may participate in an informal resolution process outlined in EP15 and the CCR procedural guidelines at any time

prior to a determination of responsibility. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

- (a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and
 - (b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.
- (4) Referral for adjudication. Except as provided in subsection (2) of this section, if CCS determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a ~~((conduct officer hearing (-)))~~ brief adjudication ((-)) ~~in accordance with WAC 504-26-402, or conduct board hearing (full adjudication))~~ in accordance with WAC 504-26-402 or a full adjudicative proceeding in accordance with WAC 504-26-403. In determining which process is appropriate, CCS considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with CCS, ~~((and))~~ the range of possible sanctions that ((could be assigned)) would be appropriate given the alleged conduct, and whether the alleged conduct constitutes sex discrimination or sex-based harassment. A student may request ~~((that a conduct board hear the case))~~ a full adjudicative proceeding, but the final decision regarding whether to refer the matter to ~~((the conduct board for hearing))~~ a full adjudicative proceeding for resolution is made by CCS and is not subject to appeal.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-402 ((Conduct officer hearings (-)) Brief adjudications ((+)). (1) ~~((The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than 10 instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.~~

~~((2-))~~ Notice of hearing. The ~~((conduct officer must provide the))~~ parties must be provided with written notice no later than seven calendar days prior to ~~((the conduct officer hearing))~~ a brief adjudication. The notice must include:

- (a) A brief description of the factual allegations or issues involved;
- (b) The specific standard of conduct provision(s) the respondent is alleged to have violated;
- (c) The time, date, and place of the hearing or process by which a respondent may schedule the hearing;
- (d) Information regarding what to expect during the student conduct process and student rights including, but not limited to:

(i) A statement that the parties have the right to have an advisor present at the hearing;

(ii) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045;

(iii) Information regarding the right to request recusal of a conduct officer or community standards board member under WAC 504-26-125;

(e) Available resources, including how to access an information session ~~((and legal resources in the community))~~;

(f) A statement that any request to modify the time or date of the ~~((conduct officer))~~ hearing should be addressed to CCS;

(g) A statement that indicates that respondents are presumed "not responsible" for the pending allegations;

(h) A statement that violations are determined by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred.

~~((3))~~ (2) Hearing and possible outcomes. ~~((Conduct officer hearings are))~~

(a) Brief adjudications are conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows ~~((the conduct officer to))~~ for an objective evaluation and review of available information, ~~((hear the parties' view of the matter, render))~~ the rendering of a decision regarding responsibility, and ~~((assign))~~ assigned sanctions, as appropriate. The conduct officer may engage in further questioning of parties and witnesses as needed to evaluate the allegations and assess credibility.

~~((a))~~ (b) Upon conclusion of the hearing, ~~((the conduct officer may take any of))~~ the following actions may be taken:

(i) Find the respondent responsible for any or all of the alleged violations and assign sanctions as provided in WAC 504-26-425 ~~((within the limitations described in subsection (1) of this section))~~;

(ii) Find the respondent not responsible for any or all of the alleged violations;

(iii) Dismiss the matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information becomes known ~~((or~~

~~iv) Refer the matter to the conduct board))~~.

~~((4))~~ (3) Notice of decision and right to appeal. The ~~((conduct officer notifies the))~~ parties are notified in writing of the decision within 10 calendar days of the ~~((conduct officer hearing))~~ brief adjudication. This is the initial order of the university and must include:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the ~~((university conduct board hearing))~~ outcome of the brief adjudication, as well as a rationale for such determinations;

(c) Appropriately numbered findings of fact and conclusions;

(d) The sanction(s) ~~((and/or remedy(ies)))~~ to be assigned, if any, and the rationale for the sanction(s) ~~((and/or remedy(ies)))~~;

(e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-403 (~~(Conduct board hearings~~(~~)~~) **Full adjudications**(~~(~~)~~)~~). (1) (~~Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than 10 instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board at the discretion of CCS.~~

~~(2))~~ Adoption of model rules of procedure. (~~Conduct board hearings are~~) Full adjudications are governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

~~((3))~~ (2) Notice of hearing. Notice to the parties of a (~~conduct board hearing~~) full adjudicative proceeding must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-401 must be provided.

~~((4))~~ (3) Time for (~~conduct board~~) hearings. The (~~conduct board hearing~~) full adjudicative proceeding is scheduled (~~(not)~~) no less than seven calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A request for an extension of time is granted only upon a showing of good cause.

~~((5))~~ (4) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

~~((6))~~ (5) Discovery. Depositions(~~(~~r~~)~~) and interrogatories(~~(~~r~~)~~ and physical or medical examinations of parties) are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

~~((7))~~ (6) Direct questioning and cross-examination. As required by RCW 34.05.449, direct and cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues.

(a) For hearings involving allegations where EP15 is implicated, parties and/or their advisors or representatives may submit direct and cross-examination (~~is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be~~

~~permitted to cross-examine each other directly. Before any witness or party may answer a) questions to the presiding officer who asks relevant, permissible, clear, and nonharassing questions. Prior to asking any direct and cross-examination question, the presiding officer must first determine whether the question is relevant, permissible, clear, and nonharassing. If a presiding officer excludes a question, the presiding officer must explain the rationale for exclusion and provide the party and/or advisor an opportunity to clarify or revise their question.~~

~~(b) For hearings involving allegations where EP15 is not implicated, cross-examination is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer must instruct parties or witnesses not to answer cross-examination questions that are irrelevant, immaterial, or unduly repetitious.~~

~~((8)) (7) Decision requirements. Decisions regarding responsibility and sanctions are made by ((a majority of the conduct board hearing the matter)) the presiding officer.~~

~~((9)) (8) Notice of decision and right to appeal. Within 10 calendar days of the completion of the hearing, the ((conduct board)) presiding officer must issue ((a decision)) the initial order simultaneously to all parties, ((which is the)) unless the presiding officer notifies the parties in writing that additional time (up to 30 calendar days) is needed. The initial order of the university ((and)) must contain the following:~~

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the ((university conduct board hearing)) outcome of the full adjudicative proceeding;

(c) Appropriately numbered findings of fact and conclusions;

(d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);

(e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or ((student)) conduct ((proceeding)) hearing relating to alleged standards of conduct violations. An emergency sus-

pension may be assigned at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension. (~~((a) For matters which would not constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15,))~~ Emergency suspension may be assigned only in situations when the dean of students or a vice chancellor for student affairs (in consultation with CCS), or their designee, has (cause to believe that) engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:

~~((i))~~ (a) Allegedly has violated any provision of the standards of conduct; and

~~((ii) Presents an immediate danger))~~ (b) If the allegations in (a) of this subsection are true, the student is an imminent and serious threat to the health((,)) or safety((, or welfare)) of any ((part of the university community or the public at large)) student, employee, or other individual. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

~~((b) For matters which would constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in a situation where the dean of students or a vice chancellor for student affairs (in consultation with CCS), or their designee, has engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:~~

~~(i) Has violated any provision of the standards of conduct; and~~

~~(ii) Is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment.))~~

(3) Procedure. The dean of students or a vice chancellor for student affairs, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), the policy reasons for the emergency suspension, and the process to challenge the decision. The emergency suspension does not replace the ~~((regular hearing))~~ community standards process, which must proceed to a conduct ((officer hearing or conduct board)) hearing, as applicable, as quickly as feasible unless the emergency suspension is lifted earlier by the individual who issued the original emergency suspension or the individual who reviewed the student's challenge to an emergency suspension. If an emergency suspension is lifted prior to the hearing, the conduct officer determines whether to refer the matter to a hearing. Once a final order or agreement is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order or agreement is assigned.

(4) Challenge of the decision. The student can challenge the emergency suspension decision within 10 calendar days of the date of notice. Challenges are reviewed by the vice president for student affairs or their designee, provided the designee is not the same person who made the original emergency suspension decision. The vice president for student affairs or designee has 10 calendar days to respond to the ~~((review))~~ challenge and can uphold, reverse, or modify the emergency suspension. If the challenge is not reviewed within 10 cal-

endar days, it is automatically deemed upheld. The submission of a challenge does not stay the emergency suspension decision.

AMENDATORY SECTION (Amending WSR 24-10-031, filed 4/23/24, effective 5/24/24)

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor believes that an academic integrity violation has occurred, the instructor must ~~((assemble the evidence and, upon reasonable notice to the respondent of the date, time, and nature of the allegations,))~~ make reasonable attempts to meet with the ~~((respondent))~~ student suspected of committing an academic integrity violation to allow the student to respond to the allegations.

(b) ~~((If the respondent admits that they committed an academic integrity violation, the instructor assigns an outcome in keeping with published course policies and notifies CCS in writing, including the allegations, the respondent's admission, and the sanctions assigned.~~

~~((c) If the instructor is unable to meet with the respondent or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor,))~~ After the meeting or reasonable attempts to meet occur, the instructor must make a ~~((determination))~~ decision as to whether it is more likely than not that the respondent ~~((did or did not commit))~~ is responsible for an academic integrity violation ~~((based on a preponderance of the evidence standard, meaning that it is more likely than not that the violation occurred))~~ as defined in WAC 504-26-202. If the instructor finds that the respondent ~~((was in))~~ is responsible for an academic integrity violation, the instructor must provide the respondent and CCS with a written ~~((determination))~~ decision, the evidence relied upon, and the academic sanctions assigned.

~~((d) The respondent has 21 calendar days from))~~ (c) Decisions made by the instructor become final 21 calendar days after the date ~~((of))~~ the decision ~~((letter to request review of the instructor's determination and/or sanction(s) assigned to the academic integrity hearing board))~~ is sent to the respondent, unless an appeal is submitted.

(2) ~~((Review))~~ Appeal.

(a) The respondent can appeal the instructor's decision by submitting an appeal to CCS within 20 calendar days of the date of decision. Upon timely ~~((request for review by a respondent who has been found by their instructor to have committed an academic integrity violation))~~ submission of appeal, the academic integrity hearing board ~~((must make a separate and independent determination of whether or not the respondent is responsible for committing an academic integrity violation and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies))~~ conducts a limited review.

(b) ~~((The academic integrity hearing board must consist of a minimum of one member. No academic integrity hearing board member may serve on a case if the member previously served on a board in a case involving the same student.))~~ Scope of review. Appeal of an instructor's academic integrity decision is limited to a review of the record to determine whether:

(i) The instructor meeting was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless procedural error affected the outcome of the matter.

(ii) The decision reached was based on substantial information, i.e., whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) The academic sanction assigned by the instructor was in alignment with the published course policies and/or syllabus statement(s).

(c) Actions. After reviewing the record and any information provided by the parties, the academic integrity hearing board may take the following actions:

(i) Affirm, reverse, or modify the initial decision, or any part of the decision;

(ii) Affirm, reverse, or modify the academic sanctions and/or remedies assigned by the decision maker, or any part of the sanctions and/or remedies; or

(iii) Set aside the findings, sanctions, remedies, or any part of the findings, sanctions, or remedies and remand the matter back to the decision maker with instructions for further proceedings.

(d) The academic integrity hearing board is empowered to provide an appropriate remedy for a respondent including arranging a withdrawal from the course, having the respondent's work evaluated, or changing a grade where it finds that:

(i) The respondent is not responsible for violating academic integrity policies; or

(ii) The outcome assigned by the instructor violates the instructor's published policies.

~~((d) Academic integrity hearing board proceedings.~~

~~(i) Any respondent appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:~~

~~(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;~~

~~(B) The approximate time and place of the alleged act that forms the factual basis for the violation;~~

~~(C) The time, date, and place of the hearing;~~

~~(D) A list of the witnesses who may be called to testify, to the extent known; and~~

~~(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the respondent must have the right to inspect the documentation.~~

~~(ii) Time for hearings.~~

~~(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the respondent has been sent notice of the hearing.~~

~~(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to CCS. A request for extension of time is granted only upon a showing of good cause.~~

~~(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by (d) (iv) of this subsection:~~

~~(A) Academic integrity hearing board hearings are conducted in private.~~

~~(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.~~

~~(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.~~

~~(D) In hearings involving graduate respondents, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.~~

~~(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weekdays before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may submit written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the academic integrity hearing board chair, who has the discretion to determine admissibility of information.~~

~~(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.~~

~~(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.~~

~~(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is more likely than not responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.~~

~~(I) The respondent is notified of the academic integrity hearing board's decision within 20 calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.~~

~~(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.~~

~~(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written state-~~

ment, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

~~(vi))~~ (e) Content of decision. The decision includes the outcome, any sanction or remedy, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. The written decision of the academic integrity hearing board is the university's final order. There is no additional appeal ~~((from))~~ of the findings of responsibility or ~~((outcomes))~~ academic sanctions assigned by academic integrity hearing board.

(3) ~~((If the reported violation is the respondent's first offense, CCS ordinarily requires the respondent to attend a workshop))~~ After a finding of responsibility, either upon expiration of the appeal period or the academic integrity hearing board decision, the matter is referred to CCS for educational sanctioning separate from, and in addition to, any academic ((outcomes)) sanctions assigned by the instructor.

(4) ~~((If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, to determine appropriate sanctions, which may include expulsion from the university.~~

~~(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred to the conduct board with a recommendation for expulsion from the university even if it is the respondent's first offense.~~

~~(6))~~ Because instructors and departments have ~~((a legitimate))~~ an educational ~~((interest in))~~ need to know the outcome ~~((s, reports))~~ of an academic integrity hearing board ~~((and/or conduct board hearings must be reported to))~~ decision, academic integrity hearing board decisions are shared with the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-420 Appeals. (1) Time for appeals. ~~((Decisions made by a conduct officer or conduct board))~~ Conduct hearing decisions become final on the 21st calendar day after the date the decision is sent to the parties, unless an appeal is submitted within 20 calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the ~~((conduct officer's or conduct board's))~~ decision maker's initial order, the implementation of an initial order assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals ~~((of conduct officer decisions))~~. Upon receipt of a timely appeal, CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond within 10 calendar days. ~~((The appeals board then conducts a limited review as described below.))~~

(a) Brief adjudication scope of review. Except as required to explain the basis of new information, appeal of a ~~((conduct officer))~~

brief adjudication decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless procedural error affected the outcome of the matter;

(ii) To determine whether the decision reached was based on substantial information, ~~((that is))~~ i.e., whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed;

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original ~~((conduct officer hearing))~~ brief adjudication, because such information and/or facts were not known to the person appealing at the time of the original ~~((conduct officer hearing))~~ brief adjudication;

(v) To consider whether or not the university had jurisdiction per WAC 504-26-015 to address the situation through the community standards process ~~((. In cases implicating the university's executive policy 15, the appeals board must consult with the university's Title IX coordinator))~~; or

(vi) To consider whether the ~~((Title IX coordinator,))~~ investigator(s) ~~((r))~~ or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(b) ~~((Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.~~

~~(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond within 10 calendar days.)~~
Full adjudicative proceeding scope of review. In addition to the criteria listed in (a) of this subsection, the appeals board members for full adjudicative proceeding appeals must make a separate and independent decision in the matter and personally consider the whole record.

The appeals board must have and exercise all the decision-making power that the ~~((conduct board))~~ decision maker had, except that the appeals board must give due regard to the ~~((conduct board's))~~ decision maker's opportunity to observe the witnesses, if applicable. ~~((The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.~~

~~(5))~~

(4) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. ~~((Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.~~

~~(6))~~

(5) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the ~~((conduct board's or conduct officer's))~~ initial decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions and/or remedies assigned by the ~~((conduct board or conduct officer))~~ decision maker, or any part of the sanctions and/or remedies; or

(iii) Set aside the findings ~~((or))~~, sanctions, remedies, or any part of the findings ~~((or))~~, sanctions, remedies and remand the matter back to the ~~((conduct board or conduct officer))~~ decision maker with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction and/or remedy, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of ~~((conduct board hearings))~~ full adjudicative proceedings, the decision includes, or incorporates by reference to the ~~((conduct board's))~~ presiding officer's decision, all matters as set forth in WAC 504-26-403(8).

(c) Service and effective date of decision. For appeals of ~~((conduct officer decisions))~~ brief adjudicative proceedings, the appeals board's decision must be sent simultaneously to the parties within 20 calendar days of receipt of the appeal. For appeals of ~~((conduct board decisions))~~ full adjudicative proceedings, the appeals board's decision must be sent simultaneously to the parties within 30 calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to 90 calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

~~((7))~~ (6) Reconsideration of final orders. Within 10 calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or 21 calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within 21 calendar days, the request is deemed to have been denied.

~~((8))~~ (7) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within 10 calendar days of the date the order was served.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the university website. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) assigned for a particular violation.

(2) Factors for sanctioning must include, but not be limited to, the following:

(a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;

(b) Malicious intent. If a respondent is found to have intentionally selected a ((~~victim~~)) complainant based upon the respondent's perception of the ((~~victim's~~)) complainant's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct;

(c) Impact on ((~~victim~~)) complainant and/or university community;

(d) Applicable local, state, or federal laws that define sanctioning.

(3) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(4) Types of sanctions. The following sanctions may be assigned to any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be assigned for any single violation:

(a) Warning. A notice in writing to the respondent that the respondent is violating or has violated the standards of conduct.

(b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the respondent that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be assigned if the respondent is found to have violated the standards of conduct or any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A respondent on probation is not eligible to run for or hold an office in any ((~~recognized or~~)) registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. Assignment of service hours (not to exceed 80 hours per respondent or per member of a ((~~recognized or~~)) registered student organization).

(g) University housing suspension. Separation of the respondent from a residence hall or halls for a definite period of time, after which the respondent may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the respondent from a residence hall or halls.

(i) University suspension. Separation of the respondent from the university for a definite period of time. The respondent may be required to request readmission after completing a suspension per other university policy.

(j) University expulsion. Permanent separation of the respondent from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree or admission, or for other serious violations committed by a respondent before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions assigned, if any.

(m) Trespass. A respondent may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A (~~recognized or~~) registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a (~~recognized or~~) registered student organization. Services, privileges, and approval to be withdrawn may include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student (~~involvement~~) engagement office organizational activities, and their liaison relationship with the center for fraternity and sorority life.

(o) Hold on transcript and/or registration. A hold restricts release of a respondent's transcript or access to registration until satisfactory completion of conditions or sanctions assigned by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact directive. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be assigned. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a respondent who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902. Any (~~recognized or~~) registered student organization that is found responsible for hazing must lose recognition for a specified period of time.

(s) Remedies. Sanctions designed to restore or preserve a complainant's equal access to the university's educational programs or activities.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The dean of students or designee has authority to interpret these rules and develops policies, procedures, and guidelines for

the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the university website. A link to the website must be provided to parties during their initial contact from CCS.

(2) Definitions from these standards are incorporated into (~~the university's executive policy 15~~) EP15.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-510 Good Samaritan policy. CCS may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student or (~~recognized or~~) registered student organization who, while in the course of helping another person seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk. In addition, CCS may elect not to initiate a conduct proceeding against a complainant who admits to the possession or use of alcohol or drugs in connection with a report under this policy.

AMENDATORY SECTION (Amending WSR 22-23-142, filed 11/21/22, effective 1/1/23)

WAC 504-26-530 Recordkeeping and confidentiality. (1) Removal of conduct record. A student may request removal of a single disciplinary violation from their record. Granting such a request is discretionary, and the student must make such a request in accordance with university policies and procedures.

(2) Conduct records are maintained in accordance with the university's records retention schedule.

(3) The conduct record is confidential and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 504-21 WAC, University policy on student education records. Situations where CCS may release records include, but are not limited to, releases:

(a) To another educational institution, upon request, where the student seeks or intends to enroll;

(b) To a parent or legal guardian, if a student under the age of 21 is found responsible for a drug or alcohol violation;

(c) To comply with legally served search warrants and subpoenas;

(d) To other university employees, if there is an educational need for the employee to know the information;

(e) To inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA;

(f) To inform the complainant of the outcome of any conduct proceeding alleging dating violence, domestic violence, sexual assault, or stalking as defined by the Clery Act (34 C.F.R. 668.46

(k) (2) (v) (A)).

(4) A student may request a copy of their own conduct record at their own reasonable expense by making a written request to CCS.

(5) Personally identifiable student information is redacted to protect other students' privacy, except as otherwise required by law or permitted by policy.

(6) A student may authorize release of their own conduct record to a third party in compliance with FERPA by making a written request to CCS.

**WSR 24-18-122
PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed September 4, 2024, 10:46 a.m.]

Continuance of WSR 24-15-149.

Preproposal statement of inquiry was filed as WSR 24-13-120.

Title of Rule and Other Identifying Information: Real estate appraisers fee increases; WAC 308-125-120 Fees and charges.

Hearing Location(s): On September 18, 2024, at 10:30 a.m., at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504; or virtual option via Microsoft Teams [contact agency for link], Meeting ID 294 796 429 452, Passcode qktssp; or dial in by phone +1 564-999-2000,,570747312# United States, Olympia, (564) 999-2000,,570747312# United States (Toll-free), Phone conference ID 570 747 312#. If you are having trouble accessing the virtual meeting, please call in to participate over the phone. You may also attend in person at the listed address. Signs will be posted on the lobby door of the visitor entrance.

Date of Intended Adoption: September 19, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov (subject: Appraisers' Fee Increases Public Hearing), beginning July 24, 2024, by September 18, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by September 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (DOL) is continuing their rule making to raise appraisers' licensing fees. DOL is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Current fees for appraisers are insufficient to sustain the program, and therefore DOL is increasing fees.

Reasons Supporting Proposal: In accordance with RCW 43.24.086, we are required to set these fees "at a sufficient level to defray the costs of administering that program." After completing an account audit with the federal Appraiser Subcommittee (ASC), DOL identified an error in the program fund balance. To bring the program balance to good standing, DOL must increase program fees. The appraiser program has not had a fee increase since 2009 (15 years). Current fees are insufficient to sustain this program with cost of business increases. Fee increases are needed to continue providing the information technology systems, training and oversight, and other critical services needed to support licensees and maintain public safety.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule, 46.01.110, and 18.140.050 Fees and collection procedures.

Statute Being Implemented: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule and 18.140.050 Fees and collection procedures.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Lauren Gilmore, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-634-5365;

Implementation and Enforcement: Chantelle Petrone Marker, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-634-5365.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.055 (b) (vi) [34.05.238 (5) (b) (vi)] exempts DOL from this requirement since DOL sets and adjusts fees pursuant to legislative standards, authorized in RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule, and 18.140.050 Fees and collection procedures.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

September 4, 2024
 Ellis Starrett
 Rules and Policy Manager

OTS-5650.3

AMENDATORY SECTION (Amending WSR 20-18-024, filed 8/26/20, effective 9/26/20)

WAC 308-125-120 Fees and charges. The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee	Fee
(1) Application for examination	((\$370.00)) <u>\$740.00</u>
(2) Examination	120.00**
(3) Reexamination	120.00**
(4) Original certification	((250.00*)) <u>420.00*</u>
(5) Active license renewal	((530.00*)) <u>980.00*</u>
((6)) Inactive license renewal	110.00)
((7)) Inactive license reinstatement	((530.00))
(6)	<u>1,200.00*</u>
((8)) Late renewal	((38.00))
(7)	<u>76.00</u>
((9)) Certification history record	30.00
(8)	
((10)) Application for reciprocity	((370.00))
(9)	<u>660.00</u>
((11)) Original certification via reciprocity	((250.00))
(10)	<u>420.00*</u>
((12)) Temporary practice	((150.00))
(11)	<u>250.00</u>

Title of Fee	Fee
((13)) Trainee registration	((200.00))
<u>(12)</u>	<u>400.00</u>
((14)) Trainee registration renewal	((200.00))
<u>(13)</u>	<u>400.00</u>
((15)) DOL license print	5.00
<u>(14)</u>	

- * Fees for these categories marked with an asterisk include a national registry fee in an amount determined by the appraisal subcommittee to be submitted by the state. Title XI, SEC. 1109 requires each state to submit a roster listing of state licensed and certified appraisers to the Appraiser Subcommittee.
- ** Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

WSR 24-18-123
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 4, 2024, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-022.

Title of Rule and Other Identifying Information: Adult entertainer safety, chapter 296-831 WAC.

Hearing Location(s): On October 14, 2024, at 11:00 a.m., at the Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168. A prehearing overview will begin at 10:00 a.m. The hearing will start at 11:00 a.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's division of fraud prevention and labor standards (FPLS); and on October 15, 2024, at 2:00 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/87075679462?pwd=ePBjQ2wvAbvYdydgkD0fFPMVb4YIx7.1>; or join by phone (audio only) 253-205-0468 or 253-215-8782, Meeting ID 870 7567 9462, Passcode 140340150. A prehearing overview will begin at 1:00 p.m. The hearing will start at 2:00 p.m. and will continue until all oral comments are received. This public hearing will be held jointly with FPLS.

Date of Intended Adoption: December 2, 2024.

Submit Written Comments to: Cynthia Ireland, L&I, Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Cynthia.Ireland@lni.wa.gov, fax 360-902-5619, beginning September 5, 2024, at 8:00 a.m., by October 18, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cynthia Ireland, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@lni.wa.gov, by October 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making will implement the requirements of ESSB 6105, section 1, chapter 250, Laws of 2024, codified under RCW 49.17.470. Specifically, this rule making will address some of the following:

- Adds statutory requirement that an adult entertainment establishment provide training, inclusive of the training topics outlined in ESSB 6105, to its employees other than entertainers;
- Updates requirements that an adult entertainment establishment provide panic buttons to include they must be accessible, and adds statutory requirement to submit annual proof of compliance and panic button maintenance to L&I;
- Add statutory requirements for establishments to provide appropriate cleaning supplies, equip dressing or locker rooms with a keypad requiring a code, displaying signage about appropriate customer etiquette, and establishing written processes and procedures for responding to customer violence and ejecting customers who violate club policies;
- Add statutory requirement that an adult entertainment establishment have written policies and procedures for implementation of the block list and panic buttons requirements, and must make such policies, procedures, and any other related records available for inspection by L&I upon request;
- Add statutory requirements that an adult entertainment establishment provide dedicated security personnel, and specify when se-

curity personnel may not engage in duties other than security, and when additional security is necessary;

- Add statutory requirements that an adult entertainment establishment must provide dedicated security to monitor interactions between entertainers and patrons; and
- Other housekeeping amendments in chapter 296-831 WAC.

L&I's DOSH is required to implement and enforce ESSB 6105, which addresses safety and health standards for entertainers at adult entertainment establishments. ESSB 6105, codified as RCW 49.17.470, becomes effective January 1, 2025. L&I must adopt rules to implement and enforce the provisions of the law.

L&I's FPLS division is conducting rule making to clarify and implement the requirements of ESSB 6105 under chapter 49.46 RCW. The proposed rules also describe FPLS's enforcement mechanisms, including the complaint, investigation, citation, and appeals processes. The proposed rules also provide for remedies and penalties for violations of the rules. FPLS is engaging in simultaneous rule making.

Reasons Supporting Proposal: The proposed rule making is needed in order to meet RCW 49.17.470 and to provide additional worker protections.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.470.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 360-902-6954; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cynthia Ireland, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@lni.wa.gov.

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

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

Explanation of exemptions: See table below. The proposed language largely adopts the statutory amendments made by ESSB 6105 to RCW 49.17.470 without material change and makes housekeeping adjustments.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The below table lists all sections identified as exempt from analysis:

Proposed WAC Sections and Title	This proposed rule section is exempt (in whole or in part). Provide RCW to support this exemption.
WAC 296-831-200 Definitions.	RCW 34.05.310 (4)(c); the proposed language is fully exempt because it makes updates to definitions based on changes made by ESSB 6105 to RCW 49.17.470 or make housekeeping updates by updating subsection numbers.
WAC 296-831-250 General requirements.	RCW 34.05.310 (4)(c) and (4)(d); the proposed language is exempt because part of the amendment is adopting without material change language from WAC 296-831-100 relocating the information found in a note into the general rule language. Requirements remain the same.
WAC 296-831-300 Panic button requirements.	RCW 34.05.310 (4)(c) and (4)(d); the proposed language is partially exempt because it makes updates based on changes made by ESSB 6105 to RCW 49.17.470, moves exception language into a subsection format and moves a guidance checklist to the correct section.
WAC 296-831-310 Install an appropriate entertainer alarm system(s).	RCW 34.05.310 (4)(d); the proposed language is fully exempt because it makes updates based on changes made by ESSB 6105 to RCW 49.17.470, removes redundant language and amends language to make the section easier to read and understand.
WAC 296-831-450 Security personnel requirements.	RCW 34.05.310 (4)(c); the proposed language is partially exempt because it makes updates based on changes made by ESSB 6105 to RCW 49.17.470.
WAC 296-831-500 Customer complaint log requirements.	RCW 34.05.310 (4)(c) and (4)(d); the proposed language is fully exempt because it makes updates based on changes made by ESSB 6105 to RCW 49.17.470, and makes housekeeping updates.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. As outlined in the chart below, the rule does not impose more-than-minor administrative costs on adult entertainment establishments.

WAC 296-831-300(2)	Any potential costs would likely be minimal and administrative in nature, related to reviewing and synthesizing the entertainers' recommendations before finalizing the placement of panic buttons.
WAC 296-831-300(4)	The cost impact is negligible. This change adjusts the frequency of panic button testing to an annual basis, which may actually reduce costs if establishments were previously conducting more frequent tests.
WAC 296-831-300(5)	There is no associated cost. This language incorporates provisions from ESSB 6105, based on RCW 49.17.470(3), and clarifies the necessary documentation to be submitted as proof of compliance
WAC 296-831-400(4)	No additional cost is expected from this proposed language, as training records will be included in general recordkeeping, which is already required for establishments.
WAC 296-831-450(2)	No cost is anticipated. This language incorporates provisions from ESSB 6105 under RCW 49.17.470(5) and provides additional guidance on identifying peak operating hours, but does not put a specific requirement in place on how to determine when peak hours occur.
WAC 296-831-450(3)	No additional cost is expected. This language includes provisions from ESSB 6105 under RCW 49.17.470 (5)(a)-(e). Additionally, the factors outlined are part of a broader assessment required to determine the appropriate security-to-customer ratio. Establishments that do serve alcohol will need to consider the increase in potential security events caused by alcohol use when staffing security for both peak and non-peak hours.

September 4, 2024
 Joel Sacks
 Director

OTS-5782.1

AMENDATORY SECTION (Amending WSR 22-10-070, filed 5/3/22, effective 7/1/22)

WAC 296-831-100 Purpose and scope. This chapter applies to all adult entertainment establishments.

In addition to this chapter, chapter 296-800 WAC Safety and health core rules, chapter 296-24 WAC General safety and health standards, and chapter 296-62 WAC General occupational health standards contain safety and health rules that also apply to adult entertainment establishments. Similarly, other special industry focused chapters (e.g., chapter 296-832 WAC Late night retail worker crime prevention, chapter 296-155 WAC construction, etc.) and special hazard focused chapters (e.g., chapter 296-876 WAC ladders, chapter 296-880 WAC fall protection, etc.) complement the rules found in this chapter and may apply depending on operations being performed.

If a provision of this chapter conflicts with the general safety and health requirements identified above, the provisions of this chapter will prevail.

((Note: All of the requirements in this rule work in conjunction with the Accident Prevention Program (APP) rules in WAC 296-800-140 through 296-800-14025 within the safety and health core rules. Therefore, an adult entertainment establishment's fully compliant Accident Prevention Program (APP) will cover the following (in addition to other general safety and health considerations applicable to all businesses):

- Entertainer orientation on panic button location, use, and maintenance, if any;
- How to add a problematic customer to your complaint log/blocklist;
- How to report work-related hazards, injuries, unsafe conditions, or unsafe practices;
- The proper use and care of personal protective equipment (PPE); and
- What to do in an emergency, including how to leave the workplace.

Adult entertainment establishments are also required to regularly hold safety and health meetings for the purpose of communicating and evaluating safety and health issues in the workplace, including the evaluation of your APP to determine whether improvements are necessary to ensure that it is effective in practice. Specific requirements differ somewhat between large and small employers. See WAC 296-800-130 Safety committees/safety meetings—Summary, for details.))

AMENDATORY SECTION (Amending WSR 22-10-070, filed 5/3/22, effective 7/1/22)

WAC 296-831-200 Definitions. ((Note:)) The definitions below exclusively apply to this chapter.

(1) Adult entertainment. Any exhibition, performance, or dance of any type conducted ~~((in))~~ within the view of one or more members of the public inside a premises where such exhibition, performance, or dance involves an entertainer who ~~((:~~

~~(a))~~ is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, ~~((buttocks,))~~ vulva, or genitals~~((; or~~

~~(b) Touches, caresses, or fondles the breasts, buttocks, anus, genitals, or pubic region of another person, or permits the touching, caressing, or fondling of the entertainer's own breasts, buttocks, anus, genitals, or pubic region by another person)),~~ with ~~((the))~~ an intent to sexually arouse or excite another person.

(2) Adult entertainment establishment or establishment. Any business to which the public, patrons, or members are invited or admitted where an entertainer provides adult entertainment to a member of the public, a patron, or a member.

(3) Department. The department of labor and industries.

(4) **Entertainer.** Any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.17.020.

(5) **Panic button.** An emergency contact device by which the entertainer may summon immediate on-scene assistance from another entertainer, a security guard, or a representative of the entertainment establishment.

NEW SECTION

WAC 296-831-250 General requirements. (1) Adult entertainment establishments must have a written accident prevention program (APP) that addresses requirements in WAC 296-800-140 through 296-800-14025. An establishment's APP must cover the following (in addition to other general safety and health considerations applicable to all businesses):

(a) Entertainer orientation on panic button location, use, and maintenance, if any;

(b) Adding a problematic customer to the establishment's complaint log/blocklist, in accordance with WAC 296-831-500;

(c) Reporting work-related hazards, injuries, unsafe conditions, or unsafe practices;

(d) The proper use and care of personal protective equipment (PPE); and

(e) What to do in an emergency, including how to leave the workplace.

(2) An establishment must regularly hold safety and health meetings, in accordance with WAC 296-800-130 Safety committees/safety meetings—Summary. Safety meetings are to be used to communicate and evaluate safety and health issues in the workplace, including the evaluation of the establishment's APP. Safety committee/safety meetings may also be used to:

(a) Determine locations of panic buttons as required in WAC 296-831-300; and

(b) Determine alternative types of panic buttons as allowed in WAC 296-831-300(3).

(3) An establishment must:

(a) Provide appropriate cleaning supplies at all stage performance areas. A nonexhaustive list of examples of appropriate cleaning supplies is available for reference on the department's website. Employers are required to follow all applicable rules for chemical use including requirements for a hazard communication program under chapter 296-901 WAC, and potential exposure to bloodborne pathogens or other potentially infectious materials under chapter 296-823 WAC;

(b) Equip dressing or locker rooms for entertainers with a keypad requiring a code to enter; and

(c) Display signage at the entrance directing customers to resources on appropriate etiquette. Resources can include a list of requirements developed by the establishment which addresses appropriate customer etiquette, and is conspicuously posted in various locations throughout the establishment;

(4) An establishment must have written processes and procedures accessible to all employees and entertainers for:

- (a) Responding to customer violence or criminal activity, including when police are called; and
- (b) Ejecting customers who violate club policies, including intoxication or other inappropriate or illegal behavior.

AMENDATORY SECTION (Amending WSR 22-10-070, filed 5/3/22, effective 7/1/22)

WAC 296-831-300 Panic button requirements. (1) Adult entertainment establishments must provide ((a)) an accessible panic button in each room in the establishment in which an entertainer may be alone with a customer, and in bathrooms and dressing rooms. An entertainer may use the panic button if the entertainer has been harmed, reasonably believes there is a risk of harm, or there is another emergency in the entertainer's presence. The entertainer may cease work and leave the immediate area to await the arrival of assistance.

(2) For the purposes of this chapter, the accessibility of a panic button must be determined in coordination with, and based on, recommendations provided by entertainers on the appropriate location for placement of a panic button based on the entertainer's point of use.

(3) Panic buttons, and their associated alarm(s), must be silent (discreet) at the entertainer's point of use, while still effectively alerting whomever ((you have)) the establishment has determined to be responsible for responding to emergencies. Panic buttons that trigger a recognizable (audible/visual/tactile) alarm at the entertainer's point of use may be used in specific locations within an establishment where alarms are required only if:

(a) The establishment has assessed its business operations and alarm system with the required safety and health committee (see WAC 296-800-130 Safety committees/safety meetings—Summary); and

(b) The committee has unanimously determined that such an alarm would be more effective for a particular location within the establishment where an alarm is required. In such cases, this determination is limited to a particular location within the establishment and must be documented along with other required safety committee documentation.

((Exception: Panic buttons that trigger a recognizable (audible/visual/tactile) alarm at the entertainer's point of use may be used in specific locations within an establishment where alarms are required but only if you have assessed your business operations and alarm system with your required safety and health committee (see WAC 296-800-130 Safety committees/safety meetings—Summary) and the committee has unanimously determined that such an alarm would be more effective for a particular location within your establishment where an alarm is required. In such cases, this determination is limited to a particular location within your establishment and must be documented along with other required safety committee documentation.

~~(3) Adult entertainment))~~ (4) Establishments must test and maintain ((your)) its alarm system regularly to ensure that it will function as intended when needed.

~~(a) Testing must be performed at least annually ((, or at whatever interval is recommended by the alarm system manufacturer (this information is typically found in the owner's manual)))).~~

~~(b) ((Adult entertainment)) Establishments must keep a record that includes the dates of all testing or maintenance performed and any pertinent details, such as errors corrected or adjustments made.~~

((Note: Appendix A contains a nonmandatory panic button checklist that adult entertainment establishments can use to assist in identifying panic button and response procedure related hazards in their workplace, and to aid establishments in evaluating what performance criteria will address the violence-based hazards in their establishment.

(5) By July 1st of each year, establishments must submit to the department proof of compliance with the requirements of subsections

(1), (2), and (4) of this section. The information submitted to the department must include:

- (a) Name and address of the adult entertainment establishment;
 - (b) Unified business identifier number;
 - (c) A list, map, or other visual of the establishment, containing the locations of all panic buttons in the establishment; and
 - (d) Maintenance records demonstrating that panic buttons have been maintained and are confirmed to be in working condition.
- (6) A sample panic button checklist that establishments can use to assist in identifying panic button and response procedure related hazards in their workplace, and to aid establishments in evaluating what performance criteria will address the violence-based hazards in their establishment, is provided below:

PANIC BUTTON CHECKLIST		
<u>If the response to <i>any</i> of the following questions in this checklist is "NO," and if no other alternative hazard controls are in place for the identified hazard, panic buttons are likely not effective.</u>		
<u>Do panic buttons and panic buttons systems exclusively rely on establishment owned/leased/ etc., equipment or services?</u>	<u>YES</u>	<u>NO</u>
<u>The above covers the complete chain of events from the initial signaling at the entertainer's point of use through notification and to response from the establishment. The rule does not prohibit entertainer owned devices supplementing the devices provided by establishment (e.g., as a backup method).</u>		
<u>Do panic buttons require only a single action to activate (such as a single push/pull/tap, etc.)?</u>	<u>YES</u>	<u>NO</u>
<u>Panic buttons which require multiple actions (such as using a number pad to unlock/dial a cell phone, or selecting a channel/frequency on a portable radio, or pressing a button and then speaking) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.</u>		
<u>Do panic buttons and the associated signal or alarm latch?</u>	<u>YES</u>	<u>NO</u>
<u>Once triggered, panic buttons alarms continue to both alarm and identify the location of the used panic button(s) without requiring ongoing action of the entertainer. Panic buttons requiring ongoing actions of the entertainer (continued holding/pressing, etc.) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.</u>		
<u>Do panic buttons systems resist tampering?</u>	<u>YES</u>	<u>NO</u>
<u>Once triggered, panic buttons alarms are not easily reset at the panic button (entertainer's point of use) itself, especially using the same action that activated it. Panic buttons which can be readily turned off or reset by customers would delay response actions and allow continued exposure to the hazard.</u>		
<u>Do panic buttons reduce or minimize inadvertent activation or false alarms?</u>	<u>YES</u>	<u>NO</u>
<u>False alarms increase the likelihood of delayed, deprioritized, or ignored alarms. Buttons, switches, etc., which are protected, shouldered, recessed, or flush with top surface/bracket/etc. reduce the likelihood of false alarms.</u>		
<u>Do panic buttons systems identify the location of the triggered panic buttons?</u>	<u>YES</u>	<u>NO</u>
<u>Uncoordinated response to panic buttons increases the likelihood of response actions being delayed or otherwise inadequate.</u>		
<u>Do panic buttons trigger distinct alarms?</u>	<u>YES</u>	<u>NO</u>
<u>If an establishment's panic button response procedures dictate that after the triggering of a panic button, uninvolved entertainers should continue entertaining while the establishment conducts response activities; then panic buttons alarm systems (and response procedures) would need to continue to fully function during an alarm (or multiple alarms). Indistinct alarms, or alarms where the establishment cannot identify/respond to multiple simultaneous alarms, increase the likelihood of response actions being delayed or otherwise inadequate.</u>		
<u>Do panic buttons alarms produce recognizable signals to perform actions under the APP, Emergency Action Plan, etc.?</u>	<u>YES</u>	<u>NO</u>

<p><u>At the establishment's point of reception, alarms must be recognizable in the conditions under which they will be used. The following can obscure alarms sufficiently enough to make an alarm unrecognizable:</u></p> <ul style="list-style-type: none"> - Areas subject to noise/music at volumes equal or above the volume of an alarm; - Areas subject to strobing lighting equal or above the amount of illumination of an alarm; - Areas with sufficient distance, intermediary materials, or the room/building configuration itself, impairs alarm signals to the point that they are no longer recognizable. <p><u>At the entertainer's point of use, panic buttons may be either discreet, or produce an audible alarm. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but simultaneously prevent other entertainers and personnel in the area from knowing a panic button was triggered. Regardless of which method is used, associated hazards must be further mitigated such as via a multistage alarm (normally discreet, only audible if alarm malfunction, etc.), multicomponent alarm (using notification lights, rather than audible alarms, within adjacent booths/rooms/etc., in conjunction with indicator light(s) outside booth/room/etc., to signal and locate the use of a panic button).</u></p>		
<p>Are panic buttons provided by the establishment in each room in the establishment in which entertainers may be alone with a customer, and in bathrooms and dressing rooms?</p>	<p><u>YES</u></p>	<p><u>NO</u></p>
<p>For the purposes of this question, "alone" means outside of direct line-of-sight of other establishment personnel, entertainers, employees, etc., such as in private or semi-private booths, rooms, etc.</p>		
<p>Are panic buttons that are permanently installed in the workplace, located within immediate reach?</p>	<p><u>YES</u></p>	<p><u>NO</u></p>
<p>Panic buttons must be kept free of obstacles blocking their use (doors, furniture, mop buckets, boxes, coat racks, etc.).</p>		
<p>Are panic buttons in good working order? If not, are entertainers informed of, and excluded from, areas lacking required panic buttons protection (e.g. during power loss, wireless service loss, etc.)?</p>	<p><u>YES</u></p>	<p><u>NO</u></p>
<p>Keep a record of, and inform entertainers of, nonfunctional/improperly working panic buttons until replaced or repaired.</p> <ul style="list-style-type: none"> - Use signage or otherwise inform entertainers prior to working; and - Use written procedures and policies in Accident Prevention Plan that prohibit or restrict access to relevant areas. 		

AMENDATORY SECTION (Amending WSR 22-10-070, filed 5/3/22, effective 7/1/22)

WAC 296-831-310 Install an appropriate entertainer alarm system(s). (1) Adult entertainment establishments must make sure that an alarm system, with a distinctive (not confused with fire alarm, etc.) signal, is installed for the purposes of communicating entertainer violence related emergencies to employer-designated responders.

(2) (~~Adult entertainment~~) Establishments must make sure alarm systems:

(a) Communicate the use/triggering of panic buttons.

(b) Identify the location of all panic buttons which have been used/triggered.

(c) Latch, or continue to both communicate the use/triggering of panic buttons, and identify the location of panic buttons which have been used/triggered, without requiring ongoing action(s) of the person that used the panic button. For example, entertainers must not be required to hold a button down to keep the alarm triggering.

(d) Are recognizable above surrounding noise (~~and/or~~) and light levels by establishment designated responder(s) in all relevant portions of the establishment in which designated responders are acting in this role. Areas far enough away from an alarm, or where building materials or walls are in the alarms path, may reduce the effectiveness of the alarm to the point that it is no longer recognizable.

(3) For the purposes of this rule, panic button alarm systems can be categorized based on whether the entertainer's point of use features a silent (discreet), or a recognizable (audible/visual/tactile) alarm from the entertainer's and customer's perspective. Discreet panic buttons reduce the likelihood of escalating a confrontation towards

violence, but at the same time prevent other entertainers and personnel in the area from knowing a panic button was used/triggered. (~~(See WAC 296-831-300(2) and the exception immediately following it for specific requirements regarding silent (discreet) vs. recognizable (audible/visual/tactile) alarm systems.)~~) Regardless of which method is used, associated hazards must be further mitigated by implementing either of the below, or a similarly protective, strategy:

(a) A multistage alarm (normally discreet at the panic button point of use, but switches to audible/recognizable at the point of use if the alarm system detects a malfunction that would prevent response actions); or

(b) A multicomponent alarm (discreet at the panic button point of use, but nonaudible alarm components (lights, etc.)) provided within adjacent booths/rooms/etc., and above/adjacent/on the entrance to booth(s)/room(s)/etc., to communicate to designated responders both the use, and location, of a panic button alarm in the area.

AMENDATORY SECTION (Amending WSR 22-10-070, filed 5/3/22, effective 7/1/22)

WAC 296-831-400 Training requirements. (1) Adult entertainment establishments must train entertainers on the following, prior to their work as entertainers (~~((for more information related to customer complaint logs/blocklists see WAC 296-831-500))~~).

(a) The location and type of panic buttons used in the establishment (audible/discreet at the point of use).

(b) How to use panic button(s).

(c) Proper scenarios for use of panic button(s).

(d) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are entertainers expected to do in these scenarios.

(e) The location and purpose of both the customer complaint log and blocklist.

(f) What scenarios are appropriate for listing customers in both the complaint log and blocklist.

(g) What steps entertainers must take to have customers added to blocklist and/or customer complaint log. For more information related to customer complaint logs/blocklists, see WAC 296-831-500.

(2) Adult entertainment establishments designate and train responders on the following prior to their work as designated responders (~~((for more information related to customer complaint logs/blocklists see WAC 296-831-500))~~):

(a) The location and type of panic buttons used in the establishment (-);

(b) How to recognize panic button alarms (?);

(c) ~~((What, if any, are))~~ The limitations of the panic button(s) and/or alarm system(s) ~~((Under what))~~, the circumstances ~~((could))~~ under which the panic button(s) and alarm system(s) could fail, and what ~~((are))~~ responders are expected to do in these scenarios (?);

(d) ~~((What are))~~ The duties assigned to designated responders ~~((assigned duties))~~ following the use of a panic button (?);

(e) How ~~((do))~~ designated responders perform assigned duties following the use of a panic button (?);

(f) The location and purpose of both the customer complaint log and blocklist((-));

(g) What scenarios are appropriate for listing customers in both the complaint log and blocklist((-)); and

(h) What steps designated responders must take to have customers added to blocklist and/or customer complaint log. For more information related to customer complaint logs/blocklists, see WAC 296-831-500.

(3) An establishment must provide training to its employees other than entertainers to minimize occurrences of unprofessional behavior and enable employees to support entertainers in times of conflict.

(a) An establishment must require all employees other than entertainers to complete the training by the later of: March 1, 2025; or within 30 days of hiring for recorded content or 120 days of hiring for live courses. Employees must complete the training at least every two years thereafter.

(b) The training content must be developed and provided by a third-party qualified professional with experience and expertise in personnel training. A third-party qualified professional is defined as one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated their ability to effectively train on the topics outlined in (c) of this subsection, and who does not have an interest, financial or otherwise, direct or indirect, in the establishment for which the training is being provided, or any establishments with common ownership. If possible, the training should be designed for use by adult entertainment establishments. When practicable, the training must be translated if necessary for one or more non-English speaking employees to understand the training.

(c) The training topics must include, but are not limited to:

(i) Preventing sexual harassment, sexual discrimination, and assault in the workplace;

(ii) Information on how to identify and report human trafficking;

(iii) Conflict deescalation between entertainers, other employees, and patrons; and

(iv) Providing first aid.

(d) An establishment must offer entertainers the ability to opt in to trainings offered under this subsection.

(4) Upon the request of the department, an establishment must provide proof of compliance with the requirements under this section for inspection by the department.

NEW SECTION

WAC 296-831-450 Security personnel requirements. (1) An adult entertainment establishment must provide at least one dedicated security person on the premises during operating hours whose primary duty is security, including monitoring interactions between entertainers and customers.

(2) During peak operating hours, security personnel cannot have duties other than security. Peak operating hours includes the times of the day, and days of the week, when customer volume at the establishment is the highest. Establishments must have a method for determining peak operating hours, and can utilize information such as a log of day-to-day customer volume, electronic point of sale activity in the

establishment, or other mechanism that a club utilizes to track customer volume from the preceding 90-day period.

(3) Establishments must assess when the need for additional security personnel exists. This need could occur outside of the established peak operating hours, and the assessment of any such need must take into consideration any events or activities occurring in the establishment which could yield a reasonable expectation of an increase in customer volume. When determining the appropriate number of security personnel, establishments must also consider:

(a) The size of the establishment, such as total square footage;

(b) The layout and floor plan of the establishment, such as line of sight between security personnel and entertainers, and areas of the establishment accessible by customers;

(c) The occupancy and customer volume, such as the occupancy rating, and average customer volume from the preceding 90-day period. A 25:1 ratio of customers to security personnel will be deemed to be in compliance with this requirement;

(d) Security cameras and panic buttons, such as the number of security cameras operational on the premises of the establishment, how comprehensively security cameras capture the premises, and how security cameras and panic buttons are monitored by staff in the establishment;

(e) The history of security events at the establishment, such as the number of reports filed with law enforcement, and the number of customers added to the blocklist, in the preceding 90-day period; and

(f) Whether the establishment currently holds any license issued under chapter 66.24 RCW.

(4) If a security issue arises outside of peak operating hours, the dedicated security personnel required under subsection (1) of this section must be immediately relieved of any additional duties and be available to provide immediate assistance to entertainers.

AMENDATORY SECTION (Amending WSR 22-10-070, filed 5/3/22, effective 7/1/22)

WAC 296-831-500 Customer complaint log requirements. (1) Adult entertainment establishments must record the ~~((accusations))~~ allegations it receives that a customer has committed sex trafficking, prostitution, promotion of prostitution, or an act of violence, including assault, sexual assault, or sexual harassment, towards an entertainer. The establishment must make every effort to obtain the customer's name and if the establishment cannot determine the name, it must record as much identifying information about the customer as is reasonably possible. The establishment must retain a record of the customer's identifying information and written detail about the incident for at least five years after the most recent ~~((accusation))~~ allegation.

(2) If an ~~((accusation))~~ allegation involving a customer is supported by a statement made under penalty of perjury or other evidence, the ~~((adult entertainment))~~ establishment must ~~((decline to allow))~~ add the customer to the blocklist and must prohibit the customer ~~((to return))~~ from returning to the establishment ~~((blocklist))~~ for at least three years after the date of the incident. In addition to statements made under penalty of perjury, any other evidence brought forth to an employer that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment towards an en-

ertainer, should be considered credible and trigger the employer to take action as required under the customer complaint log requirements. The establishment must share the information about the customer with other establishments with common ownership ~~((and those))~~. Establishments with common ownership must also ~~((decline to allow the))~~ add the customer to their blocklists and must prohibit the customer ((to enter)) from entering those establishments ((-blocklist-)) for at least three years after the date of the incident. No entertainer may be required to provide such a statement.

((Note: Appendix B contains a standard declaration template that can be used to make a statement under penalty of perjury. In addition to statements made under penalty of perjury, any other evidence brought forth to an employer that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment towards an entertainer, should be considered credible and trigger the employer to take action as required under the customer complaint log requirements above unless the employer can provide a rational explanation why they do not deem the evidence credible.

Appendix A

PANIC BUTTON CHECKLIST		
If the response to <i>any</i> of the following questions in this checklist is "NO," and if no other alternative hazard controls are in place for the identified hazard, panic buttons are likely not effective.		
Do panic buttons and panic buttons systems exclusively rely on establishment owned/leased/etc., equipment or services?	YES	NO
The above covers the complete chain of events from the initial signaling at the entertainer's point of use through notification and to response from the establishment. The rule does not prohibit entertainer owned devices supplementing the devices provided by establishment (e.g., as a backup method).		
Do panic buttons require only a single action to activate (such as a single push/pull/tap, etc.)?	YES	NO
Panic buttons which require multiple actions (such as using a number pad to unlock/dial a cell phone, or selecting a channel/frequency on a portable radio, or pressing a button and then speaking) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
Do panic buttons and the associated signal or alarm latch?	YES	NO
Once triggered, panic buttons alarms continue to both alarm and identify the location of the used panic button(s) without requiring ongoing action of the entertainer. Panic buttons requiring ongoing actions of the entertainer (continued holding/pressing, etc.) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
Do panic buttons systems resist tampering?	YES	NO
Once triggered, panic buttons alarms are not easily reset at the panic button (entertainer's point of use) itself, especially using the same action that activated it. Panic buttons which can be readily turned off or reset by customers would delay response actions and allow continued exposure to the hazard.		
Do panic buttons reduce or minimize inadvertent activation or false alarms?	YES	NO
False alarms increase the likelihood of delayed, deprioritized, or ignored alarms. Buttons, switches, etc., which are protected, shouldered, recessed, or flush with top surface/bracket/etc. reduce the likelihood of false alarms.		
Do panic buttons systems identify the location of the triggered panic buttons?	YES	NO
Uncoordinated response to panic buttons increases the likelihood of response actions being delayed or otherwise inadequate.		
Do panic buttons trigger distinct alarms?	YES	NO
If an establishment's panic button response procedures dictate that after the triggering of a panic button, uninvolved entertainers should continue entertaining while the establishment conducts response activities, then panic buttons alarm systems (and response procedures) would need to continue to fully function during an alarm (or multiple alarms). Indistinct alarms, or alarms where the establishment cannot identify/respond to multiple simultaneous alarms, increase the likelihood of response actions being delayed or otherwise inadequate.		

Do panic buttons alarms produce recognizable signals to perform actions under the APP, Emergency Action Plan, etc.?	YES	NO
<p>At the establishment's point of reception, alarms must be recognizable in the conditions under which they will be used. The following can obscure alarms sufficiently enough to make an alarm unrecognizable:</p> <ul style="list-style-type: none"> - Areas subject to noise/music at volumes equal or above the volume of an alarm; - Areas subject to strobing lighting equal or above the amount of illumination of an alarm; - Areas with sufficient distance, intermediary materials, or the room/building configuration itself, impairs alarm signals to the point that they are no longer recognizable. <p>At the entertainer's point of use, panic buttons may be either discreet, or produce an audible alarm. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but simultaneously prevent other entertainers and personnel in the area from knowing a panic button was triggered. Regardless of which method is used, associated hazards must be further mitigated such as via a multistage alarm (normally discreet, only audible if alarm malfunction, etc.); multicomponent alarm (using notification lights, rather than audible alarms, within adjacent booths/rooms/etc., in conjunction with indicator light(s) outside booth/room/etc., to signal and locate the use of a panic button).</p>		
Are panic buttons provided by the establishment in each room in the establishment in which entertainers may be alone with a customer, and in bathrooms and dressing rooms?	YES	NO
<p>For the purposes of this question, "alone" means outside of direct line-of-sight of other establishment personnel, entertainers, employees, etc., such as in private or semi-private booths, rooms, etc.</p>		
Are panic buttons that are permanently installed in the workplace, located within immediate reach?	YES	NO
<p>Panic buttons must be kept free of obstacles blocking their use (doors, furniture, mop buckets, boxes, coat racks, etc.).</p>		
Are panic buttons in good working order? If not, are entertainers informed of, and excluded from, areas lacking required panic buttons protection (e.g. during power loss, wireless service loss, etc.)?	YES	NO
<p>Keep a record of, and inform entertainers of, nonfunctional/improperly working panic buttons until replaced or repaired.</p> <ul style="list-style-type: none"> - Use signage or otherwise inform entertainers prior to working; and - Use written procedures and policies in Accident Prevention Plan that prohibit or restrict access to relevant areas. 		

Appendix B)

(3) An establishment must have written policies and procedures for implementing the requirements of this subsection, which must include a process for employees and entertainers to record allegations involving a customer under this subsection. These policies and procedures may be a part of the establishments APP. Upon the request of the department, an establishment must make written policies and procedures and any records under this section available for inspection by the department.

(4) A standard declaration template that can be used to make a statement under penalty of perjury is provided below:

Declaration of: _____
(Type or print your name here)

_____ declares as follows:
(Type or print your name)

I am over the age of eighteen, and I am otherwise competent to testify. I make these statements based on personal knowledge and belief.

(Insert your statement here describing what happened)

I declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

DATED this ____ day of _____ 20____, in _____, Washington.
(##) (Month) (Year) (Name of city/town)

(Sign above)

(Type or print your name)