

WSR 24-21-009
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 3, 2024, 9:50 a.m., effective November 3, 2024]

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

Purpose: The licensing division is updating the name of the curriculum in WAC 110-302-0160 to honor the work of John McCoy (lulilaš). The curriculum will be called the John McCoy (lulilaš) since time immemorial early learning curriculum.

Citation of Rules Affected by this Order: Amending WAC 110-302-0160.

Statutory Authority for Adoption: RCW 74.15.030.

Adopted under notice filed as WSR 24-15-093 on July 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 3, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5590.2

AMENDATORY SECTION (Amending WSR 23-10-059, filed 5/1/23, effective 6/1/23)

WAC 110-302-0160 Promoting diversity and belonging. (1) ONB providers must provide culturally and racially diverse learning opportunities (~~(. Diverse learning opportunities must be demonstrated by the ONB provider's)~~) by using curriculum, activities, and materials that represent all children, families, staff, and the local Native American tribes, such as:

(a) Diverse dolls, books, pictures, games, or materials that do not reinforce stereotypes;

(b) Diverse music from many cultures in children's primary languages; and

(c) A balance of different ethnic and cultural groups, ages, abilities, family styles, and genders.

(2) (~~An~~) ONB providers must contact the local Native American tribes to begin a partnership, recognizing tribal sovereignty and incorporating cultural materials or practices, as appropriate.

(3) ONB programs must provide supplemental learning opportunities that incorporate elements of tribally approved curriculum such as, but not limited to, ~~((Washington's))~~ the John McCoy (luliláš) since time immemorial early learning curriculum ((~~https://www.dcyf.wa.gov/tribal-relations/since-time-immemorial~~)) ~~https://www.dcyf.wa.gov/tribal-relations/john-mccoy-lulilas-since-time-immemorial~~ or school-age curriculum ~~((~~https://www.k12.wa.us/student-success/resources-subject-area/time-immemorial-tribal-sovereignty-washington-state/elementary-curriculum~~)) ~~https://ospi.k12.wa.us/student-success/resources-subject-area/john-mccoy-lulilas-time-immemorial-tribal-sovereignty-washington-state~~~~.

(4) ONB providers must appropriately intervene to stop biased behavior displayed by children or adults. Such intervention may include, but is not limited to:

- (a) Redirecting an inappropriate conversation or behavior;
- (b) Being aware of situations that may involve bias and responding appropriately; and
- (c) Refusing to ignore bias.

WSR 24-21-010

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed October 3, 2024, 9:51 a.m., effective November 3, 2024]

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

Purpose: RCW 39.33.015(3) requires rules for the disposition of property for public benefit purposes.

Citation of Rules Affected by this Order: New WAC 468-30-130.

Statutory Authority for Adoption: RCW 39.33.015(3).

Adopted under notice filed as WSR 24-17-143 on August 21, 2024.

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

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

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

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

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

Date Adopted: October 3, 2024.

Sam Wilson, Director
Business Support Services

OTS-5717.3NEW SECTION

WAC 468-30-130 Transfer, lease, disposal of public property for affordable housing. (1) The department may enter into lease agreements with public, private, and nongovernmental bodies, allowing them to construct and operate affordable housing on land under the jurisdiction of the department, for less than fair economic rent if the following conditions are met:

(a) The leased premises is not presently needed for highway purposes;

(b) The leased premises is used for housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons;

(c) The tenant pays all appraisal costs, debt services, and any other liabilities to the department for the processing and execution of the lease;

(d) The leased premises is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;

(e) The use of the leased premises is consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070;

(f) The lease terminates if the tenant fails to use the premises for affordable housing;

(g) The lease authorizes the department to terminate the lease if the leased premises is needed for a highway purpose;

(h) The lease provides that prior to termination, the tenant agrees, if so directed by the department, to restore the leased premises to its condition prior to tenant's occupancy, reasonable wear and tear excepted. This work is to be done at tenant's expense to the satisfaction of the department. In the event tenant fails to restore leased premises upon termination, the department may restore the leased premises as it deems appropriate and at tenant's expense.

(2) The department may transfer real property to public, private, and nongovernmental bodies, at less than fair market value for the construction and operation of affordable housing if the following conditions are met:

(a) The property is no longer required for transportation purposes;

(b) The property is used for housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons;

(c) Consideration includes appraisal costs, debt services, all closing costs, and any other liabilities to the department;

(d) The use of the property is consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070;

(e) The transfer is executed with a quitclaim deed;

(f) The deed contains a covenant or other requirement that the property shall be used for the designated public benefit purpose;

(g) The deed contains remedies that apply if the grantee fails to use the property for the designated purpose or ceases to use it for such purpose. Such remedies shall include clauses reverting title to the department, or the payment of fair market value.

(3) The department must comply with RCW 39.33.020.

WSR 24-21-026

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 7, 2024, 11:23 a.m., effective November 7, 2024]

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

Purpose: This rule making will amend WAC 192-140-035 What happens if I do not respond to a request for information?. The rule making will correct inconsistent terminology within WAC 192-140-035. WAC 192-140-035 currently states that the employment security department (department) will presume an individual is disqualified from receiving unemployment benefits if they provide potentially disqualifying information, or fail to provide necessary information, and then they do not respond to a request for specific information. The rule then states that the department will deny benefits under RCW 50.20.010. However, RCW 50.20.010 is not a disqualification statute; rather, it sets out a claimant's eligibility for unemployment benefits. The rule will be amended to clarify that a failure to respond to a request for information will lead to either disqualification from or ineligibility for benefits.

Citation of Rules Affected by this Order: Amending WAC 192-140-035.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010, 50.20.050, 50.20.060, 50.20.066, 50.20.070, 50.20.080, 50.20.085, 50.20.090, 50.20.095.

Adopted under notice filed as WSR 24-14-005 on June 21, 2024.

A final cost-benefit analysis is available by contacting Lawrence Larson, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email esdgpuirules@esd.wa.gov, website <https://www.esd.wa.gov/newsroom/ui-rulemaking/standard-occupational-code-reporting>.

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

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

Date Adopted: October 7, 2024.

Joy Adams
Employment System Policy Director

OTS-5413.1

AMENDATORY SECTION (Amending WSR 23-19-006, filed 9/6/23, effective 10/7/23)

WAC 192-140-035 What happens if I do not respond to a request for information? (1) The department will presume that you are disqualified from or ineligible for benefits if you provide information indicating you are potentially (~~(disqualifying information)~~) disqualified from or ineligible for benefits, or fail to provide necessary information (~~(r)~~) and (~~(then)~~) do not respond to a request for specific information. The department will deny benefits (~~(under RCW 50.20.010)~~) based on this presumption.

(2) This denial is for an indefinite period of time and will continue until either:

(a) You provide the requested information;

(b) You qualify and are eligible for a new, separate unemployment claim and the information requested under subsection (1) of this section is not relevant for your new claim; or

(c) The request for information was made pursuant to a quality control review under 20 C.F.R. § 602.11 and your response is no longer needed for the quality control review.

(3) Once you provide the requested information, the department may issue a redetermination under RCW 50.20.160. The department will issue a new decision allowing benefits if you provide enough information to establish your qualification and eligibility for benefits.

WSR 24-21-037

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 22-18—Filed October 8, 2024, 7:40 a.m., effective November 8, 2024]

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

Purpose: This rule establishes reporting requirements for recipients of funding from the Climate Commitment Act (CCA) accounts so that the department of ecology (ecology) can complete our required annual report to the state legislature. These reporting requirements include those related to RCW 70A.65.230 regarding expenditures that benefit vulnerable populations within the boundaries of overburdened communities and those that are formally supported by a resolution of a tribe. Additionally, the rule includes requirements for recipients to report on the quantity of greenhouse gas (GHG) emissions reductions expected to result from work funded by the CCA.

Citation of Rules Affected by this Order: New chapter 173-446B WAC.

Statutory Authority for Adoption: Chapter 70A.65 RCW, Greenhouse gas emissions—Cap and invest program.

Adopted under notice filed as WSR 24-10-028 on April 23, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Ecology made edits to: (1) Ensure that, for all expenditures, recipients report on whether they expect verifiable emissions reductions or other long-term impacts to emissions; (2) make it clear that direct and meaningful benefits that are expected to occur may be reported; (3) create more flexibility for agencies that voluntarily conduct ongoing tracking and monitoring; (4) make reporting on job quality and quantity optional for expenditures from all CCA accounts, rather than required for expenditures from a single account; and (5) align sections of the rule related to reporting on GHG emissions reductions.

A final cost-benefit analysis is available by contacting Harrison Ashby, Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-485-2771, Washington relay service or TTY call 711 or 877-833-6341, email harrison.ashby@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/summarypages/2414066.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

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

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

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Date Adopted: October 8, 2024.

Laura Watson
Director

OTS-5233.5

Chapter 173-446B WAC
CLIMATE COMMITMENT ACT FUNDS REPORTING

NEW SECTION

WAC 173-446B-010 Introduction. (1) RCW 70A.65.300 requires the department of ecology (ecology) to submit to the appropriate committees of the legislature an annual report that identifies all distributions of money from the accounts created in RCW 70A.65.240 through 70A.65.280. The department must require by rule that recipients of funds from the accounts created in RCW 70A.65.240 through 70A.65.280 report to ecology, in a form and manner prescribed by ecology, the information required for ecology to carry out these duties.

(2) The annual reporting requirements set forth in this chapter are adopted to comply with RCW 70A.65.300, which requires that the report include, at a minimum:

- (a) The recipient of the funding.
- (b) The amount of the funding.
- (c) The purpose of the funding.
- (d) The actual end result or use of the funding.

(e) Whether the project that received the funding produced any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions.

(3) For projects that produce verifiable reductions in greenhouse gas emissions or other long-term impacts to emissions, RCW 70A.65.300 further requires that the annual report identify:

- (a) The quantity of reduced greenhouse gas emissions.
- (b) The cost of the reduced greenhouse gas emissions, per metric ton of carbon dioxide equivalent.
- (c) A comparison to other greenhouse gas emissions reduction projects.

(4) During the 2023-2025 fiscal biennium, RCW 70A.65.030(4) requires agencies to coordinate with ecology and the office of financial management regarding the allocation of funds from the carbon emissions reduction account, the climate commitment account, the natural climate solutions account, the climate investment account, the air quality and health disparities improvement account, the climate transit programs account, and the climate active transportation account, as needed to achieve the following:

At least 35 percent (and a goal of 40 percent) of total statewide spending from these accounts must provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.

(5) Beginning in the 2025-2027 fiscal biennium, RCW 70A.65.030(1) requires that each year or biennium, as appropriate, each state agency allocating funds from the carbon emissions reduction account, the climate commitment account, the natural climate solutions account, the climate investment account, the air quality and health disparities improvement account, the climate transit programs account, and/or the climate active transportation account must achieve the following:

At least 35 percent (and a goal of 40 percent) of the agency's total investments from these accounts must provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.

(6) In RCW 70A.65.230, the legislature stated its intent that each year the total investments made through the carbon emissions reduction account, the climate commitment account, the natural climate solutions account, the air quality and health disparities improvement account, the climate transit programs account, and the climate active transportation account achieve the following:

(a) At least 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.

(b) At least 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe.

(7) The state's omnibus operating appropriations act for the 2023-2025 biennium (section 302(13), chapter 475, Laws of 2023), requires ecology to develop and implement a process to track, summarize and report on state agency expenditures from Climate Commitment Act accounts. This process must enable ecology to track and report on the following information, at a minimum:

(a) The amount of each expenditure that provides direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities;

(b) An explanation of how the expenditure provides such benefits;

(c) The methods by which overburdened communities and vulnerable populations were identified by the agency and an explanation of the outcomes of those identification processes, including the geographic location impacted by the expenditure where relevant, and the geographic boundaries of overburdened communities identified by the agency;

(d) The amount of each expenditure used for programs, activities, or projects formally supported by a resolution of an Indian tribe; and

(e) For expenditures that neither provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities nor are formally supported by a resolution of an Indian tribe, an explanation of why.

(8) Ecology must include a summary of the information described in subsection (7) of this section in a report to the appropriate committees of the legislature.

(9) Ecology will make reports to the legislature available to the public on its website. Data contained in ecology's reports to the legislature will be made available through an online data dashboard.

NEW SECTION

WAC 173-446B-020 What definitions apply to terms used in this chapter? The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. For those terms not listed in this section, the definitions found in chapter 70A.65 RCW apply in this chapter.

(1) "Appropriation" means funding provided by the Washington state legislature to a state agency or other entity for a specific purpose, as set forth in an enacted operating, capital, or transporta-

tion appropriations act, where such funding is distributed from one of the Climate Commitment Act accounts.

(2) "Climate Commitment Act accounts" or "CCA accounts" means the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, the climate active transportation account created in RCW 46.68.490, and any other state treasury account(s) the legislature establishes specifically for the deposit of proceeds from the auction of allowances authorized in chapter 70A.65 RCW.

(3) "Direct and meaningful benefits" means benefits that are achieved through:

(a) The direct reduction of environmental burdens in overburdened communities;

(b) The reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change;

(c) The support of community led project development, planning, and participation costs; or

(d) Meeting a community need identified by the community that is consistent with the intent of chapter 70A.65 RCW or RCW 70A.02.010.

(4) "Expenditure" means the actual end result or use of funds received through an appropriation of funding from one of the Climate Commitment Act accounts. A single appropriation may be used by a recipient to fund multiple distinct expenditures.

(5) "Greenhouse gas" or "GHG" has the same meaning as in chapter 173-441 WAC.

(6) "Long-term impact to emissions" means emissions reductions calculated using methods described in WAC 173-446B-060.

(7) "Overburdened community" has the same meaning as in RCW 70A.65.010.

(8) "Recipient" means the state agency or other entity that received an appropriation of funding from one of the Climate Commitment Act accounts, irrespective of whether the state agency or other entity subsequently provides any of the funding to another entity.

(9) "Subrecipient" means an entity that received pass-through funding from a recipient. Subrecipients are not directly subject to the requirements of this rule, but recipients may include reporting requirements in their contracts with subrecipients to assist the recipients in complying with reporting obligations.

(10) "Vulnerable populations" has the same meaning as in RCW 70A.02.010.

NEW SECTION

WAC 173-446B-030 How and when must recipients provide their data to ecology? By June 30th of each year, ecology will notify recipients of the manner and date by which they must submit their data for the upcoming fiscal year.

NEW SECTION

WAC 173-446B-040 For which expenditures must recipients report the quantity of greenhouse gas emissions projected to be reduced? (1) A recipient must report the quantity of greenhouse gas emissions projected to be reduced if ecology has approved a methodology and calculator tool for an applicable expenditure category, as described in WAC 173-446B-060.

(2) Expenditures for which recipients are not required to report the quantity of greenhouse gas emissions projected to be reduced may include, but are not limited to, those that involve only:

- (a) Building awareness in or educating a community.
- (b) Clean energy workforce development.
- (c) Conducting administrative appeals.
- (d) Conducting outreach in communities.
- (e) Conducting research.
- (f) Creating plans for future activities.
- (g) Enhancing a recipient's or other entity's capacity to fulfill its mission.
- (h) Enhancing or maintaining emergency response systems or procedures.
- (i) Hiring agency staff.
- (j) Providing technical assistance.
- (k) Training new employees, sharing knowledge among staff, or building employees' skills.

NEW SECTION

WAC 173-446B-050 What information are recipients required to provide to ecology? (1) For each appropriation, recipients must provide the following information:

- (a) What is the appropriation title?
- (b) What is the purpose of the appropriation?
- (c) What is the geographic location of the appropriation (if not reported under subsection (2) of this section)? If the appropriation is spent directly by the recipient in multiple locations, provide each location and the amount spent at each location.
- (d) How much total funding did the legislature provide from CCA accounts for this appropriation?
- (e) From which CCA account(s) was the funding appropriated?
- (f) How much of the appropriation was expended?
- (g) How much and what percent of the expenditure provides or provided direct and meaningful benefits, as defined in WAC 173-446B-020, to vulnerable populations within the boundaries of an overburdened community?
 - (i) What benefits are or were provided and how did the expenditure provide those benefits?
 - (ii) Which overburdened community is or was impacted by the expenditure?
 - (iii) How were members of vulnerable populations within the overburdened community involved in determining and measuring the benefits provided?
 - (iv) Provide any relevant and available qualitative information collected through engagement with vulnerable populations within the overburdened community.

(h) Was the expenditure formally supported by a tribal resolution? If so, which tribe or tribes formally supported the expenditure by resolution?

(i) For expenditures that do not provide direct and meaningful benefits to vulnerable populations in overburdened communities, and are not formally supported by a tribal resolution, explain why.

(j) Is this expenditure expected to produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, as described in WAC 173-446B-040?

(i) If so, what is the quantity of greenhouse gas emissions (carbon dioxide equivalent) projected to be reduced by the expenditure?

(ii) If so, what is the estimated cost per carbon dioxide equivalent metric ton of greenhouse gas reduced?

(iii) For expenditures not reporting on any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, indicate which category, if any, in WAC 173-446B-040(2) describes this expenditure.

(2) Recipients that pass funding through to a subrecipient must also provide the following information for each funding agreement including, but not limited to, grants, contracts, loans, or interagency agreements:

(a) What appropriation title is the funding agreement funded by?

(b) What is the purpose of the funding agreement?

(c) What is the geographic location impacted by the funding agreement?

(d) How much of the appropriation's funding is allocated to this funding agreement?

(e) How much of the appropriation has been expended through the funding agreement?

(f) What is the name of the subrecipient?

(g) How much and what percent of the funding agreement provides or provided direct and meaningful benefits, as defined in WAC 173-446B-020, to vulnerable populations within the boundaries of an overburdened community?

(i) What benefits are or were provided and how did the funding agreement provide those benefits?

(ii) Which overburdened community is or was impacted by the funding agreement?

(iii) How were members of vulnerable populations within the overburdened community involved in determining and measuring the benefits provided?

(iv) Provide any relevant and available qualitative information collected through engagement with vulnerable populations within the overburdened community.

(h) Was this funding agreement formally supported by a tribal resolution? If so, which tribe or tribes supported the funding agreement by resolution?

(i) For funding agreements that do not provide direct and meaningful benefits to vulnerable populations in overburdened communities, and are not formally supported by a tribal resolution, explain why.

(j) Is this funding agreement expected to produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, as described in WAC 173-446B-040?

(i) If so, what is the quantity of greenhouse gas emissions (carbon dioxide equivalent) projected to be reduced by the funding agreement?

(ii) If so, what is the estimated cost per carbon dioxide equivalent metric ton of greenhouse gas reduced?

(iii) For funding agreements not reporting on any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, indicate which category, if any, in WAC 173-446B-040(2) describes this expenditure.

(3) Recipients reporting on funding agreements or other expenditures that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities must provide the following additional information:

(a) Describe the process(es) and/or method(s) (including data sources, mapping tools, and/or community consultation) by which the recipient identified overburdened communities and vulnerable populations.

(b) Explain the outcomes of the identification process(es) described in (a) of this subsection.

(c) Provide the geographic boundaries of overburdened communities and characteristics of vulnerable populations the recipient identified.

(4) If a recipient conducts ongoing tracking or monitoring for an expenditure included in prior annual reports, such as receiving periodic status reports, the recipient shall provide a summary of this information to ecology in each subsequent annual report until such tracking or monitoring ends. This summary may also include:

(a) An explanation of whether the expenditure has been implemented as planned.

(b) Any changes to previously reported reductions of greenhouse gas emissions.

(c) Any changes to previously reported direct and meaningful benefits to vulnerable populations in overburdened communities.

(5) Recipients may provide any available information related to the quantity and quality of jobs, apprenticeships, and/or internships created, if any, as a result of their expenditure(s).

(6) If the recipient or a subrecipient is a tribe, this rule does not require the recipient to provide ecology with data that the tribe deems to be culturally sensitive information, confidential proprietary information, or intellectual property.

NEW SECTION

WAC 173-446B-060 How will ecology specify methods for recipients to calculate the quantity of greenhouse gas emissions projected to be reduced by expenditures that produce verifiable reductions in greenhouse gas emissions or other long-term impact(s) to emissions? (1)

For each category of expenditure that is expected to produce verifiable reductions in greenhouse gas emissions or other long-term impact(s) to emissions, ecology will, in consultation with the recipient, either:

(a) Identify the appropriate California air resources board methodology and calculator tool for use in calculating the projected quantity of reduced greenhouse gas emissions, and adapt the inputs used in the methodology and calculator tool as needed to be appropriate for use in Washington;

(b) Adapt a California air resources board methodology and calculator tool to make it appropriate;

(c) Develop an appropriate methodology; or

(d) Locate a methodology from another source that is of the same or better quality than methods provided by the California air resources board.

(2) Ecology will approve methodologies and calculator tools and post them on its website for use by recipients for the purposes described in this section.

(3) If a recipient expects their expenditure(s) will produce a verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, but ecology has not approved a methodology and calculator tool for an applicable expenditure category, the recipient must notify ecology.

WSR 24-21-046

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 9, 2024, 7:44 a.m., effective November 9, 2024]

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

Purpose: The health care authority is amending WAC 182-526-0020 to clarify the meaning of good cause for applicants and recipients with rights to adjudicative proceedings.

Citation of Rules Affected by this Order: Amending WAC 182-526-0020.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 74.09.741.

Adopted under notice filed as WSR 24-16-088 on August 1, 2024.

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Date Adopted: October 9, 2024.

Wendy Barcus
Rules Coordinator

OTS-5704.1

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0020 Good cause. (1) Good cause is a substantial reason or legal justification allowing the administrative law judge (ALJ) to grant a party's request or to excuse their action or inaction, including granting a continuance or excusing a failure to appear at an administrative proceeding.

(2) To determine if there is good cause, the administrative law judge may consider the provisions of Superior Court Civil Rule 60 as a guideline. Good cause may include, but is not limited to, the following examples:

(a) The party who requested the hearing ignored a notice because ((he or she)) the party was in the hospital or was otherwise prevented from responding; or

(b) The party who requested the hearing could not respond to the notice because it was written in a language that ((he or she)) the party did not understand.

(3) For applicants and recipients with rights to adjudicative proceedings, good cause for failing to meet a hearing deadline is further addressed in RCW 74.09.741.

(4) The requestor bears the burden to show why a request should be granted or an action excused.

WSR 24-21-051
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 9, 2024, 1:49 p.m., effective January 7, 2025]

Effective Date of Rule: January 7, 2025.

Purpose: This rule making amends sections of chapter 314-55 WAC to implement E2SSB 5367, (chapter 365, Laws of 2023), related to the regulation of certain tetrahydrocannabinol (THC) products. The legislation became effective on July 23, 2023, and codified as RCW 69.50.101, 69.50.1025, 69.50.326, and 69.50.346. Additionally, WAC 314-55-095 in the proposed rule is being amended in the rule to implement SHB 1249, (chapter 9, Laws of 2024), regarding limits on the possession and sale of cannabis products. SHB 1249 became effective on June 9, 2024, and was codified as RCW 69.50.360.

Citation of Rules Affected by this Order: Amending WAC 314-55-010 Definitions, 314-55-095 Cannabis servings and transaction limits, 314-55-102 Quality assurance and quality control testing, 314-55-105 Cannabis product packaging and labeling, 314-55-106 Cannabis warning symbol requirement, and 314-55-109 Cannabinoid additives—Requirements, restrictions, and quality assurance testing.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Adopted under notice filed as WSR 24-16-126 on August 6, 2024.

Changes Other than Editing from Proposed to Adopted Version: (1) The proposed rule repealed the transaction allowance of 10 units of cannabis-infused product otherwise taken into the body in WAC 314-55-095 (1)(c). This allowance has been put back into the final rules for adoption.

(2) A new subsection (3) is created in WAC 314-55-095 to reference the creation of a publicly available nonexhaustive list that the liquor and cannabis board will maintain to clarify which cannabinoid compounds are not classified as THC's, per the definition in RCW 69.50.204, and thus subject to the amended single-serving limits for the amount of THC allowed in a single serving of a cannabis-infused product meant to be eaten, swallowed, or otherwise taken into the body. This change reflects public input received during the comment period.

(3) The final rule corrects the equation for calculating total THC for THC compounds other than delta-9 THC provided in WAC 314-55-102 (3)(a)(i) to include a ratio.

A final cost-benefit analysis is available by contacting Cassidy West, Rules and Policy Manager, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-878-4235, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 9, 2024.

David Postman
Chair

OTS-5416.5

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-010 Definitions. The following definitions apply for the purpose of this chapter in addition to the definitions provided in RCW 69.50.101.

(1) "Applicant" or "cannabis license applicant" means any person or business entity who is considered by the ((WSLCB)) LCB as a true party of interest in a cannabis license, as outlined in WAC 314-55-035. However, for purposes of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of cannabis-infused product containing material from one or more lots of cannabis.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Cannabis" has the meaning provided in RCW 69.50.101.

(5) "Cannabis concentrates" has the meaning provided in RCW 69.50.101.

(6) "Cannabis-infused products" has the meaning provided in RCW 69.50.101.

(7) "Cannabis mix" means an intermediate lot that contains multiple strains of useable cannabis and is chopped or ground so no particles are greater than 3 mm.

(8) "Cannabis mix infused" or "mix infused" means an end product that contains cannabis mix and may contain other intermediate products or useable cannabis.

(9) "Cannabis mix packaged" or "mix packaged" means an end product containing only cannabis mix and no other product types.

(10) "Cannabis products" has the meaning provided in RCW 69.50.101.

(11) "Cannabis strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(12) "CBD concentration" has the meaning provided in RCW 69.51A.010.

(13) "Characterizing flavor" means a noticeable taste, other than one of cannabis, resulting from an additive or combination of additives including, but not limited to, fruit, spice, herbs, alcohol, candy, or menthol, or that is noticeable before or during consumption of the cannabis product.

~~((5))~~ (14) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than 24 hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

~~((6))~~ (15) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

~~((7))~~ (16) "Cooperative" means a group of more than one, but no more than four qualified medical cannabis patients and/or designated providers who share responsibility for growing and processing cannabis only for the medical use of the members of the cooperative.

~~((8))~~ (17) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

~~((9))~~ (18) "Elementary school" means a school with a physical location for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

~~((10))~~ (19) "Employee" means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.

~~((11))~~ (20) "End product" means a cannabis product that requires no further processing prior to retail sale.

~~((12))~~ (21) "Financier" means any person or entity, other than a banking institution, that provides money as a gift or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest.

~~((13))~~ (22) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under ~~((twenty-one))~~ 21 years of age are not restricted.

~~((14))~~ (23) "Harvest" means the cannabis plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

~~((15))~~ (24) "Immature plant or clone" means a cannabis plant or clone that has no flowers, is less than 12 inches in height, and is less than 12 inches in diameter.

~~((16))~~ (25) "Intermediate product" means cannabis flower lots or other material lots that have been converted by a cannabis processor to a cannabis mix lot, cannabis concentrate or cannabis-infused product that must be or are intended to be converted further to an end product.

~~((17))~~ (26) "LCB" means the Washington state liquor and cannabis board.

(27) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((18))~~ (28) "Licensed premises" means all areas of a premises where the licensee has leasehold rights as listed in the property lease submitted to the board. Any vehicle assigned for the purposes of transporting cannabis, useable cannabis, cannabis concentrates, or

cannabis-infused products shall be considered an extension of the licensed premises.

~~((19))~~ (29) "Licensee" or "cannabis licensee" means any person or entity that holds a cannabis license, or any person or entity who is a true party of interest in a cannabis license, as outlined in WAC 314-55-035.

~~((20))~~ (30) "Lot" means either of the following:

(a) The flowers from one or more cannabis plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more cannabis plants. A single lot of trim, leaves, or other plant matter cannot weigh more than 15 pounds.

~~((21))~~ (31) "Lozenge" means a cannabis-infused product such as a hard candy, mint, pastille, tablet, or similar type of edible product that is generally swallowed whole, chewed and swallowed, or dissolved in the mouth.

~~((22))~~ "~~Cannabis strain~~" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~(23)~~ "~~Cannabis mix~~" means an intermediate lot that contains multiple strains of useable cannabis and is chopped or ground so no particles are greater than 3 mm.

~~(24)~~ "~~Cannabis mix infused~~" or "~~mix infused~~" means an end product that contains cannabis mix and may contain other intermediate products or useable cannabis.

~~(25)~~ "~~Cannabis mix packaged~~" or "~~mix packaged~~" means an end product containing only cannabis mix and no other product types.

~~(26))~~ (32) "Member," except as that term is used in relation to registered cooperatives, means a principal or governing person of a given entity including, but not limited to: LLC member/manager, president, vice president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((27))~~ (33) "Package" has the meaning provided in RCW 69.50.101.

(34) "Paraphernalia" means items used for the storage or use of useable cannabis, cannabis concentrates, or cannabis-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongs, and storage containers. Items for growing, cultivating, and processing cannabis, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((28))~~ (35) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

~~((29))~~ (36) "Perimeter" means a property line that encloses an area.

~~((30))~~ (37) "Plant" means a cannabis plant.

~~((31))~~ (38) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagat-

ing plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((32))~~ (39) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

~~((33))~~ (40) "Product(s) otherwise taken into the body" means a cannabis-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

~~((34))~~ (41) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((35))~~ (42) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((36))~~ (43) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under 21 years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, federal government, or metropolitan park district.

~~((37))~~ (44) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((38))~~ (45) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to 12 and recognized by the Washington state superintendent of public instruction.

~~((39))~~ (46) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the ~~((WSLCB))~~ LCB. For purposes of this subsection:

(a) "Product" means cannabis, cannabis concentrates, useable cannabis, or cannabis-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

~~((40))~~ (47) "Synthetic cannabinoid" includes any chemical compound identified in RCW 69.50.204 (c) [(3)] (30) [(dd)] (i) or by the pharmacy quality assurance commission under RCW 69.50.201.

(48) "Terpenes" means a class of compounds that impart smell, taste, or both occurring in the cannabis plant which consist of a car-

bon skeleton derived from isoprene units. The word "terpene" may include, but is not limited to, the following:

(a) "Botanical terpenes" means constituents derived from a spice, fruit, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, or leaf or similar plant material. Their significant function in cannabis products is flavoring. This includes:

(i) Essential oil, which is natural oil typically obtained by distillation and possessing the characteristic fragrance of the plant or other source from which it is extracted;

(ii) Oleoresin, which is a natural or artificial mixture of essential oils and a resin;

(iii) Distillate; or

(iv) Any product of roasting, heating, or enzymolysis which contains terpenes.

(b) "Synthetic terpenes" means any terpene that does not occur in the cannabis plant, or in other botanical sources, and is produced through chemical manipulation in a laboratory or similar facility.

(c) "Terpenoids" means the natural products and related compounds formally derived from isoprene units, or "isoprenoids," that have the same meaning as that found in the current version of the International Union of Pure and Applied Chemistry (IUPAC) and as hereafter amended.

~~((41))~~ (49) "Tetrahydrocannabinols" has the meaning provided in RCW 69.50.204.

(50) "Total THC" means any tetrahydrocannabinol, as defined in chapter 69.50 RCW, identified in the product testing process measured in milligrams per gram, taking into account the conversion from acidic to neutral form.

(51) "THC concentration" has the meaning provided in RCW 69.50.101.

~~(52) "Unit" ((means an individually packaged cannabis-infused solid or liquid product meant to be eaten or swallowed, not to exceed 10 servings or 100 milligrams of active tetrahydrocannabinol (THC), or Delta-9)) has the meaning provided in RCW 69.50.101.~~

~~((42) "WSLCB" means the Washington state liquor and cannabis board.)~~

(53) "WSDA" means the Washington state department of agriculture.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-035 Qualifying for a cannabis license. A cannabis license must be issued in the name(s) of the true party(ies) of interest. The board may conduct an investigation of any true party of interest who exercises control over the applicant's business operations. This may include financial and criminal background investigations.

(1) **True parties of interest.** True parties of interest must qualify to be listed on the license, and meet residency requirements consistent with this chapter. For purposes of this title, "true party of interest" means:

Entity	True party(ies) of interest
Sole proprietorship	Sole proprietor
General partnership	All partners

Entity	True party(ies) of interest
Limited partnership, limited liability partnership, or limited liability limited partnership	All general partners All limited partners
Limited liability company (LLC)	All LLC members All LLC managers
Privately held corporation	All corporate officers and directors (or persons with equivalent title) All stockholders
Multilevel ownership structures	All persons and entities that make up the ownership structure
Any entity(ies) or person(s) with a right to receive revenue, gross profit, or net profit, or exercising control over a licensed business	Any entity(ies) or person(s) with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year Any entity(ies) or person(s) who exercise(s) control over the licensed business
Nonprofit corporations	All individuals and entities having membership rights in accordance with the provisions of the articles of incorporation or bylaws

(2) A married couple may not be a true party of interest in more than five retail cannabis licenses, more than three producer licenses, or more than three processor licenses. A married couple may not be a true party of interest in a cannabis retailer license and a cannabis producer license or a cannabis retailer license and a cannabis processor license.

(3) The following definitions apply to this chapter unless the context clearly indicates otherwise:

(a) "Control" means the power to independently order, or direct the management, managers, or policies of a licensed business.

(b) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the department of financial institutions.

(c) "Gross profit" means sales minus the cost of goods sold.

(d) "Net profit" means profits minus all other expenses of the business.

(e) "Revenue" means the income generated from the sale of goods and services associated with the main operations of business before any costs or expenses are deducted.

(4) For purposes of this chapter, "true party of interest" does not include (this is a nonexclusive list):

(a) A person or entity receiving payment for rent on a fixed basis under a lease or rental agreement. Notwithstanding, if there is a common ownership interest between the applicant or licensee, and the entity that owns the real property, the board may investigate all

funds associated with the landlord to determine if a financier relationship exists. The board may also investigate a landlord in situations where a rental payment has been waived or deferred.

(b) A person who receives a bonus or commission based on their sales, so long as the commission does not exceed 10 percent of their sales in any given bonus or commission period. Commission-based compensation agreements must be in writing.

(c) A person or entity contracting with the licensee(s) to receive a commission for the sale of the business or real property.

(d) A consultant receiving a flat or hourly rate compensation under a written contractual agreement.

(e) A person with an option to purchase the applied for or licensed business, so long as no money has been paid to the licensee under an option contract or agreement for the purchase or sale of the licensed business, or a business that is applying for a license.

(f) Any business or individual with a contract or agreement for services with a licensed business, such as a branding or staffing company, will not be considered a true party of interest, as long as the licensee retains the right to and controls the business.

(g) A financial institution.

(5) **Notification.**

(a) Except as provided in this subsection (4) (a) (i), (ii), and (iii), after licensure the licensee must continue to disclose the source of all funds to be invested in the licensed business, including all funds obtained from financiers, prior to investing the funds into the licensed business.

(i) Revenues of the licensed cannabis business that are reinvested in the business do not require notification or vetting by the board.

(ii) Proceeds of a revolving loan where such loan has been approved by the board within the three previous years do not need to be vetted by the board, unless the source of the funds has changed or the approved loan amount has increased.

(iii) If the source of funds is an identified true party of interest on the license, or a previously approved financier associated with the license, or a previously approved revolving loan, the board will allow these funds to be used upon receipt of an application to use such funds. The board will then investigate the source of funds. If the board cannot verify the source of funds after reasonable inquiry, or the board determines that the funds were obtained in a manner in violation of the law, the board may take actions consistent with the provisions of this chapter.

(b) Licensees must receive board approval before making any ownership changes consistent with WAC 314-55-120.

(c) Noncompliance with the requirements of this section may result in action consistent with this chapter.

(6) **Disclosure agreements and intellectual property.**

(a) Licensed cannabis businesses may enter into agreements consistent with the provisions of RCW 69.50.395.

(b) Notwithstanding the foregoing, no producer or processors may enter into an intellectual property agreement with a retailer.

(7) **Financiers.**

(a) Consistent with WAC 314-55-010(~~((+11))~~) (21), a financier is any person or entity, other than a financial institution or a government entity, that provides money as a gift, a grant, or loans money to an applicant, business, or both, and expects to be paid back the amount of the loan, with or without reasonable interest.

(b) A financier may not receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a loan or gift of funds, unless the financier, if directly involved in the loaning of funds, receives board approval and has qualified on the license as a true party of interest.

(c) Washington state residency requirements do not apply to financiers who are not also a true party of interest, but all financiers must reside within the United States.

(d) The board will conduct a financial and criminal background investigation on all financiers.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-095 Cannabis servings and transaction limitations.

Personal possession limits and transaction limits are detailed in RCW 69.50.360 and 69.50.4013.

(1) For persons age 21 and older and qualifying patients or designated providers who are not entered into the medical cannabis authorization database, cannabis serving and transaction limitations are as follows:

(a) **Single serving.** A single serving of a cannabis-infused product must not exceed 10 milligrams of active ~~((tetrahydrocannabinol (THC), or Delta-9))~~ delta-9 THC. Additional tetrahydrocannabinol compounds other than delta-9 THC may be present in the product, but any single tetrahydrocannabinol compound other than delta-9 THC must not exceed 0.5 milligrams per serving, and the combined concentration of additional tetrahydrocannabinol compounds must not exceed 1.0 milligram per serving.

~~(b) ((Maximum number of servings. The maximum number of servings in))~~ **Single package.** Any one single ~~((unit))~~ package of cannabis-infused product meant to be eaten or swallowed or otherwise taken into the body ~~((is 10 servings or 100 milligrams of active THC, or Delta 9))~~ must not exceed 100 milligram of active delta-9 THC.

~~(c) ((Single concentrate unit. A single unit of cannabis concentrate cannot exceed one gram.~~

~~((e))~~ **(d) Transaction limits.**

(i) A single transaction is limited to:

(A) One ounce of useable cannabis;

(B) ~~((Sixteen))~~ 16 ounces of cannabis-infused product meant to be eaten or swallowed in solid form;

(C) ~~((Seven))~~ 7 grams of cannabis-infused extract or cannabis concentrate for inhalation; ~~((and))~~

(D) ~~((Seventy-two))~~ Ten units of a cannabis-infused product otherwise taken into the body;

(E) 72 ounces of cannabis-infused product in liquid form for oral ingestion or applied topically to the skin~~((; and~~

~~((E) Ten units of a cannabis-infused product otherwise taken into the body)),~~ unless the product is packaged in individual units containing no more than 4 milligrams of active delta-9 THC per unit; and

(F) 200 mg of active delta-9 THC within a cannabis-infused product in liquid form if the product is packaged in individual units containing no more than 4 milligrams of active delta-9 THC per unit.

(ii) A licensee or employee of a licensee is prohibited from conducting a transaction that facilitates an individual in obtaining more than the personal possession amount.

(2) For qualifying patients and designated providers who are entered into the medical cannabis authorization database, serving and transaction limits are as follows:

(a) **Single serving.** Except as provided in chapter 246-70 WAC, a single serving of a cannabis-infused product meant to be eaten, swallowed, or applied must not exceed 10 milligrams of active ~~((tetrahydrocannabinol (THC), or Delta-9))~~ delta-9 THC. Additional tetrahydrocannabinol compounds other than delta-9 THC may be present in the product, but any additional single tetrahydrocannabinol compound other than delta-9 THC must not exceed 0.5 milligrams per serving, and the combined concentration of additional tetrahydrocannabinol compounds must not exceed 1.0 milligram per serving.

(b) ~~((Maximum number of servings.))~~ **Single package.** Except as provided in chapter 246-70 WAC, ~~((the maximum number of servings in any one single unit))~~ a single package of cannabis-infused product meant to be eaten, swallowed or applied ~~((is 10 servings or))~~ must not exceed 100 milligrams of active delta-9 THC ~~((, or Delta-9)).~~

(c) **Single concentrate unit.** A single unit of cannabis concentrate cannot exceed one gram.

~~((e))~~ (d) **Transaction limitation.** A single transaction by a retail store with a medical cannabis endorsement to a qualifying patient or designated provider who is entered into the medical cannabis database is limited to three ounces of useable cannabis, 48 ounces of cannabis-infused product meant to be eaten or swallowed in solid form, 21 grams of cannabis-infused extract or cannabis concentrate for inhalation, and 216 ounces of cannabis-infused product in liquid form meant to be eaten or swallowed, and up to 200 mg of active delta-9 THC with- in a cannabis-infused product in liquid form meant to be eaten or swallowed if product is packaged in individual units containing no more than 4 milligrams of active delta-9 THC per unit.

(3) The board will provide and maintain a nonexhaustive list of cannabinoid compounds that do not meet the definition of tetrahydrocannabinols for the purposes of single-serving limits under this section. The list may be updated as needed, by the LCB, and will be publicly available via the internet.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-102 Quality assurance and quality control. (1) ~~((Lab certification and accreditation for))~~ **Certified laboratory quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section. Cannabis licensees must use a laboratory certified by the board (certified laboratory) to conduct quality control testing required under this chapter. Prior to becoming certified, laboratories must be accredited by the WSDA as specified in chapter 16-309 WAC.

(a) ~~((Certified labs must be))~~ Licensees must use certified laboratories to conduct ~~((the following))~~ testing on cannabis and cannabis products in the following required fields of testing:

- (i) Water activity;
- (ii) ~~((Potency))~~ Cannabinoid concentration analysis;
- (iii) Foreign matter inspection;
- (iv) Microbiological screening;
- (v) Mycotoxin screening;
- (vi) Pesticide screening; and
- (vii) Residual solvent screening.

(b) Certified labs may be certified for heavy metal testing. Certified labs must comply with the guidelines for each quality control field of testing described in this chapter if they offer that testing service.

(c) Certified labs may reference samples for mycotoxin, heavy metal, or pesticide testing by subcontracting for those fields of testing.

(2) General product quality control testing requirements for certified labs.

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors. Certified labs must also verify if any unused portion of the sample is destroyed after the completion of required testing.

(b) Certified labs must report quality control test results directly to the board in the required format.

(c) Product must not be converted, transferred, or sold by the licensee until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(f) For the purposes of this section, limits have been written to the number of significant digits that certified laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(3) Quality control analysis and screening. The following analysis and screening are only required for samples that have not been previously tested, or that have failed quality control testing.

(a) ~~((Potency))~~ Cannabinoid concentration analysis.

~~(i) ((Certified labs must test and report the following cannabinoids to the board when testing for potency:))~~ A cannabinoid concentration analysis is required to determine the concentration of cannabinoid compounds present in cannabis and cannabis products. The results of the cannabinoid concentration analysis must be reported to the board in the state's traceability system in the required format. The cannabinoid concentration analysis must include testing for at least the following cannabinoids:

(A)

Cannabinoid	Lower Limit of Quantitation (mg/g)	CAS #
CBD	1.0	13956-29-1
CBDA	1.0	1244-58-2
Δ^9 -THC	1.0	1972-08-3
Δ^9 -THCA	1.0	23978-85-0

(B) Any THC compound that is labeled, advertised, or marketed as part of the product;

(C) Total delta-9 THC;

~~((C))~~ (D) Total THC for tetrahydrocannabinol compounds other than delta-9 THC;

(E) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total delta-9 THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.

(B) Total THC for tetrahydrocannabinol compounds other than delta-9 that are present in an amount greater than 0.2 mg/g must be calculated as follows, where M is the mass or mass fraction of the neutral (THC) or acidic form (THCA) of the tetrahydrocannabinol compound: $M \text{ total THC} = M \text{ THC} + [(molar \text{ mass of THC} / molar \text{ mass of THCA}) \times M \text{ THCA}]$.

(C) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(iii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Water activity testing.** The sample fails quality control testing for water activity if the results exceed the following limits:

(i) Water activity rate of more than 0.65 a_w for useable cannabis;

(ii) Water activity rate of more than 0.85 a_w for solid edible products.

(c) **Foreign matter screening.** The sample fails quality control testing for foreign matter screening if the results exceed the following limits:

(i) Five percent of stems 3 mm or more in diameter; or

(ii) Two percent of seeds or other foreign matter; or

(iii) One insect fragment, one hair, or one mammalian excreta in sample.

(d) **Microbiological screening.** The sample and the related population fails quality control testing for microbiological screening if the results exceed the following limits:

Unprocessed Plant Material	Colony Forming Unit per Gram (CFU/g)
Bile Tolerant Gram Negative bacteria (BTGN)	1.0×10^4
Shiga toxin-producing Escherichia coli (STEC)	<1
Salmonella spp.	<1
Processed Plant Material	Colony Forming Unit per Gram (CFU/g)
Bile Tolerant Gram Negative bacteria (BTGN)	1.0×10^3
Shiga toxin-producing Escherichia coli (STEC)	<1
Salmonella spp.	<1

(e) **Mycotoxin screening.** The sample and the related population fails quality control testing if the results exceed the following limits:

Mycotoxin	µg/kg	CAS #
Aflatoxins (Sum of Isomers)	20.	
• Aflatoxin B1		1162-65-8
• Aflatoxin B2		7220-81-7
• Aflatoxin G1		1165-39-5
• Aflatoxin G2		7241-98-7
Ochratoxin A	20.	303-47-9

(f) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and the related population fails quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for any class one solvents as defined in *United States Pharmacopoeia USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent	µg/g	ppm (simplified)	CAS #
Acetone	5.0 * 10 ³	5000	67-64-1
Benzene	2.0	2	71-43-2
Butanes (Sum of Isomers)	5.0 * 10 ³	5000	
• n-butane			106-97-8
• 2-methylpropane (isobutane)			75-28-5
Cyclohexane	3.9 * 10 ³	3880	110-82-7
Chloroform	2.0	2	67-66-3
Dichloromethane	6.0 * 10 ²	600	75-09-2
Ethanol	5.0 * 10 ³	5000	64-17-5
Ethyl acetate	5.0 * 10 ³	5000	141-78-6
Heptanes (Single Isomer)	5.0 * 10 ³	5000	
• n-heptane			142-82-5
Hexanes (Sum of Isomers)	2.9 * 10 ²	290	
• n-hexane			110-54-3
• 2-methylpentane			107-83-5
• 3-methylpentane			96-14-0
• 2,2-dimethylbutane			75-83-2
• 2,3-dimethylbutane			79-29-8
Isopropanol (2-propanol)	5.0 * 10 ³	5000	67-63-0
Methanol	3.0 * 10 ³	3000	67-56-1
Pentanes (Sum of Isomers)	5.0 * 10 ³	5000	
• n-pentane			109-66-0
• methylbutane (isopentane)			78-78-4
• dimethylpropane (neopentane)			463-82-1
Propane	5.0 * 10 ³	5000	74-98-6

Solvent	µg/g	ppm (simplified)	CAS #
Toluene	8.9 * 10 ²	890	108-88-3
Xylenes (Sum of Isomers)	2.2 * 10 ³	2170	
• 1,2-dimethylbenzene (ortho-)			95-47-6
• 1,3-dimethylbenzene (meta-)			108-38-3
• 1,4-dimethylbenzene (para-)			106-42-3

(g) **Heavy metal screening.** Heavy metal screening is required for all DOH compliant product as described in chapter 246-70 WAC. Heavy metal screening is optional for non-DOH compliant product; however, heavy metal limits provided below apply to all products. Any product exceeding the provided limits is subject to recall and destruction. The board may conduct random or investigation driven heavy metal screening for compliance. A sample and related quantity of product fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(h) **Pesticide screening.** For purposes of pesticide screening, a sample and the related quantity of cannabis is considered to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(4) **Required quality control tests.** The following quality control tests are required for each of the cannabis products described below. Licensees and certified labs may opt to perform additional quality control tests on the same sample.

(a) **Cannabis flower.** Cannabis flower requires the following quality control tests:

Product	Test(s) Required
Cannabis flower	1. Water activity testing 2. ((Potency)) <u>Cannabinoid concentration analysis</u> 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening

(b) If cannabis flower will be sold as useable flower, no further testing is required.

(c) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality assurance testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) Cannabis mix must be chopped or ground so no particles are greater than 3 mm; and

(iv) Intermediate products require the following quality assurance tests:

Intermediate Product Type	Tests Required
Cannabis mix	1. Water activity testing 2. ((Potency)) <u>Cannabinoid concentration</u> analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Mycotoxin screening 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with a CO ₂ extractor like hash oil	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Mycotoxin screening 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with ethanol	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Mycotoxin screening 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with approved food grade solvent	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Microbiological screening 3. Mycotoxin screening 4. Residual solvent test 5. Pesticide screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening
Infused cooking oil or fat in solid form	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening

(d) **End products.** All cannabis, cannabis-infused products, cannabis concentrates, cannabis mix packaged, and cannabis mix infused sold from a processor to a retailer require the following quality assurance tests:

End Product Type	Tests Required
Infused solid edible	1. ((Potency)) <u>Cannabinoid concentration</u> analysis 2. Water activity testing
Infused liquid (like a soda or tonic)	1. ((Potency)) <u>Cannabinoid concentration</u> analysis
Infused topical	1. ((Potency)) <u>Cannabinoid concentration</u> analysis
Cannabis mix packaged (loose or rolled)	1. ((Potency)) <u>Cannabinoid concentration</u> analysis
Cannabis mix infused (loose or rolled)	1. ((Potency)) <u>Cannabinoid concentration</u> analysis

End Product Type	Tests Required
Concentrate or cannabis-infused product for inhalation	1. ((Potency)) <u>Cannabinoid concentration analysis</u>

(e) End products consisting of only one intermediate product that has not been changed in any way are not subject to ((potency)) cannabinoid concentration analysis.

(5) Useable flower, a batch of cannabis concentrate, or a batch of cannabis-infused product may not be sold until the completion and successful passage of required quality control testing, except:

(a) Licensees may wholesale and transfer batches or quantities of cannabis flower and other material that will be extracted, and cannabis mix and nonsolvent extracts, for the purposes of further extraction prior to completing required quality control testing.

(b) Business entities with multiple locations licensed under the same UBI number may transfer cannabis products between the licensed locations under the same UBI number prior to quality control testing.

(c) Licensees may wholesale and transfer failed batches or quantities of cannabis flower to be extracted pursuant to subsection (6) of this section, unless failed for tests that require immediate destruction.

(6) Failed test samples.

(a) Upon approval by the board, failed quantities of cannabis or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) Retesting. A producer or processor must request retesting. The board may authorize the retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) Remediation. Remediation is a process or technique applied to quantities of cannabis flower, lots, or batches. Remediation may occur after the first failure, depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed cannabis flower, lots, or batches so long as the remediation method does not impart any toxic or harmful substance to the useable cannabis, cannabis concentrates, or cannabis-infused product. Remediation solvents or methods used on the cannabis product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the cannabis products;

(C) A licensed retailer carrying cannabis products derived from the remediated cannabis flower, lot, or batch; or

(D) The consumer upon request.

(ii) The entire quantity of cannabis from which the failed sample(s) were deducted must be remediated.

(iii) No remediated quantity of cannabis may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed quantity of remediated cannabis is not remediated or reprocessed in any way after a first failure, it cannot be retested. Any subsequent certificates of analysis produced without reme-

diation or reprocessing of the failed quantity of cannabis will not supersede the original compliance testing certificate of analysis.

(7) **Referencing.** Certified (~~(labs)~~) laboratories may reference samples for mycotoxins, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. (~~(Labs)~~) Laboratories must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, and receiving personnel.

(8) Certified (~~(labs)~~) laboratories are not limited in the amount of useable cannabis and cannabis products they may have on their premises at any given time, but a certified (~~(lab)~~) laboratory must have records proving all cannabis and cannabis-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(9) A certificate of analysis issued by a certified (~~(lab)~~) laboratory for any cannabis product subject to the requirements of this chapter that has not already been transferred to a retail location expires 12 calendar months after issuance.

(10) The board, or its designee, may request that a licensee or a certified lab provide an employee of the board or their designee samples of cannabis or cannabis products, or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random or investigatory compliance checks. Samples may be randomly screened and used for other quality control tests deemed necessary by the board.

(11) All cannabis products produced, processed, distributed, or sold after the effective date of these rules, must comply with these rules and this chapter; however, postharvest products in the possession of or being processed by a licensee that do not comply with these rules as of their effective date may be sold, distributed, or both within a reasonable period of time, determined by the board.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-105 Cannabis product packaging and labeling. (1) The following definitions apply to this section, unless the context clearly indicates otherwise:

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that meets any of the following criteria:

(i) The use of comically exaggerated features;

(ii) The attribution of human characteristics to animals, plants, or other objects;

(iii) The attribution of animal, plant, or other object characteristics to humans;

(iv) The attribution of unnatural or extra-human abilities.

(b) "Child resistant packaging" means packaging that is used to reduce the risk of poisoning in persons under the age of 21 through the ingestion of potentially hazardous items including, but not limited to, cannabis concentrates, useable cannabis, and cannabis-infused products.

(c) "Especially appealing to persons under the age of 21" means a product or label that includes, but is not limited to:

- (i) The use of cartoons;
- (ii) Bubble-type or other cartoon-like font;
- (iii) A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of 21;
- (iv) Symbols or celebrities that are commonly used to market products to persons under the age of 21;
- (v) Images of persons under the age of 21; or
- (vi) Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of 21.

(d) "Cannabis concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than 10 percent, consistent with RCW 69.50.101((~~z~~)).

(e) "Cannabis edible" means a cannabis-infused product as defined in RCW 69.50.101((~~ff~~)).

(f) "Cannabis topical" or "topical" means any product containing parts of the cannabis plant that is intended for application to the body's surface including, but not limited to, lotions, ointments, salves, gels, or cream that are not intended for ingestion, inhalation, or insertion by humans or animals.

(g) "Structure and function claims" mean a description of the role of a cannabis product intended to affect normal structure and function in humans, characterized by the means by which a cannabis product acts to maintain such structure or function, or describe the general well-being from consumption of a cannabis product, consistent with the guidance provided in 21 U.S.C. Sec. 343(6).

(h) "Useable cannabis" means dried cannabis flowers consistent with RCW 69.50.101((~~ww~~)). The term "useable cannabis" does not include either cannabis-infused products or cannabis concentrates.

(2) **Cannabis concentrates.** The following standards apply to all packaging and labeling of cannabis concentrates:

(a) (~~Containers or~~) Packaging containing cannabis concentrates must protect the product from contamination. (~~Containers or~~) Packaging must not impart any toxic or harmful substance to the cannabis concentrate.

(b) Cannabis concentrates must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of 21 from accidental exposure to cannabis concentrates.

(c) Cannabis concentrates must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Cannabis concentrate labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Cannabis concentrate labels must clearly and visibly provide all of the following information:

(i) The business or trade name and the (~~nine~~) 9-digit Washington state unified business identifier (UBI) number of the cannabis producer and processor;

- (ii) The lot number of the product (~~((the unique identifier number generated by the board's traceability system))~~). This must be the same number that appears on the transport manifest;
- (iii) The net weight in ounces and grams or volume as applicable;
- (iv) (~~Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and~~) Total THC, calculated individually for each tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g, as defined in WAC 314-55-010, using the formula referenced in WAC 314-55-102;
- (v) Total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;
- ~~((v))~~ (vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use;
- ~~((vi))~~ (vii) If solvents were used to create concentrate or extract, a statement that discloses the type of extraction method, including in solvents or gases used to create the concentrate; and
- ~~((vii))~~ (viii) A complete list of any other chemicals, compounds, additives, thickening agents, terpenes, or other substances used to produce or added to the concentrate or extract at any point during production. A copy of the complete list of chemicals, compounds, additives, thickening agents, terpenes, or other substances must be kept and maintained at the facility in which the cannabis concentrates are processed.
- (f) Cannabis concentrate labels may not contain any statement, depiction, or illustration that:
- (i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);
- (ii) Promotes over consumption;
- (iii) Represents that the use of cannabis has curative or therapeutic effects;
- (iv) Depicts a person under the age of 21 consuming cannabis; or
- (v) Is especially appealing to persons under 21 years of age as defined in subsection (1)(c) of this section.
- (g) The following statements must be included on all cannabis concentrate labels:
- (i) "Warning - May be habit forming;"
- (ii) "Unlawful outside Washington State;"
- (iii) "It is illegal to operate a motor vehicle while under the influence of cannabis;"
- (iv) The cannabis universal symbol as provided in WAC 314-55-106; and
- (v) "Smoking is hazardous to your health."
- (h) Product labeling for cannabis concentrates identified as compliant cannabis product under RCW 69.50.375(4) and chapter 246-70 WAC may include:
- (i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or
- (ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.
- (iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.
- (i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product that is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washing-

ton. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product that is not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(3) **Cannabis edibles in solid form.** The following standards apply to all packaging and labeling of cannabis edibles in solid form:

(a) ~~((Containers or))~~ Packaging containing cannabis edibles in solid form must protect the product from contamination. ~~((Containers or))~~ Packaging must not impart any toxic or harmful substance to the cannabis edibles in solid form.

(b) Cannabis edibles in solid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of 21 from accidental exposure to cannabis edibles in solid form.

(c) Cannabis-infused edibles in solid form, such as capsules, lozenges, and similar products approved by the board on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

(d) Cannabis edibles in solid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(e) Labels for cannabis edibles in solid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(f) Labels for cannabis edibles in solid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the ~~((nine))~~ 9-digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the cannabis or cannabis products;

(ii) The lot number of the product ~~((the unique identifier number generated by the board's traceability system))~~. This must be the same number that appears on the transport manifest;

(iii) The serving size, the amount of product per serving, and the number of servings contained within the ~~((unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving))~~ package must be prominently displayed;

(iv) Net weight in ounces and grams or volume as applicable;

(v) Total THC ~~((delta-9-tetrahydrocannabinol))~~ meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD), calculated individually for each tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g, as defined in WAC 314-55-010, using the formula~~((s))~~ referenced in WAC 314-55-102;

(vi) Total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use;

~~((vii))~~ (viii) A list of ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

~~((viii))~~ (ix) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that were added to the extract.

(g) Labels for cannabis edibles in solid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents that the use of cannabis has curative or therapeutic effects;

(iv) Depicts a person under the age of 21 consuming cannabis, or is especially appealing to persons under 21 years of age as defined in subsection (1)(c) of this section.

(h) The following warning statements must be included on all labels for all cannabis edibles in solid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of cannabis;"

(iv) The cannabis universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(i) Product labeling for cannabis edibles in solid form identified as compliant cannabis product under RCW 69.50.375~~((4))~~ and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(j) Where there is one statement made under (i) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(k) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(4) **Cannabis edibles in liquid form.** The following standards apply to all packaging and labeling of cannabis edibles in liquid form:

(a) ~~((Containers or))~~ Packaging containing cannabis edibles in liquid form must protect the product from contamination. ~~((Containers or))~~ Packaging must not impart any toxic or harmful substance to the cannabis edibles in liquid form.

(b) Cannabis edibles in liquid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of 21 from accidental exposure to cannabis edibles in liquid form.

(iii) Cannabis edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Cannabis edibles in liquid form must include a measuring device such as a measuring cup or dropper. Hash marks on the (~~bottle~~) package or package cap qualify as a measuring device.

(c) Cannabis edibles in liquid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Labels for cannabis edibles in liquid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Labels for cannabis edibles in liquid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the (~~nine~~) 9-digit Washington state unified business identifier (UBI) number of the licensee that produced and processed the cannabis or cannabis products;

(ii) The lot number of the product (~~(the unique identifier number generated by the board's traceability system)~~). This must be the same number that appears on the transport manifest;

(iii) The serving size, the amount of product per serving, and the number of servings contained within the (unit. If more than one serving is in a) package(, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving) must be prominently displayed;

(iv) Net weight in ounces and grams or volume as applicable;

(~~(v) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;~~) Total THC, calculated individually for each tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g, as defined in WAC 314-55-010, using the formula referenced in WAC 314-55-102;

(v) Total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use;

(vii) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Protections Act of 2004;

(viii) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract.

(f) Labels for cannabis edibles in liquid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of cannabis has curative or therapeutic effects;

(iv) Depicts a person under the age of 21 consuming cannabis, or is especially appealing to persons under 21 years of age as defined in subsection (1)(c) of this section.

(g) The following warning statements must be included on all labels for all cannabis edibles in liquid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of cannabis;"

(iv) The cannabis universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(h) Product labeling for cannabis edibles in liquid form identified as compliant cannabis product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(5) **Useable cannabis.** The following standards apply to all packaging and labeling of useable cannabis:

(a) ~~((Containers or))~~ Packaging containing useable cannabis must protect the product from contamination. ~~((Containers or))~~ Packaging must not impart any toxic or harmful substance to the useable cannabis.

(b) Useable cannabis must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Useable cannabis must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for useable cannabis must clearly and visibly provide all of the following information:

(i) The business or trade name and the ~~((nine))~~ 9-digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the cannabis or cannabis products;

(ii) The lot number of the product ~~((the unique identifier number generated by the board's traceability system))~~. This must be the same number that appears on the transport manifest;

(iii) Net weight in ounces and grams or volume as applicable;

(iv) (~~Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;~~) Total THC, calculated individually for each tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g, as defined in WAC 314-55-010, using the formula referenced in WAC 314-55-102;

(v) Total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use.

(e) Labels for useable cannabis may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of cannabis has curative or therapeutic effects;

(iv) Depicts a person under the age of 21 consuming cannabis, or is especially appealing to persons under 21 years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all useable cannabis. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of cannabis;"

(iv) The cannabis universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for useable cannabis identified as compliant cannabis product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(6) **Cannabis mix.** Cannabis mix is defined in WAC 314-55-010(~~(+22)~~) (7) as an intermediate lot that contains multiple strains of useable cannabis and is chopped or ground so no particles

are greater than 3 mm. The following standards apply to all packaging and labeling of cannabis mix:

(a) ~~((Containers or))~~ Packaging containing cannabis mix must protect the product from contamination. ~~((Containers or))~~ Packaging must not impart any toxic or harmful substance to the cannabis mix.

(b) Cannabis mix must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Cannabis mix must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for cannabis mix must clearly and visibly provide all of the following information:

(i) The business or trade name and the ~~((nine))~~ 9-digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the cannabis or cannabis products;

(ii) The lot number of the product ~~((the unique identifier number generated by the board's traceability system))~~. This must be the same number that appears on the transport manifest;

(iii) Net weight in ounces and grams or volume as applicable;

(iv) ~~((Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;))~~ Total THC, calculated individually for each tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g, as defined in WAC 314-55-010, using the formula referenced in WAC 314-55-102;

(v) Total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use;

~~((vii))~~ (vii) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract;

~~((viii))~~ (viii) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(e) Labels for cannabis mix form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of cannabis has curative or therapeutic effects;

(iv) Depicts a person under the age of 21 consuming cannabis, or is especially appealing to persons under 21 years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all cannabis mix. The following warning statements must legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of cannabis;"

(iv) The cannabis universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for cannabis mix identified as compliant cannabis product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(7) **Cannabis topicals.** The following standards apply to all packaging and labeling of cannabis topicals:

(a) ~~((Containers or))~~ Packaging containing a cannabis topical must protect the product from contamination. ~~((Containers or))~~ Packaging must not impart any toxic or harmful substance to the cannabis topical.

(b) Cannabis topicals must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Cannabis topicals must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for cannabis topicals must clearly and visibly provide all of the following information:

(i) The business or trade name and the ~~((nine))~~ 9-digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the cannabis or cannabis products;

(ii) The lot number of the product ~~((the unique identifier number generated by the board's traceability system))~~. This must be the same number that appears on the transport manifest;

(iii) The label must prominently display the net weight in ounces and grams or volume as applicable, and may not exceed serving and transaction limits as described in WAC 314-55-095;

(iv) ~~((Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;))~~ Total THC, calculated individually for each tetrahydrocannabinol compound present in amounts greater than 0.2 mg/g, as defined in WAC 314-55-010, using the formula referenced in WAC 314-55-102;

(v) Total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use; and

~~((vi))~~ (vii) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(e) Labels for cannabis topicals may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of cannabis has curative or therapeutic effects;

(iv) Depicts a person under the age of 21 consuming cannabis~~((7))~~ or is especially appealing to persons under 21 years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all cannabis topicals. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Unlawful outside Washington State;"

(ii) The cannabis universal symbol as provided in WAC 314-55-106; and

(iii) "DO NOT EAT" in bold, capital letters.

(g) Product labeling for cannabis topicals identified as compliant cannabis product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the cannabis product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(8) **Optional label information.** Optional label information includes the following: Harvest date, "best by" date, and manufactured dates.

(9) **Accompanying materials.** Accompanying materials must be provided with a cannabis product or made available to the consumer purchasing cannabis products.

A producer or processor must provide the following product-specific information, for as long as the product is for sale, through an internet link, web address, or QR code on the product label as follows:

(a) A statement disclosing all pesticides applied to the cannabis plants and growing medium during production of the useable cannabis or the base cannabis used to create the concentrate or the extract added to infused products;

(b) A list disclosing all of the chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any cannabis concentrate during or after production.

(10) **Upon request materials.** A consumer may request the name of the certified lab and quality assurance test results for any cannabis or cannabis product. A retailer must provide the information upon request.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-106 Cannabis warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Cannabis-infused products for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("warning symbol") created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's website.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package, except that a licensee must use a black border around the edges of the white background of the warning symbol image when the label or packaging is also white to ensure visibility of the warning symbol.

(c) Licensees may download the digital warning symbol from the WPC and print stickers, or purchase and use a sticker made available by the WPC, in lieu of incorporating the warning symbol on the label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

(i) Must meet all requirements of (a) and (b) of this subsection; and

(ii) Must not cover or obscure in any way labeling or information required on cannabis products by WAC 314-55-105.

(2) All cannabis products sold at retail must be labeled on the principal display panel or front of the product package with the cannabis universal symbol ("universal symbol") created and made available in digital form to licensees without cost by the ((WSLCB)) LCB. The digital file for the universal symbol is available on the ((~~WSLCB's~~)) LCB's website.

(a) The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers that the product is or contains cannabis, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width;

(b) The universal symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package; and

(c) Licensees may download the digital universal symbol from the WSLCB's website and print stickers in lieu of incorporating the universal symbol on the label or packaging as required under (a) and (b) of this subsection. If a licensee elects to use a universal symbol sticker, the sticker:

- (i) Must meet all requirements of this section; and
- (ii) Must not cover or obscure in any way labeling or information required on cannabis products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate ~~((container,))~~ package or of any outer ~~((container,))~~ package or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate ~~((container,))~~ package" means the external container holding the cannabis product.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-109 Cannabinoid additives—Requirements, restrictions, and quality assurance testing. (1) As provided in RCW 69.50.326 Licensed cannabis producers and licensed cannabis processors may use a cannabidiol (CBD) product obtained from a source not licensed under this chapter, provided the CBD product:

- (a) ~~((Has a THC level of 0.3 percent or less; and))~~ Is not cannabis or a cannabis product, as defined in chapter 69.50 RCW; and
- (b) Has been tested for contaminants and toxins by a testing laboratory accredited under this chapter and in accordance with testing standards established in this section.

(2) Licensed cannabis producers and licensed cannabis processors may use a CBD product obtained from a source not licensed under this chapter and chapter 69.50 RCW as an additive for the purpose of enhancing the CBD concentration of any product authorized for production, processing, and sale under this chapter. However, useable cannabis, except cannabis that is an intermediate product that will be converted into a cannabis-infused product or a cannabis concentrate, may not be treated or otherwise adulterated in any way including the addition of a CBD product consistent with the rules of this chapter. Except as allowed under this section, CBD product additives must be lawfully produced by, or purchased from, a producer or processor licensed under this chapter. The testing requirements for CBD products derived from cannabis produced by cannabis licensees are provided in WAC 314-55-102. The testing requirements in this section are required in addition to quality assurance testing otherwise required under this chapter for cannabis products.

(3) **Traceability requirements.** A licensee must enter CBD products obtained from a source not licensed under this chapter into the state traceability system and keep the information in the traceability system completely up to date, consistent with cannabis and cannabis product recordkeeping and traceability requirements in WAC 314-55-083. A licensee must keep CBD products obtained from a source not licensed under this chapter labeled and quarantined in an area separate from cannabis and cannabis products under video surveillance consistent with the requirements for controlled areas in WAC 314-55-083(3) until

the CBD products successfully pass quality assurance testing or are destroyed due to failure of tests as provided in this section. At no time during the quarantine period can the product be handled or moved under any circumstances, except for purposes of deducting samples as required under this section, and is subject to auditing by the ((WSLCB)) LCB or its designee(s). CBD products obtained from a source not licensed under this chapter that fail quality assurance testing as provided in this section must not be added to any cannabis product and must be disposed of consistent with WAC 314-55-097 and the disposal logged into the traceability system consistent with WAC 314-55-083.

(4) **Testing requirements.** The following sample deduction and testing requirements apply to CBD products obtained from a source not licensed under this chapter. Such products must successfully pass quality assurance testing prior to being added to any cannabis product. Samples that fail quality assurance testing and the corresponding products that the samples were deducted from must be disposed of consistent with WAC 314-55-097.

(a) **Sample size and deduction requirements.** Licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section. Samples must be deducted in a way that is most representative of the product the sample is deducted from. The minimum sample size for the testing requirements under this section for CBD products is one percent of the product as packaged by the manufacturer of the CBD product but in no case shall the sample be less than two grams. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample before the sample is tested.

(i) All samples must be collected/deducted in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(ii) Persons collecting samples must wash their hands prior to collecting a sample, wear appropriate gloves, and must use sanitary utensils and storage devices when collecting samples.

(iii) Samples must be placed in a sanitary plastic or glass container and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.

(iv) The licensee must maintain the CBD products from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the products from becoming contaminated or degraded prior to the CBD products being added or incorporated into cannabis products after successful passage of testing requirements.

(v) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:

(A) The unique identifier for the product generated by the state traceability system;

(B) The name of the certified lab receiving the sample;

(C) The license number and business or trade name of the licensee sending the sample;

(D) The date the sample was collected; and

(E) The weight of the sample.

(vi) Certified labs may retrieve samples from a cannabis licensee's licensed premises and transport the sample(s) directly to the lab. Certified labs may also return any unused portion of the sample(s).

(b) **Required fields of testing.**

(i) ~~((Potency testing. Potency testing))~~ **Cannabinoid concentration analysis.** Cannabinoid concentration analysis is required to confirm the product is ~~((less than 0.3 percent THC))~~ not cannabis or a cannabis product, as defined in chapter 69.50 RCW, contains detectable levels of CBD, and to ((determine)) measure the levels of THC, THC-A, CBD, and CBD-A in the product, as provided in WAC 314-55-102. Synthetic cannabinoids as defined in RCW 69.50.204 are prohibited under RCW 69.50.401 and any test result that suggests the presence of a synthetic cannabinoid must be immediately reported to the ~~((WSLCB))~~ board in the required format. The cannabinoid concentration analysis must be conducted consistent with the requirements under WAC 314-55-102.

~~((A) Certified labs must test and report the following cannabinoids to the WSLCB in the state traceability system when testing for potency:~~

~~(I) THCA;~~

~~(II) THC;~~

~~(III) Total THC;~~

~~(IV) CBDA;~~

~~(V) CBD; and~~

~~(VI) Total CBD.~~

~~(B) Calculating total THC and total CBD.~~

~~(I) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).~~

~~(II) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).~~

~~(C) Regardless of analytical equipment or methodology used for testing, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.~~

~~(D))~~ The following ~~((potency))~~ cannabinoid concentration analysis results fail quality control and assurance testing for the purposes of this section and the sample and corresponding product from which the sample was deducted must be disposed of consistent with this section and WAC 314-55-097:

~~((I))~~ (A) The CBD product ((tests above 0.3 percent THC)) is cannabis or a cannabis product, as defined in chapter 69.50 RCW;

~~((II))~~ (B) The CBD product does not contain any detectable ((amounts)) levels of CBD or CBD-A; and

~~((III))~~ (C) The sample test results indicate that a substance is present that is not THC, CBD, or inert substance which the THC or CBD is dissolved into.

(ii) **Pesticide screening.**

(A) ~~((Certified third-party labs))~~ Licensees must use a certified laboratory to screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department of health in consultation with the Washington state department of agriculture and the ((WSLCB)) LCB.

(B) If the ~~((WSLCB))~~ LCB, WSDA, other designee of the ((WSLCB)) LCB, or certified lab identifies a pesticide that is not allowed for use or application on cannabis under this chapter and is above the action levels provided in WAC 314-55-108, that sample and corresponding product from which the sample was deducted has failed quality assurance testing. A sample that tests at or above the action levels for pesticides consistent with WAC 314-55-108 fails pesticide testing re-

quirements for the purposes of this section. A sample and corresponding product from which the sample was deducted that fails quality assurance testing under this section must be destroyed consistent with WAC 314-55-097.

(C) (~~Certified third-party labs~~) Cannabis licensees must also use certified laboratories to screen for pyrethrins and piperonyl butoxide (PBO) in samples of CBD products obtained from a source not licensed under this chapter. ~~Certified~~ (~~third-party labs~~) laboratories may also screen for additional pesticides not specifically required under this section and per the DOH list, however, any sample that tests at or above the action level for any pesticide(s) as established in WAC 314-55-108 fails the testing requirements under this section and must be disposed of consistent with WAC 314-55-097.

(iii) **Heavy metal screening.** For the purposes of heavy metal screening, a sample fails quality assurance testing and must be disposed of consistent with WAC 314-55-097 if it meets or exceeds the following limits:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(iv) **Residual solvents screening.** (~~Certified labs~~) Cannabis licensees must use a certified laboratory to test for the solvents listed in the table below at a minimum. Except as otherwise provided in this subsection, a sample and corresponding product from which the sample was deducted fail quality assurance testing for residual solvents and must be disposed of consistent with WAC 314-55-097 if the results meet or exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing.

Solvent	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000

Solvent	ppm
Toluene	890
Xylene*	2,170

* Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(v) **Microbiological screening.** The sample and corresponding product from which the sample was deducted fail quality assurance testing for microbiological screening and must be disposed of consistent with WAC 314-55-097 if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 ⁴	Not detected in 1g
Extracted or Processed Botanical Product	10 ³	Not detected in 1g

(vi) **Mycotoxin screening.** The sample and corresponding product from which the sample was deducted fail quality assurance testing for mycotoxin screening and must be disposed of consistent with WAC 314-55-097 if the results exceed the following limits:

- (A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and
- (B) Ochratoxin A: 20 µg/kg of substance.

(5) **Test results reporting requirements.** Cannabis licensees must use a certified ((~~labs must~~)) laboratory to report all test results as required by this section into the state traceability system within 24 hours of completion of the tests.

(6) **Retesting.** At the request of the producer or processor, the ((~~WSLCB~~)) LCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest. ((~~Potency~~)) Retesting cannabinoid concentrations will not generally ((~~not~~)) be authorized.

(7) **Remediation.** Producers and processors may remediate failed products so long as the remediation method does not impart any toxic or deleterious substance to the CBD products obtained from a source outside the regulated system. Remediation solvents or methods used on the product must be disclosed to a licensed processor the producer or producer/processor transfers the products to; a licensed retailer carrying cannabis products derived from the remediated product; or consumer upon request. The product(s) the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated CBD products obtained from a source outside the regulated system may be sold, transported, or used in the processing of cannabis products until the completion and successful passage of quality assurance testing as required in this section.

(8) A licensee or certified lab that violates any of the provisions of this section is subject to disciplinary action, including possible summary suspension or revocation of the producer license, processor license, producer/processor license, or lab certification.

WSR 24-21-065
PERMANENT RULES
HIGHLINE COLLEGE

[Filed October 11, 2024, 10:17 a.m., effective November 11, 2024]

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

Purpose: To update the student conduct code in accordance with the 2024 Title IX regulations. We are reintegrating sexual harassment procedures into the student conduct code, as opposed to having supplemental procedures. This revision also updates out-of-date language and makes adjustments to other prohibited conduct charges.

Citation of Rules Affected by this Order: New WAC 132I-126-060, 132I-127-505, 132I-127-515, 132I-127-525, 132I-127-535, 132I-127-545, 132I-127-555, 132I-127-565, 132I-127-575 and 132I-127-585; repealing WAC 132I-126-400, 132I-126-410, 132I-126-420, 132I-126-430, 132I-126-505, 132I-126-515, 132I-126-525, 132I-126-535, 132I-126-545, 132I-126-555, 132I-126-565, 132I-126-575 and 132I-126-585; and amending WAC 132I-126-010, 132I-126-030, 132I-126-040, 132I-126-050, 132I-126-100, 132I-126-125, 132I-126-200, 132I-126-220, 132I-126-230, 132I-126-240, 132I-126-260, 132I-126-270, 132I-126-280, 132I-126-290, 132I-126-300, and 132I-126-350.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, Department of Education April 2024 Title IX Regulations Final Rule, <https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf>.

Adopted under notice filed as WSR 24-17-131 on August 20, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 13, Repealed 13; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 10, Amended 16, Repealed 13; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 10, 2024.

Danielle K. Slota
Executive Director and TIX Coordinator
Office of the President

OTS-5575.1

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-010 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities; ~~((or))~~

(c) ~~((To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

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

(5) The ~~((student conduct officer))~~ college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

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

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-030 Authority. The board of trustees, acting pursuant to RCW 28B.50.140 ~~((+13+))~~ (14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. ~~((Unless otherwise specified))~~ Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

(1) The administrator or delegate in charge of any college office, department or facility is responsible for student conduct that takes place in that area, but outside a classroom setting. The administrator or delegate may remove a student from the area within their control if they reasonably believe that the student conduct substantially and materially disrupts college operations and such removal is necessary to protect the learning environment and/or to ensure the safety and well-being of members of the college community and/or to protect property or facilities belonging to the college or members of

the college community. Staff directing the removal of a student must report the student's conduct to their administrator in charge at the earliest opportunity. The administrator in charge must report the incident in writing to the student conduct officer at the earliest opportunity.

(2) The instructor or advisor is responsible for student conduct in the classroom or at any college-related activity or event. The instructor or advisor is authorized to remove the student from a single class or college-sponsored event in which the student's conduct materially and substantially disrupts the educational environment. When such behavior results in removal, the instructor or advisor must report the student's conduct in writing to the student conduct officer at the earliest opportunity.

(3) In all cases involving disruption, the student conduct officer or designee will proceed with the investigation and/or disciplinary proceedings at the earliest opportunity consistent with the procedural requirements established in this chapter.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-040 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-050 Definitions. The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment and other property owned, used or controlled by the college.

(3) "Complainant" is a student, employee, or another member of the college community who was participating or attempting to participate in college programs and activities at the time of the alleged violation, and who is directly affected by a claimed violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may file complaints alleging a violation of the student conduct code. In any case involving a report of sex discrimination, a complainant is afforded certain rights as specified in this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision or dismissal of their sex discrimination complaint; and

(c) The right to be accompanied by an advisor, who may be an attorney retained at complainant's cost.

(4) "Conduct review officer" is the vice president for student services or designee who is responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((4))~~ (5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

~~((5))~~ (6) "Disciplinary appeal" is the process by which an aggrieved ~~((student))~~ party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or from a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action are reviewed through brief adjudicative proceedings, unless the case is referred to the committee by the student conduct officer or the conduct review officer.

~~((6))~~ (7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and either intercampus mail or first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((7))~~ (8) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(9) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(10) "Program" or "programs and activities" means all operations of the college.

(11) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(12) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(13) "Respondent" is ~~((the))~~ a student ~~((against whom disciplinary action is initiated))~~ who is alleged to have violated the student conduct code. All respondents are afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process; and

(b) The right to be accompanied by an advisor, who may be an attorney retained at respondent's cost.

~~((8))~~ (14) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail, whichever is first.

~~((9))~~ (15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been admitted for admission are considered "students."

~~((10))~~ (16) "Student conduct officer" is a college administrator designated by the vice president for student services to be responsible for implementing and enforcing the student conduct code. The vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((11))~~ (17) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(18) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

~~((12) "The president" is the president of the college. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.)~~ (19) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(20) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

NEW SECTION

WAC 132I-126-060 Amnesty. (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students, or student groups, are encouraged to seek swift medical assistance for themselves and others without fear of penalty. Students requesting and receiving medical assistance in these situations are not typically subject to the student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. The college will consider the positive impact of reporting a situation when determining any course

of action. Without imposing sanctions, the college may initiate educational remedies regarding alcohol or drug use.

(2) Complainants and witnesses who in good faith report sexual harassment will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual harassment unless their own conduct placed another person's health or safety at risk.

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-100 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

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

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Collusion includes assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or to increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct includes intentionally violating college policies, such as altering grades, misrepresenting one's identity failing to report known incident of academic dishonesty or participating in obtaining or distributing any part of the test or any information about a test.

Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders.

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) ~~((Assault, intimidation, harassment.))~~ **Abuse of others.** Assault, unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, ((harassment, bullying,)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law. ~~((For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victims.))~~

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

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property and college trademarks.

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

(8) **Weapons violation.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

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

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

(9) **Hazing.**

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

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

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

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

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

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

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

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

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

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

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

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

(a) **Alcohol.** ~~((The)) Use, possession, ((delivery, sale, or being~~ observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies)) manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(b) ~~((**Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana-))~~ **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of ((marijuana)) cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any build-

ing owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law. This includes, but is not limited to: Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132I-126-505 through 132I-126-585 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

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

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

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

~~(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(I) The length of the relationship;~~

~~(II) The type of relationship; and~~

~~(III) The frequency of interaction between the persons involved in the relationship.~~

~~(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety, or the safety of others, or suffer substantial emotional distress.~~

~~(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gen-~~

der identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.) (a) Unwelcome and offensive conduct, including verbal, non-verbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(13) **Sexual discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly-situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, dating violence, and stalking.

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

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

(C) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.

(D) **Statutory rape.** Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should

know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

(14) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

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

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

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-125 Disciplinary sanctions and terms and conditions. (1) The following corrective actions or disciplinary sanctions may be imposed upon students or upon college sponsored student organizations, athletic teams, or living groups found to have violated the student conduct code.

(a) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the ~~((action is taken))~~ suspension is imposed.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the ~~((action is taken))~~ dismissal is imposed.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-200 Initiation of disciplinary action. (~~((1) All disciplinary action will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

~~(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s) and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) Within ten business days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the sanctions imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.~~

~~(4) The student conduct officer may take any of the following disciplinary actions:~~

~~(a) Exonerate the respondent and terminate the proceedings.~~

~~(b) Impose disciplinary sanction(s) outlined in this chapter.~~

~~(c) Impose disciplinary terms and conditions alone or in conjunction with a disciplinary sanction including, but not limited to, disciplinary terms and conditions identified in WAC 132I-126-125(2).~~

~~(d) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.)~~

(1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** For reports of behavior that took place prior to August 1, 2024, refer to and use chapter 132I-127 WAC procedures. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132I-126-125; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex-based harassment, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of five business days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated.

(i) The complainant and respondent will have three business days to notify the Title IX coordinator, in writing, of any objection to the continuation, modification, or termination of any supportive measures. Any objection will be reviewed within three business days by a neutral employee, who will review the investigation report, student conduct officer's recommendation, confer with the Title IX coordinator or their designee, complainant and respondent, as appropriate, and determine whether to continue, modify, or terminate the supportive measures.

(j) If it is determined that a violation of the student conduct code occurred, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-220 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex-based harassment, as

set forth in WAC 132I-126-100 (13) (a), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the (~~conduct review~~) student conduct officer.

(4) A respondent who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has the right to a prompt, fair and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of (~~ten~~) 10 instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer or the conduct review officer.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of (~~ten~~) 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any disciplinary conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and exonerations are final actions and are not subject to appeal.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-230 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within (~~ten~~) 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-240 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the vice president for student services or designee, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the initial decision.

(2) The vice president for student services or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the vice president for student services or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 10 business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the vice president for student services or designee does not make a disposition of the matter within (~~twenty~~) 20 business days after the request is submitted.

(5) If the vice president for student services or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-260 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the faculty senate;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the vice president for ~~((student))~~ administrative services at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. ~~((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-270 ~~((Appeals to the)) Student conduct committee—Prehearing.~~ (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven ~~((business))~~ calendar days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;

- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent.

If doing so, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer (~~(, upon request,)~~) shall provide reasonable assistance to the respondent (~~(in obtaining relevant and admissible evidence that is within the college's control)~~) and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by (~~a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer~~) an advisor of their choice, which may be an attorney retained at the student's expense.

(10) The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the

student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by

the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(g) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(h) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-280 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) With the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The

chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) The chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-290 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions and/or a proposed decision for its consideration.

(2) Within (~~twenty-one~~) 21 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the vice president for student services.

(5) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-300 Appeal from student conduct committee initial decision. (1) (~~(A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision.)~~) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to

the president by filing a written appeal with the president's office within 10 business days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

~~(2) ((The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.~~

~~(3) The president shall provide a written decision to all parties within forty five days after receipt of the notice of appeal. The president's decision shall be final.~~

(4)) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 21 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-350 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure is pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the (~~student~~) respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with

timely notice of any subsequent changes to the summary suspension order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132I-126-400	Supplemental sexual misconduct procedures.
WAC 132I-126-410	Supplemental definitions.
WAC 132I-126-420	Supplemental complaint process.
WAC 132I-126-430	Supplemental appeal rights.
WAC 132I-126-505	Order of precedence.
WAC 132I-126-515	Prohibited conduct under Title IX.
WAC 132I-126-525	Title IX jurisdiction.
WAC 132I-126-535	Initiation of discipline.
WAC 132I-126-545	Prehearing procedure.
WAC 132I-126-555	Rights of parties.
WAC 132I-126-565	Evidence.
WAC 132I-126-575	Initial order.
WAC 132I-126-585	Appeals.

OTS-5576.1

Chapter 132I-127 WAC

SUPPLEMENTAL DISCIPLINE PROCEDURES FOR CASES INVOLVING TITLE IX SEXUAL HARASSMENT FOR INCIDENTS PRIOR TO AUGUST 1, 2024

NEW SECTION

WAC 132I-127-505 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence for behaviors that took place prior to August 1, 2024. Highline College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132I-127-515 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(2) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.52.010.

(3) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(4) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(5) Sexual assault. Sexual assault includes the following conduct:

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132I-127-525 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity;
and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132I-127 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132I-127-535 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
- (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132I-127-545 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132I-126-270. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132I-127-555 Rights of parties. (1) The college's student conduct procedures, WAC 132I-126-200, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132I-127-565 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132I-127-575 Initial order. (1) In addition to complying with WAC 132I-126-290, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132I-127-585 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

WSR 24-21-069

PERMANENT RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed October 11, 2024, 2:02 p.m., effective November 11, 2024]

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

Purpose: Incorporation by reference of federal statutes or regulations and national consensus codes in pharmacy rules. The pharmacy quality assurance commission (commission) adopted revisions to WAC 246-945-010, 246-945-013, 246-945-030, 246-945-550, and 246-945-565 to update various references incorporated throughout chapter 246-945 WAC. The revisions amend:

- WAC 246-945-010 to incorporate the updated Title 21 C.F.R., Sections 1300 through 1399;
- WAC 246-945-013 to incorporate the updated 21 C.F.R. 1306.23, the updated 21 C.F.R. 1306.13, and the updated Title 21 U.S.C., Section 829;
- WAC 246-945-030 to incorporate the updated United States Food and Drug Administration (FDA) "Orange Book," "Green Book," and "Purple Book";
- WAC 246-945-550 to incorporate the updated 21 C.F.R. 210 and 211, and 21 U.S.C. 353b (d) (A); and
- WAC 246-945-565 to incorporate the updated United States Pharmacopeia—National Formulary.

New WAC 246-945-034 incorporates updates to FDA drug classifications. When effective, this permanent rule making for WAC 246-945-030 and 246-945-034 supersedes emergency rules filed as WSR 24-16-085 on August 1, 2024.

Citation of Rules Affected by this Order: New WAC 246-945-034; and amending WAC 246-945-010, 246-945-013, 246-945-030, 246-945-550, and 246-945-565.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.075, and 69.50.301.

Adopted under notice filed as WSR 24-11-152 on May 22, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 1, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 5, Repealed 0.

Date Adopted: October 11, 2024.

Hawkins DeFrance, PharmD, Chair
Pharmacy Quality Assurance Commission

OTS-4740.4

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

- WAC 246-945-010 Prescription and chart order—Minimum requirements.** (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).
- (2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.
- (3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:
- (a) Prescriber's name;
 - (b) Name of patient, authorized entity, or animal name and species;
 - (c) Date of issuance;
 - (d) Drug name, strength, and quantity;
 - (e) Directions for use;
 - (f) Number of refills (if any);
 - (g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;
 - (h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and
 - (i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;
- (4) A prescription for a controlled substance must include all the information listed in subsection ~~((1+))~~ (3) of this section and the following:
- (a) Patient's address;
 - (b) Dosage form;
 - (c) Prescriber's address;
 - (d) Prescriber's DEA registration number; and
 - (e) Any other requirements listed in 21 C.F.R. ~~((, Chapter II))~~ Secs. 1300 through 1399 in effect as of March 7, 2024.
- (5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R. ~~((, Chapter II))~~ Secs. 1300 through 1399 in effect as of March 7, 2024.
- (6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."
- (a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.
- (b) If a Schedule II drug is dispensed in an emergency, the practitioner ~~((must))~~ shall deliver a signed prescription to the dispenser within seven days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the seven day period, and further the pharmacist ~~((must))~~ shall note on the prescription that it was filled on an emergency basis.
- (7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly

reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(9) Copies of the reference material listed in this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-013 Partial filling of prescriptions. (1) A pharmacist may partially fill a prescription for noncontrolled legend drugs and controlled substances listed in Schedule III through V provided that:

(a) The partial fill is requested by the patient or the prescriber;

(b) The partial filling is recorded in the same manner as a re-filling;

(c) The total quantity dispensed and delivered in all partial fillings must not exceed the total quantity prescribed; and

(d) Partial fills for controlled substances listed in Schedule III through V comply with 21 C.F.R. Sec. 1306.23 in effect as of March 7, 2024.

(2) A pharmacist may partially fill a prescription for a controlled substance listed in Schedule II within the limits of RCW 18.64.265, 21 U.S.C. Sec. 829, and 21 C.F.R. Sec. 1306.13 in effect as of March 7, 2024, as applicable.

(3) Copies of the reference material listed in this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-030 Identification of legend drugs for purposes of chapter 69.41 RCW. (1) Those drugs determined by the FDA to require a prescription under federal law should be classified as legend drugs under state law because their toxicity, potential for harmful effect, methods of use, or collateral measures necessary to their use indicate they are only safe for use under the supervision of a practitioner.

(2) The commission finds that under state law, legend drugs are those drugs designated as legend drugs under federal law, as of the date of adoption of this rule, and listed in at least one of the following publications in effect as of March 7, 2024, unless the drug is identified as an over-the-counter drug by the commission in WAC 246-945-034:

(a) The ((39th)) 44th Edition, including supplements, of the *Approved Drug Products with Therapeutic Equivalence Evaluations "Orange Book"* (available at <https://www.fda.gov/drugs/drug-approvals-and-databases/approved-drug-products-therapeutic-equivalence-evaluations-orange-book>).

(b) The ((2019)) 2024 version, including monthly updates, of the *Approved Animal Drug Products "Green Book"* (available at <https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book>).

(c) The ((2019 *List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations "Purple Book"*)) 2024 Purple Book: Database of FDA-Licensed Biological Products (available at <https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/purple-book-lists-licensed-biological-products-reference-product-exclusivity-and-biosimilarity-or>).

(3) Copies of the reference material listed in subsection (2) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(4) The commission also identifies those ephedrine products specified in WAC 246-945-031 as legend drugs under state law.

(5) There may be changes in the marketing status of drugs after the publication of the above references. Upon application of a manufacturer or distributor, the commission may grant authority for the over-the-counter distribution of certain drugs designated as legend drugs in these references. These determinations will be made after public hearing and will be published as an amendment to this chapter.

NEW SECTION

WAC 246-945-034 Identification of the over-the-counter drugs.

(1) The commission identifies the following as an over-the-counter drug in Washington:

(a) 4 mg naloxone hydrochloride nasal spray, approved by the FDA for marketing as an OTC drug product.

(b) 3 mg naloxone hydrochloride nasal spray, approved by the FDA for marketing as an OTC drug product.

(2) Any conflicts between this section and the publications incorporated by reference in WAC 246-945-030(2) should be resolved in favor of this section.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-550 Manufacturers—Minimum standards. (1) Manufacturers shall comply with the applicable requirements in 21 C.F.R., ((Part)) Sec. 210, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs"; and 21 C.F.R., ((Part)) Sec. 211, "Current Good Manufacturing Practice for Finished Pharmaceuticals; General((-))" in effect as of March 7, 2024.

(2) Manufacturers required to register with the FDA as an outsourcing facility as defined in 21 U.S.C. Sec. 353b(d)(4)(A) in effect as of March 7, 2024, shall also comply with FDA guidance document.

(3) Virtual manufacturers shall ensure its own drugs are manufactured in compliance with this section.

(4) Copies of the reference material listed in this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-565 Wholesaler—Drug storage. (1) Drugs must be stored at temperatures and under conditions required by the labeling of the drugs, if any, or by the requirements of the 43rd edition of USP and 38th edition of the National Formulary (USP/NF) in effect as of March 7, 2024, to preserve product identity, strength, quality, and purity. The USP/NF is available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501. Requestors may also contact USP directly to obtain copies.

(2) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Temperature and humidity recording equipment, devices, ~~((and/or))~~ logs, or a combination thereof shall be used to document proper storage of drugs.

(4) Controlled substance drugs should be isolated from noncontrolled substance drugs and stored in a secured area.

(5) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be physically separated from other drugs in a designated quarantine area until destroyed or returned to the original manufacturer or third party returns processor.

(6) Used drugs and those whose immediate or sealed outer or sealed secondary containers have been opened are adulterated and must be quarantined.

(7) Drugs must be quarantined under any condition that causes doubt as to a drug's safety, identity, strength, quality, or purity unless under examination, testing, or other investigation the drug is proven to meet required standards.

**WSR 24-21-072
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed October 14, 2024, 10:27 a.m., effective November 14, 2024]

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

Purpose: The health care authority (agency) is revising these rules to align with current standards of care and to clarify some sub-sections of this rule.

Citation of Rules Affected by this Order: Amending WAC 182-531-1675.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-15-152 on July 24, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-531-1675 (1)(i)		
Proposed	Reversal procedures. The agency does not cover procedures and surgeries related to reversal of <u>any</u> gender affirming surgery.	Removed in response to stakeholder concerns about excluding reversal procedures.
Adopted	This language has been removed.	
WAC 182-531-1675 (d)(i)		
Proposed	(d)Requirements for hair removal. For facial or body hair removal, a client must submit: (i) A letter written within the past 18 months from the provider managing the client's gender-affirming hormone therapy: (A) Describing the client's attempted hair removal techniques that failed, for each affected part of the body; and (B) Identifying the medical condition that prevents the client from shaving or using other hair removal techniques, such as documented folliculitis, documented sensitivity to hair removal techniques, or thick, male-pattern hair growth that prohibits adequate hair removal.	Removed WAC 182-531-1675 (d)(i)(B) to make the rules consistent with RCW 74.09.675.
Adopted	(d)Requirements for hair removal. For facial or body hair removal, a client must submit: (i) A letter written within the past 18 months from the provider managing the client's gender-affirming hormone therapy describing the client's attempted hair removal techniques that failed, for each affected part of the body.	

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

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

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

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

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

Date Adopted: October 14, 2024.

Wendy Barcus
Rules Coordinator

OTS-5495.2

AMENDATORY SECTION (Amending WSR 23-03-071, filed 1/13/23, effective 2/13/23)

WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria. (1) Overview of treatment program.

(a) **Medicaid agency coverage.** The medicaid agency covers the services listed in (b) of this subsection to treat gender dysphoria (also referred to as gender incongruence) under WAC 182-501-0050 and 182-531-0100. These services include life-changing procedures that may not be reversible.

(b) **Medical services covered.** Medical services covered by the agency include, but are not limited to:

(i) Presurgical and postsurgical hormone therapy;

(ii) Puberty suppression therapy;

(iii) Behavioral health services; (~~and~~)

(iv) Gender affirming hair removal services; and

(v) Surgical and ancillary services including, but not limited

to:

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospitalization;

(F) Physician services; and

(G) Hospitalizations and physician services required to treat postoperative complications of procedures performed under this section.

(c) (~~(Surgical services covered. Surgical services to treat gender dysphoria are a covered service for clients who have)~~) **Diagnosis of gender dysphoria/gender incongruence.** A diagnosis of gender dysphoria/gender incongruence is required to obtain services under this program and must be made by a provider who meets the qualifications outlined in chapter 182-502 WAC.

(d) **Medical necessity.** (~~(Under this program,)~~) The agency authorizes and pays for only medically necessary services. Medical necessity is defined in WAC 182-500-0070 and is determined under WAC 182-501-0165 and limitation extensions in accordance with WAC 182-501-0169.

(e) **Provider requirements.** Providers should be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria/gender incongruence, including experience utilizing standards of care that include the World Professional Association for Transgender Health (WPATH) Standards of Care.

(f) **Clients age ((~~twenty~~) 20 and younger.** The agency evaluates requests for clients age ((~~twenty~~) 20 and younger according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter 182-534 WAC. Under the EPSDT program, the agency pays for a service if it is medically necessary, safe, effective, and not experimental.

(g) **Transportation services.** The agency covers transportation services under the provisions of chapter 182-546 WAC.

(h) **Out-of-state care.** Any out-of-state care, including a presurgical consultation, must be prior authorized as an out-of-state service under WAC 182-501-0182.

~~(i) ((**Reversal procedures.** The agency does not cover procedures and surgeries related to reversal of gender affirming surgery.~~

~~(j))~~ **Corrective surgeries for intersex traits.** The agency covers corrective or reparative surgeries for people with intersex traits who received surgeries that were performed without the person's consent.

(2) **Prior authorization.**

(a) **Prior authorization requirements for surgical services.** As a condition of payment, the agency requires prior authorization for all surgical services to treat gender ~~((dysphoria, including modifications to, or complications from, a previous surgery))~~ dysphoria/gender incongruence, except as provided in subsection (3) of this section. This includes modifications or revisions to, or correcting complications from, a previous surgery related to infections or impairment of a function.

(b) **Required documentation.** The provider must include the following documentation with the prior authorization request:

~~(i) ((**Two psychosocial evaluations required.**)~~) **Behavioral health assessment.** Documentation of ~~((two separate psychosocial evaluations))~~ a behavioral health assessment performed within 18 months preceding surgery by ~~((two separate))~~ a qualified ~~((mental))~~ behavioral health professional~~((s))~~ as defined in WAC 182-531-1400. ~~((These providers))~~ This provider must be a licensed health care professional~~((s))~~ who ~~((are))~~ is eligible under chapter 182-502 WAC, as follows:

- (A) Psychiatrist;
- (B) Psychologist;
- ~~(C) Psychiatric advanced~~ practice registered nurse ~~((practitioner~~ ~~(ARNP))~~) (APRN);
- (D) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC);
- (E) Mental health counselor (LMHC);
- (F) Independent clinical social worker (LICSW);
- (G) Advanced social worker (LASW); or
- (H) Marriage and family therapist (LMFT).

~~(ii) ((**One psychosocial evaluation for top surgery.** For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation.~~

~~(iii))~~ **Evaluation requirements.** ~~((Each))~~ The comprehensive ~~((psychosocial evaluation))~~ behavioral health assessment must:

(A) Confirm the diagnosis of gender dysphoria, or gender incongruence, or both, as defined by the *Diagnostic Statistical Manual of Mental Disorders*;

(B) Document that:

(I) ~~((The client has:~~

- ~~• Lived for 12 continuous months in a gender role that is congruent with their gender identity, except for top surgery, hysterectomy, or orchiectomy; or~~

- ~~• Been unable to live in their gender identity due to personal safety concerns.~~

~~(II) The client has been evaluated for any coexisting behavioral health conditions and if any are present, the conditions are adequately managed.~~

~~(iv))~~ The client's experience of gender incongruence is marked and sustained;

(II) The client has the desire to make their body as congruent as possible with a desired gender through surgery, hormone treatment, or other medical therapies;

(III) Gender incongruence causes clinically significant distress or impairment in social, occupational, or other important areas of functioning; and

(IV) The client has no contraindicating behavioral health conditions that would impair the ability to give informed consent, as described in (c) of this subsection. If a client has a behavioral health condition that interferes with their ability to give informed consent and the client understands the risks, benefits, and alternatives to gender affirming treatment, the provider must facilitate treatment of the underlying behavioral health condition to support the client's ability to provide informed consent.

(iii) **Hormone therapy.** Documentation from the primary care provider or the provider prescribing hormone therapy that the client has:

(A) As appropriate to the client's gender goal for the following procedures:

(I) Had ~~((12))~~ six continuous months of hormone therapy immediately preceding ~~((the))~~ a request for genital surgery~~((, as appropriate to the client's gender goals,))~~; or

(II) Twelve continuous months of continuous hormone therapy immediately preceding a request for breast augmentation surgery, unless:

• Hormones are not clinically indicated for the ~~((individual, with the exception of))~~ client or hormones are not aligned with the client's gender health care plan, or both; or

• The client has requested a mastectomy or reduction mammoplasty ~~((, which do not require hormone therapy))~~; or

~~((B))~~ • The client has a medical contraindication to hormone therapy; and

~~((C))~~ • The client has a medical necessity for surgery and ~~((that))~~ the client is adherent with current gender dysphoria treatment.

~~((v))~~ (B) Gender dysphoria/gender incongruence that is not a symptom of another medical condition; and

(C) Had no medical conditions that would impair the client's ability to give informed consent.

(iv) **Surgical.** Documentation from the surgeon of the client's:

(A) Medical history and physical examination(s) performed within the 12 months preceding surgery;

(B) Medical necessity for surgery and surgical plan; and

(C) For hysterectomies, a completed agency hysterectomy consent form must be submitted.

(c) **Informed consent.** The surgeon must provide documentation showing that they informed the client of:

(i) The nature of the proposed care, treatment, services, medications, and procedures;

(ii) Potential benefits, risks, or side effects, including potential problems that might occur during recuperation;

(iii) The likelihood of achieving the client's treatment goals;

(iv) Reasonable alternatives;

(v) Relevant risks, benefits, and side effects related to alternatives, including the possible results of not receiving care, treatment, and services;

(vi) Any limitations on the confidentiality of information learned from or about the patient;

(vii) The effect of gender-affirming treatment on reproduction;
and

(viii) Reproductive options before having gender-affirming surgeries that have the potential to create iatrogenic infertility.

(d) Requirements for hair removal. For facial or body hair removal, a client must submit:

(i) A letter written within the past 18 months from the provider managing the client's gender-affirming hormone therapy describing the client's attempted hair removal techniques that failed, for each affected part of the body.

(ii) A letter of medical necessity from the client's dermatologist or primary care provider written within the past 18 months that includes:

(A) The size and location of the area to be treated; and

(B) For each area of the body, the number of expected units needed to complete treatment.

(iii) Photographs of the areas to be treated, if requested by the agency.

(e) Other requirements. If the client fails to complete all of the requirements in ~~((subsection (2)))~~ (b) of this ~~((section))~~ subsection, the agency will not authorize gender affirming surgery unless:

(i) The clinical decision-making process is provided in the referral letter and attachments described in ~~((subsection (2)))~~ (b) of this ~~((section))~~ subsection; and

(ii) The agency has determined that the request is medically necessary in accordance with WAC 182-501-0165 based on review of all submitted information.

~~((d))~~ (f) Behavioral health provider requirements. The behavioral health provider ~~((s))~~ who performs the ~~((psychosocial evaluation))~~ behavioral health assessment described in ~~((subsection (2)))~~ (b) (i) of this ~~((section))~~ subsection must:

(i) Meet the provisions of WAC 182-531-1400;

(ii) Be competent in using the *Diagnostic Statistical Manual of Mental Disorders*, and the *International Classification of Diseases* for diagnostic purposes;

(iii) Be able to recognize and diagnose coexisting ~~((mental))~~ behavioral health conditions and to distinguish these from gender dysphoria/gender incongruence;

(iv) Be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(v) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a ~~((mental))~~ behavioral health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria.

~~((e))~~ (g) Clients age 17 and younger. Clients age 17 and younger must meet the requirements for prior authorization identified in ~~((subsection (2)))~~ (a) through (d) of this ~~((section))~~ subsection, except that ~~((~~

~~((i) One of))~~ the comprehensive ~~((psychosocial evaluations))~~ behavioral health assessment required in ~~((subsection (2)))~~ (b) (i) of this ~~((section))~~ subsection must be a biopsychosocial behavioral health assessment performed by a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

~~((ii) For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation from a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.))~~

(3) **Expedited prior authorization (EPA).**

(a) **Approved EPA procedures.** The agency allows a provider to use the EPA process for clients age 17 and older for the following medically necessary procedures:

(i) Bilateral mastectomy or reduction mammoplasty with or without chest reconstruction; and

(ii) Genital or donor skin graft site hair removal when medically necessary to prepare for genital reassignment.

(b) **Clinical criteria and documentation.** To use the EPA process for procedures identified in (a) of this subsection, the following clinical criteria and documentation must be kept in the client's record and made available to the agency upon request:

(i) One comprehensive (~~psychosocial evaluation~~) biopsychosocial behavioral health assessment performed by a licensed behavioral health provider within the 18 months preceding surgery that meets the requirements identified in subsection (2) of this section;

(ii) Documentation from the primary care provider or the provider prescribing hormone therapy of the medical necessity for surgery and confirmation that the client is adherent with current gender dysphoria treatment; and

(iii) Documentation from the surgeon of the client's:

(A) Medical history and physical examinations performed within the 12 months preceding surgery; and

(B) Medical necessity for surgery and surgical plan.

(c) **Documentation exception.** When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required is either a:

(i) Letter of medical necessity from the treating surgeon that includes the size and location of the area to be treated, and expected date of planned genital surgery; or

(ii) Letter of medical necessity from the provider who will perform the hair removal that includes the surgical consult for bottom surgery and addresses the need for hair removal prior to gender affirming surgery.

(d) **Prior authorization required for other surgeries.** All other surgeries to treat gender dysphoria, including modifications to, or complications from a previous surgery require prior authorization to determine medical necessity.

(e) **Recoupment.** The agency may recoup any payment made to a provider for procedures listed in this subsection if the provider does not follow the EPA process outlined in WAC 182-501-0163 or if the provider does not maintain the documentation required by this subsection.

WSR 24-21-080

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed October 15, 2024, 4:14 p.m., effective November 15, 2024]

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

Purpose: Purpose of this revision is to update WAC 468-58-030 terminology to align to the Manual on Uniform Traffic Control Devices.

Citation of Rules Affected by this Order: Amending WAC 468-58-030.

Statutory Authority for Adoption: RCW 47.52.020, 47.36.050, 47.36.030.

Adopted under notice filed as WSR 24-15-153 on July 24, 2024.

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

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

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

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

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

Date Adopted: October 11, 2024.

Sam Wilson, Director
Business Support Services

OTS-5662.1

AMENDATORY SECTION (Amending WSR 79-08-061, filed 7/23/79)

WAC 468-58-030 Limited access highways—Policies on commercial approaches, common carrier and school bus stops, mail box locations and pedestrian crossings. (1) **Fully controlled limited access highways:**

(a) No commercial approaches shall be permitted direct access to main roadway but only to frontage roads when these are provided in the access plan or to the crossroads of interchanges outside the limits of full access control.

(b) No common carrier bus stops other than required by law shall be permitted except at locations provided by the state on the interchanges or, in exceptional cases, along the main roadway where pedestrian separation is available.

(c) School bus stops shall not be permitted except as in ((sub-paragraph)) (b) of this subsection.

(d) No mail boxes shall be permitted except on frontage roads.

(e) Pedestrian crossings shall not be permitted at grade.

(2) **Partially controlled limited access highways:**

(a) No commercial approaches shall be permitted except on frontage roads provided in the access plan or at intersections.

(b) Bus stops for both common carriers and school buses shall not be permitted other than as required by law on either two or four lane highways, except as follows:

(i) At locations of intersections, with necessary lanes to be constructed by the state;

(ii) Where shoulder widening has been provided for mail delivery service;

(iii) For a designated school bus (~~(loading zone)~~) stop on the traveled lane or adjacent thereto which has been approved by the department of transportation.

(c) Pedestrian grade crossings will be permitted only where a grade crossing is provided, except that pedestrian crossings will be permitted on two lane highways at mail box locations or at points designated for school children to cross as provided in (~~(subparagraph)~~) (d) of this subsection.

(d) Pedestrian crossings are prohibited in the immediate vicinity of school bus (~~(loading zones)~~) stops which are located adjacent to the traveled way. Pedestrian crossings may be permitted:

(i) On two lane highways not less than (~~(one hundred)~~) 100 feet from a school bus (~~(loading zone)~~) stop adjacent to the traveled lane, if school district and department of transportation personnel determine that stopping in the traveled lane is hazardous.

(ii) On two lane highways at the school bus when stopped on the traveled lane to load or unload passengers and the proper sign and signal lights displayed.

(e) School bus (~~(loading zones)~~) stops on partially controlled access highways shall be posted with school bus (~~(loading zone)~~) stop signs, in accordance with the latest edition of the Manual on Uniform Traffic Control Devices.

(f) The list of designated school bus (~~(loading zones)~~) stops approved by the department of transportation will be kept on file and maintained by the headquarters traffic engineer.

(g) Mail boxes shall be located on frontage roads or at intersections, with the following exceptions for properties which are served by Type A or B approaches:

(i) Mail boxes for Type A or B approaches on a four lane highway shall be located only on the side of the highway on which the approach is provided;

(ii) Mail boxes for Type A or B approaches on a two lane highway shall all be located on that side of the highway which is on the right in the direction of the mail delivery.

(3) Modified control limited access highways:

(a) Commercial approaches to modified controlled limited access highways may be permitted only where and in the manner specifically authorized at the time the plan is established and access rights are obtained.

(b) Bus stops and pedestrian crossings may be permitted as follows:

(i) In rural areas, bus stops and pedestrian crossings shall be subject to the same restrictions as on partial controlled limited access highways.

(ii) In urban areas bus stops for both commercial carriers and school buses may be permitted without restrictions other than those required by law.

(c) Mail boxes may be located adjacent to or opposite all authorized approaches as follows:

(i) Mail boxes on a four-lane highway shall be located only on the side of the highway on which the approach is provided.

(ii) Mail boxes on a two-lane highway shall all be located on that side of the highway which is on the right in the direction of the mail delivery.

WSR 24-21-083

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 16, 2024, 9:19 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: Behavioral health support specialist (BHSS); establishing certification standards in chapter 246-821 WAC. The department of health (department) is adopting certification standards for the new BHSS profession created by SSB 5189 (chapter 270, Laws of 2023). The department is establishing requirements including: The application process; education and curriculum; supervised experience; continuing education; professional standards; the educational program approval process; and fees.

Citation of Rules Affected by this Order: New WAC 246-821-010, 246-821-020, 246-821-025, 246-821-100, 246-821-110, 246-821-200, 246-821-210, 246-821-215, 246-821-300, 246-821-400, 246-821-405, 246-821-410, 246-821-420, 246-821-500, 246-821-505, 246-821-510, 246-821-520, 246-821-800, 246-821-810, 246-821-811, 246-821-900, and 246-821-990.

Statutory Authority for Adoption: RCW 18.227.020.

Other Authority: Chapter 18.227 RCW; SSB 5189 (chapter 270, Laws of 2023).

Adopted under notice filed as WSR 24-15-131 on July 23, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-821-210 was changed to incorporate suggestions from interested parties to add a "triadic supervision" option to the practicum supervisor requirements, which will reduce the supervision burden without reducing the quality of supervision available to a BHSS. This WAC was also changed to align the clinical competencies language with the clinical training program guidelines for the eight competency domains.

WAC 246-821-420 was updated to change the word "printed" to a more inclusive term in order to be inclusive of the alternate formats for client disclosures that may not be physically printed.

A final cost-benefit analysis is available by contacting Claire Wilson, Department of Health, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-0392, TTY 711, email bhss@doh.wa.gov, website www.doh.wa.gov, claire.wilson@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 22, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 22, Amended 0, Repealed 0.

Date Adopted: October 16, 2024.

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

OTS-5375.6

Chapter 246-821 WAC
BEHAVIORAL HEALTH SUPPORT SPECIALIST

GENERAL

NEW SECTION

WAC 246-821-010 Definitions. The definitions in RCW 18.227.010 and in this section apply throughout this chapter unless the context clearly states otherwise.

(1) "Approved educational program" means a program that has been fully approved, provisionally approved, or legacy approved by the department under WAC 246-821-810 and 246-821-811 and, if applicable, registered with the department of labor and industries.

(2) "Behavioral health" is a term that encompasses mental health, substance use, and co-occurring disorders.

(3) "Behavioral health support specialist" or "BHSS" means a person certified under chapter 18.227 RCW to deliver brief, evidence-based interventions with a scope of practice that includes behavioral health under the supervision of a Washington state credentialed provider who has the ability to assess, diagnose, and treat identifiable mental and behavioral health conditions as part of their scope of practice. A behavioral health support specialist does not have within their scope of practice the ability to make diagnoses, but does track and monitor treatment response and outcomes using measurement-based care.

(4) "Brief, evidence-based intervention" means strategies focused on the reduction of symptom severity within a time frame congruent with the needs of the patient, provider, and treatment setting.

(5) "Client" means a recipient of behavioral health services. This term may be used interchangeably with "patient."

(6) "Clinical supervisor" means a provider who meets the requirements of WAC 246-821-410 and provides oversight, supervision, and consultation to a certified BHSS working within their scope of practice.

(7) "Measurement-based care" means the application of valid assessments to monitor and measure patient symptoms, evaluate how a patient responds to treatment, and systematically adjust treatment based on patient needs.

(8) "Practicum" means supervised experience that meets the requirements of WAC 246-821-200, completed for the purpose of becoming a certified BHSS. A practicum may be completed as part of a bachelor degree, post-baccalaureate education, or registered apprenticeship program and may be referenced in documentation as a practicum, internship, on-the-job training, or other similar term. Within this chapter,

the terms "practicum" and "supervised experience" are used interchangeably.

(9) "Practicum supervisor" means a provider that meets the requirements of WAC 246-821-215, who provides oversight to a student completing a practicum.

(10) "Registered apprenticeship" means an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

(11) "Student" means an individual working toward completing BHSS education and practicum requirements, whether part of a bachelor degree program, post-baccalaureate education, or registered apprenticeship program.

NEW SECTION

WAC 246-821-020 Administrative procedures and requirements. (1)

The department uses the procedural rules in chapter 246-10 WAC to govern adjudicative proceedings.

(2) A certified BHSS must follow requirements for credentialed health care providers in chapter 246-12 WAC.

NEW SECTION

WAC 246-821-025 Behavioral health support specialist application requirements. (1) An applicant for a behavioral health support specialist (BHSS) certificate shall submit to the department:

- (a) An application on forms provided by the department;
- (b) Official transcripts to verify completion of a bachelor degree;
- (c) Documentation to verify completion of an approved BHSS educational program and practicum under subsection (2) or (3) of this section; and
- (d) Applicable fee(s) required under WAC 246-821-990.

(2) An applicant who completes BHSS education and experience requirements through an approved educational program that is not a registered BHSS apprenticeship shall submit to the department:

- (a) Official transcripts verifying completion of education requirements under WAC 246-821-100; and
- (b) Documentation on forms provided by the department of any supervised experience completed under WAC 246-821-200. If an applicant completed supervised experience through multiple practicums or at multiple practicum sites, documentation should be submitted for each one.

(3) An applicant who completes BHSS education and experience requirements through an approved and registered BHSS apprenticeship shall submit to the department an apprenticeship certificate of completion.

(4) Before issuance of a BHSS certificate, an applicant shall take and pass the jurisprudence examination under WAC 246-821-300.

EDUCATIONNEW SECTION

WAC 246-821-100 BHSS required education. To be eligible for certification as a behavioral health support specialist, an applicant shall:

- (1) Graduate from a bachelor's degree program.
- (2) Successfully complete a BHSS educational program approved by the department, which must be included as part of a:
 - (a) Bachelor degree program;
 - (b) Post-baccalaureate continuing education program; or
 - (c) Registered apprenticeship program.
- (3) Successfully complete at least the following amount of instruction in a behavioral health curriculum:
 - (a) Forty-five quarter college credits;
 - (b) Thirty semester college credits; or
 - (c) Four hundred fifty hours of apprenticeship related/supplemental instruction.

NEW SECTION

WAC 246-821-110 BHSS competencies and clinical skills. (1) Consistent with University of Washington behavioral health support specialist clinical training program guidelines, behavioral health support specialist competencies and clinical skills include, but are not limited to:

- (a) Health equity, including:
 - (i) Recognizing the impact of health disparities on patient engagement; and
 - (ii) Practicing use of inclusive communication that supports health care equity;
- (b) The helping relationship, including:
 - (i) Developing a supportive and effective working alliance with patients and their support networks;
 - (ii) Engaging patients to enhance participation in care;
 - (iii) Facilitating group psychoeducation; and
 - (iv) Utilizing a trauma-informed care framework in all aspects of helping relationships;
- (c) Cultural responsiveness, including:
 - (i) Developing knowledge of patient's identity(ies);
 - (ii) Providing services responsive to patient's identity(ies);
 - (iii) Practicing cultural humility in relationships; and
 - (iv) Striving to address own biases in work with patients;
- (d) Team-based care and collaboration, including:
 - (i) Integrating professional identity and scope of practice within a health care team;
 - (ii) Practicing interprofessional communication; and
 - (iii) Contributing to teams and teamwork;

(e) Screening and assessment, including:

(i) Utilizing appropriate standardized screening tools to identify common behavioral health conditions;

(ii) Conducting a suicide risk assessment and providing appropriate intervention under supervision;

(iii) Conducting a patient-centered biopsychosocial assessment;

and

(iv) Using measurement-based care to support stepped care approaches and adjusting the type and intensity of services to the needs of the patient;

(f) Care planning and care coordination, including:

(i) Contributing to the development of a whole health care plan and stay well plan with the patient, the patient's support network, and health care team members;

(ii) Maintaining a registry to systematically track patient treatment response to interventions;

(iii) Ensuring the flow and exchange of information among patients, patients' support networks, and linked providers;

(iv) Facilitating external referrals to social and community-based services (housing assistance, food banks, vocational rehabilitation, substance use disorder treatment, etc.);

(v) Demonstrating accurate documentation of services provided and summaries of contact with linked providers in the patient record; and

(vi) Recognizing the interaction between behavioral health conditions, chronic health conditions, and their associated symptoms;

(g) Intervention, including:

(i) Integrating motivational interviewing strategies into practice;

(ii) Providing psychoeducation to patients and their support network about behavioral health conditions and treatment options consistent with recommendations from the health care team;

(iii) Employing distress tolerance strategies including problem-solving and relaxation techniques to reduce the impact of acute stress on patient mental and behavioral health;

(iv) Applying brief, evidence-based treatment for common mental health presentations including depression, based on behavioral activation principles;

(v) Applying brief, evidence-based treatment for common mental health presentations including anxiety, based on cognitive behavioral therapy (CBT) principles;

(vi) Using harm reduction strategies for substance use concerns including the delivery of screening, brief intervention and referral to treatment (SBIRT); and

(vii) Demonstrating a clear understanding of the evidence base for brief treatment that focuses on symptom reduction; and

(h) Law and ethics, including:

(i) Identifying and applying federal and state laws to practice;

(ii) Integrating foundations of interprofessional ethics into practice;

(iii) Utilizing supervision and consultation to guide practice; and

(iv) Engaging in ongoing reflective practice.

(2) The behavioral health support specialist competencies and clinical skills described in subsection (1) of this section shall not be construed to permit a BHSS to practice beyond the scope of their practice as defined in RCW 18.227.010(4) and WAC 246-821-400.

EXPERIENCE REQUIREMENTSNEW SECTION

WAC 246-821-200 Supervised experience requirements. (1) To be eligible for certification as a behavioral health support specialist, a student shall complete a BHSS practicum or BHSS apprenticeship on-the-job training that:

(a) Provides practical instruction that reinforces BHSS competencies and clinical skills listed in WAC 246-821-110;

(b) Allows the student to participate in a clinical environment, observe providers treating clients, and provide direct client care under supervision; and

(c) Is supervised by a practicum supervisor, consistent with WAC 246-821-210 and 246-821-215.

(2) A clinical environment is a practice setting where a student is supervised by a provider eligible under WAC 246-821-215. A clinical environment is not limited to a traditional clinic setting and may include outreach, co-response, crisis response, or other settings in which a clinical provider is providing behavioral health services.

(3) The minimum amount of practicum or on-the-job experience for a BHSS credential is at least 240 hours, completed over a period of at least five months.

NEW SECTION

WAC 246-821-210 Practicum supervision requirements. (1) All supervised experience required for behavioral health support specialist certification must be completed under a practicum supervisor as defined in WAC 246-821-215.

(2) Before the practicum begins or within the first month of the practicum, the student shall meet with the supervisor to:

(a) Develop a written plan for developing clinical skills, including graduated participation in facilitating clinical encounters;

(b) Set goals and expectations for the duration of the practicum;

(c) Establish a schedule for supervision, which may include group supervision in addition to required individual supervision; and

(d) Identify an alternate supervisor, if possible, in case the primary supervisor is unavailable.

(3) A practicum supervisor shall provide supervision regularly, with at least biweekly individual or triadic supervision, and at least one in-person supervision session per quarter.

(4) Under the supervision of the practicum supervisor, a BHSS student shall:

(a) Complete at least 240 practicum hours;

(b) Complete at least 12 hours of individual or triadic supervision;

(c) Complete at least 60 hours of direct client contact, including co-delivery of services with a supervisor or other certified or

licensed behavioral health provider or substance use disorder professional; and

(d) Demonstrate at least one clinical skill from each of the eight competency domains listed in WAC 246-821-110.

(5) On forms provided by the department, the practicum supervisor shall attest to the student's completion of practicum requirements listed in subsection (4) of this section.

NEW SECTION

WAC 246-821-215 BHSS practicum supervisor requirements. (1) A behavioral health support specialist practicum supervisor must be licensed in the state of Washington, with no restrictions, as one of the following provider types:

(a) Independent clinical social worker or associate licensed under chapter 18.225 RCW;

(b) Marriage and family therapist or associate licensed under chapter 18.225 RCW;

(c) Mental health counselor or associate licensed under chapter 18.225 RCW;

(d) Psychiatric advanced practice registered nurse licensed under chapter 18.79 RCW;

(e) Psychologist or associate licensed under chapter 18.83 RCW;

or

(f) Other credentialed provider listed in WAC 246-821-410 who is competent to assess, diagnose, and treat behavioral health conditions and support a student BHSS appropriately.

(2) A practicum supervisor may not be a blood or legal relative, significant other, cohabitant of the student, or someone who has provided behavioral health counseling to a student in the past two years.

(3) A practicum supervisor or, if unavailable, an alternative designated provider shall review and sign all BHSS student clinical practicum documentation. Any alternative designated provider signing on behalf of the practicum supervisor shall also meet the supervisor requirements of this section.

(4) A practicum supervisor is responsible for all clients treated by a BHSS student they supervise.

EXAMINATION

NEW SECTION

WAC 246-821-300 Examination requirements. (1) A behavioral health support specialist applicant shall take and pass a jurisprudence examination administered by the department that covers professional judgment, knowledge of state laws, and ethics pertaining to the BHSS profession.

(2) An applicant who fails the test is eligible to retake it immediately.

PROFESSIONAL REQUIREMENTS FOR CERTIFIED BEHAVIORAL HEALTH SUPPORT SPECIALIST

NEW SECTION

WAC 246-821-400 Professional standards for certified BHSS. (1)

A behavioral health support specialist provides treatment for a behavioral health condition which is impacting a client's quality of life by:

(a) Delivering brief, evidence-based interventions to treat individuals with behavioral health conditions, including mental health or substance use disorders, consistent with subsection (3) of this section;

(b) Tracking and monitoring treatment response and outcomes using measurement-based care. Interventions should be adjusted based on patient response to find the most effective treatment;

(c) Regularly conferring with their clinical supervisor;

(d) Consulting with their clinical supervisor about a client whose symptoms fail to improve; and

(e) Referring a client to alternate health care providers or other resources when the client's needs exceed the BHSS's scope of practice or competence.

(2) A BHSS may not make diagnoses, but may provide symptom-based treatment within their scope of practice. Treatment may be based on the diagnosis of another provider or may occur prior to a diagnosis from another provider, based on screening and assessment. A BHSS adjusts interventions to the intensity of the client's symptoms, whether mild to moderate or acute.

(3) Brief, evidence-based interventions are strategies focused on the reduction of symptom severity within a time frame congruent with the needs of the patient, provider, and treatment setting. The strategies are often informed by principles associated with cognitive behavioral, problem-solving, strategic, or solution-focused psychotherapies.

(4) When the duration of treatment involving a single intervention exceeds six months, the BHSS must confer with their supervisor to determine appropriate next steps, which should include whether a new intervention or a referral to a setting and provider with a scope of practice matching the complexity of patient problems is appropriate.

(5) If the BHSS' supervisor elects to continue the intervention after six months, the BHSS must confer with their supervisor every six months to determine appropriate next steps consistent with subsection (4) of this section.

NEW SECTION

WAC 246-821-405 Ethical standards. (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to behavioral health support specialists, except WAC 246-16-100 (4) and (5).

(2) A BHSS shall never engage, or attempt to engage in:

(a) The activities listed in WAC 246-16-100 (1) and (2) with a former client or former key party; or

(b) A nontreatment relationship with a former client or former key party that could be perceived to create a conflict of interest or imbalance of power.

(3) A BHSS shall follow all federal and state laws and regulations about confidentiality and privacy including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) and 42 C.F.R., Part 2, as well as chapter 70.02 RCW.

(4) When providing care or treatment to a client, a BHSS shall limit self-disclosure to maintain a professional, neutral environment, in order to keep treatment sessions focused on client needs.

NEW SECTION

WAC 246-821-410 Clinical supervisors. (1) To supervise a certified behavioral health support specialist, a provider shall hold one of the following Washington state credentials:

(a) Advanced social worker or associate license under chapter 18.225 RCW;

(b) Independent clinical social worker or associate license under chapter 18.225 RCW;

(c) Marriage and family therapist or associate license under chapter 18.225 RCW;

(d) Mental health counselor or associate license under chapter 18.225 RCW;

(e) Osteopathic physician license under chapter 18.57 RCW;

(f) Physician license under chapter 18.71 RCW;

(g) Physician assistant license under chapter 18.71A RCW;

(h) Psychiatric advanced practice registered nurse license under chapter 18.79 RCW; or

(i) Psychologist or associate license under chapter 18.83 RCW.

(2) Other providers may also be eligible to provide BHSS supervision if they:

(a) Hold a Washington state credential issued by another state agency; and

(b) Have the ability to assess, diagnose, and treat identifiable mental and behavioral health conditions as part of their scope of practice.

(3) A clinical supervisor is responsible for:

(a) Supervising a BHSS's treatment of clients and ensuring the BHSS does not exceed their scope of practice;

(b) Providing regular, outcome-focused supervision appropriate for the BHSS's training, education, and experience;

(c) Providing competent supervision based on the supervisor's own level of training, education, and experience; and

(d) Ensuring that behavioral health consultation is available to the BHSS if necessary.

NEW SECTION

WAC 246-821-420 Required client disclosure information. (1) A behavioral health support specialist shall provide disclosure information to each client prior to the delivery of services. Disclosure information may be provided in a format of the provider's choosing or in a general format used by a state-approved treatment facility.

(2) The following information must be included on all disclosure statements provided to counseling clients in a language that can be easily understood by the client, and in a format accessible to the client:

- (a) Name of firm, agency, business, or other practice location;
- (b) Employment address, telephone number, and email address;
- (c) Name, credential, and credential number;
- (d) Clinical supervisor's name, credential, and credential number;
- (e) Clinical supervisor's employment address, telephone number, and email address, if different from the BHSS's;
- (f) Billing information, including:
 - (i) Client's cost per each counseling session;
 - (ii) Billing practices, including any advance payments and refunds;
- (g) A list of the acts of unprofessional conduct in RCW 18.130.180 including the name, address, and contact telephone number within the department of health of the health systems quality assurance complaint intake unit.

(3) The BHSS and the client must sign and date a statement indicating that the client has been given a copy of the required disclosure information, and the client has read and understands the information provided. If a client is in acute crisis or is otherwise unable to read, understand, and sign the disclosure statement, it can be completed at a later session.

CONTINUING EDUCATION REQUIREMENTSNEW SECTION

WAC 246-821-500 Continuing education requirements. A certified behavioral health support specialist shall complete 20 hours of continuing education every two years, either in person or through distance learning, including:

(1) At least two hours of health equity education every four years that comply with requirements in WAC 246-12-800 through 246-12-830;

(2) Completion of at least a three-hour training on suicide assessment, including screening and referral, listed on the department's model list. A BHSS must complete this training during their first continuing education cycle after certification, then every six years afterwards;

- (3) At least three hours of law and ethics every two years; and
- (4) The remaining hours in qualifying continuing education under WAC 246-821-510.

NEW SECTION

WAC 246-821-505 Additional training requirements. A certified behavioral health support specialist who provides clinical services through telemedicine as defined in RCW 70.41.020 shall complete a one-time telemedicine training that complies with RCW 43.70.495.

NEW SECTION

WAC 246-821-510 Qualifying continuing education and other professional development activities. (1) Qualifying continuing education (CE) for a behavioral health support specialist must:

- (a) Be relevant to the profession; and
- (b) Contribute to the advancement and enhancement of their professional competence.

(2) Activities primarily designed to increase practice income or office efficiency are not eligible for CE credit.

(3) Acceptable CE must be approved by an industry-recognized local, state, national, or international organization or institution of higher learning under WAC 246-821-520.

(4) Distance learning must require tests of comprehension upon completion to qualify as CE.

(5) Qualifying activities that count toward CE requirements include programs, courses, seminars, and workshops.

(6) All documentation must include the dates the continuing education activity took place, the number of hours of CE credit, and, if appropriate, the title of the course, the location of the course, and the name of the instructor. If the activity's relevance to the profession is not apparent based on the title, the BHSS shall submit documentation describing the content.

(7) A BHSS shall maintain CE documentation for at least six years.

NEW SECTION

WAC 246-821-520 Industry-recognized organizations or institutions of higher learning. Local, state, national, and international organizations that are recognized in the behavioral health industry and institutions of higher learning include, but are not limited to, the following:

- (1) American Association for Marriage and Family Therapy (AAMFT) and Washington Association for Marriage and Family Therapy;
- (2) American Counseling Association and Washington Counseling Association;
- (3) American Mental Health Counselors Association (AMHCA) and Washington Mental Health Counselors Association;
- (4) American Psychological Association (APA);

- (5) Association of Social Work Boards (ASWB);
- (6) Clinical Social Work Association (CSWA);
- (7) Collaborative Family Healthcare Association;
- (8) Association for Addiction Professionals (NAADAC) and the Voice for Washington State Addiction Professionals (WAADAC);
- (9) National Association of Social Workers (NASW) and Washington chapter (NASW-WA);
- (10) National Board for Certified Counselors (NBCC);
- (11) Society for Social Work Leadership in Health Care;
- (12) Substance Abuse and Mental Health Services Administration (SAMHSA);
- (13) Washington State Society for Clinical Social Work; and
- (14) Institutions of higher learning that are recognized as accredited Postsecondary Education Institutions by the U.S. Department of Education.

EDUCATIONAL PROGRAM REQUIREMENTS

NEW SECTION

WAC 246-821-800 Standards for educational programs. (1) A behavioral health support specialist educational program must be approved by the department and, if applicable, registered with the department of labor and industries before its graduates are eligible for BHSS certification.

(2) The minimum amount of behavioral health instruction required for a BHSS curriculum is at least:

- (a) Forty-five quarter college credits;
- (b) Thirty semester college credits; or
- (c) Four hundred fifty hours of apprenticeship related/supplemental instruction.

(3) Education must include instruction in all competencies and clinical skills listed in WAC 246-821-110, consistent with University of Washington behavioral health support specialist clinical training program guidelines.

(4) An educational program may grant a student credit for previously completed, relevant course instruction, up to 15 quarter or 10 semester credits.

NEW SECTION

WAC 246-821-810 Approval process for educational programs. (1) Program application process. A behavioral health support specialist educational program must be approved by the department and, if applicable, registered with the department of labor and industries before its graduates are eligible for BHSS certification.

(a) To apply for approval, a college, university, technical school, apprenticeship program, or other entity shall submit on forms provided by the department:

(i) Documentation of how its curriculum meets the requirements of WAC 246-821-100, 246-821-110, and 246-821-800, along with any supporting documentation;

(ii) Attestation by an educational program representative that the educational program has confirmed any clinical or counseling environment approved as a practicum site meets the requirements of WAC 246-821-200 through 246-821-215; and

(iii) Additional information as requested by the department.

(b) After the receipt of the completed application, the department shall consider the application, determine whether the educational program fulfills the requirements of this subsection, and notify the applicant of the department's decision. The department's decision may result in the educational program being fully approved, provisionally approved, legacy approved, or denied.

(c) If the department decides the educational program cannot be approved, the notice shall include the reasons for denial.

(2) Provisional approval.

(a) The department provisionally approves an educational program if:

(i) The educational program has BHSS curriculum categorized as "most aligned" with 29 out of 34 competencies listed in WAC 246-821-110, using the current gap analysis tool provided by the department and the University of Washington, made available on the department website for the BHSS profession; and

(ii) Submits an attestation under subsection (1)(a)(ii) of this section.

(b) During the three-year provisional approval period:

(i) The educational program must continue working to achieve full compliance with these requirements; and

(ii) Graduates from the program will be considered eligible for certification as a BHSS.

(c) The educational program must apply for, and be granted, full program approval under subsection (1)(a) of this section before the expiration of the provisional approval in order to ensure graduates from the program remain eligible for certification as a BHSS beyond the provisional approval period.

(3) Full approval. When an educational program complies with the requirements of WAC 246-821-100, 246-821-110, and 246-821-800, the department fully approves the educational program. A fully approved educational program must:

(a) Continue to comply with the standards of this chapter; and

(b) Reapply for approval every seven years after initial approval following the application process in subsection (1)(a) of this section.

(4) Required updates. An educational program approved under subsection (2) or (3) of this section shall report to the department within 60 days substantial changes to the educational program's curriculum, practicum sites, accreditation status if applicable, and financial solvency.

(5) Program audits. The department may conduct audits to ensure an educational program continues to meet educational standards in this chapter.

(6) Enforcement. If the department receives evidence the educational program is not meeting the criteria for approval under chapter

18.225 RCW and this chapter, then the department will provide the program with a written statement of deficiencies that will include instructions and time frames for submission of a plan of correction. The educational program shall submit a plan of correction within the stated time frame. The department may accept or reject the proposed plan of correction. If the plan of correction is rejected, the program will be provided an opportunity to submit a revised plan of correction within a time period identified by the department. The department may accept or reject the revised proposed plan of correction.

(a) The educational program shall correct the deficiencies listed on the plan of correction:

(i) By the time frame agreed upon by the educational program and the department representative; or

(ii) Immediately if the department determines health and safety concerns require immediate corrective action.

(b) Should the program not make required changes, or should further deficiencies develop after the statement of deficiencies is issued, then the department may revoke the approval of the educational institution. The program's students are ineligible for BHSS certification from the date that the program's approval is revoked.

(7) Appeal. An educational program whose approval is denied or revoked may request a brief adjudicative proceeding under chapter 34.05 RCW and chapter 246-10 WAC. A request for a brief adjudicative proceeding must be filed with the department within 28 days of receipt of the department's notice.

NEW SECTION

WAC 246-821-811 Legacy clause for programs operating prior to 2025. (1) The department recognizes that multiple colleges, universities, and technical colleges began implementing behavioral health support specialist educational programs prior to the establishment of chapter 18.227 RCW in 2023. In recognition of the educational programs and the achievements of their students, the department may approve BHSS educational programs for academic years prior to January 1, 2025. To apply for legacy status and to permit a program's pre-2025 graduates to apply for certification, the educational program must apply for program approval using the process established under WAC 246-821-810.

(2) If the program did not require 240-hour practicums during the pre-2025 time period, an individual BHSS applicant may supplement their application with documentation of additional supervised experience to make up the deficit.

FEES

NEW SECTION

WAC 246-821-900 Expired credential. If a behavioral health support specialist certification is expired, the individual shall meet the requirements of WAC 246-12-040 in order to return to active status.

NEW SECTION

WAC 246-821-990 Behavioral health support specialist—Fees and renewal cycle. (1) A behavioral health support specialist certificate must be renewed every year on the provider's birthday as provided in chapter 246-12 WAC.

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

Title of Fee	Fee
Application and initial certification	\$285.00
Active renewal	\$285.00
Active late renewal penalty	\$145.00
Expired certification reissuance	\$145.00
Duplicate certification	\$10.00
Verification of certificate	\$25.00

WSR 24-21-088
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 17, 2024, 8:40 a.m., effective November 17, 2024]

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

Purpose: The rule making amends four rule sections in chapter 296-127 WAC for prevailing wage. Three rule sections were amended to align with changes to the related statutes and one rule change was made to align with current department of labor and industries (L&I) practice. The changes reflect requirements in law and do not affect the purpose of the rule sections.

The following sections are amended:

- WAC 296-127-010 Definitions for chapter 296-127 WAC, update the "residential construction" definition to align with the definition for "residential construction" in RCW 39.12.017 that was created with the passage of HB 1743.
- WAC 296-127-140 Investigation of complaint, update language related to L&I's acceptance timeline of a complaint concerning the nonpayment of the prevailing rate of wage. Change the acceptance date from 30 to 60 days for public works projects. This change aligns the section with RCW 39.12.065, which was amended with the passage of SB 5088.
- WAC 296-127-160 Appeal of notice of violation, eliminate the need to submit four copies of the request for a hearing. This aligns with current L&I practice and reduces paperwork.
- WAC 296-127-320 Payroll, align section with RCW 39.12.120, which requires weekly certified payroll records be filed at least once a month using L&I's online system. RCW 39.12.120 was created with the passage of ESSB 5035.

Citation of Rules Affected by this Order: Amending WAC 296-127-010, 296-127-140, 296-127-160, and 296-127-320.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Adopted under notice filed as WSR 24-14-113 on July 2, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: October 17, 2024.

Joel Sacks
Director

OTS-5247.2

AMENDATORY SECTION (Amending WSR 22-24-089, filed 12/6/22, effective 1/6/23)

WAC 296-127-010 Definitions for chapter 296-127 WAC. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the department.

(4) "Assistant director" means the assistant director of the fraud prevention and labor standards (FPLS) division or his or her duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7)(a) The term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least 50 percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(ii)(A) and (B) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a) (i) through (v) of this subsection.

(b) The term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278; or

(ii) Ordinary maintenance.

(A) Ordinary maintenance is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

(B) For housing authorities when contracting with a property management services company for purposes of operating a housing project, as defined in RCW 35.82.030. Rental and other project revenues collected by a property management services company from the housing project's tenants and used to pay administrative operating and ordinary maintenance costs incurred by the company under the terms of the contract with the authority shall be treated as private funds, and any resulting services as executed at the cost of the property management services company and the housing project's tenants, until the net operating revenues are distributed to the authority for its exclusive use and control. For the purposes of this subsection, "ordinary maintenance" only includes: Routine repairs related to unit turnover work; grounds and parking lot upkeep; and repairs and cleaning work needed to keep a property in a clean, safe, sanitary, and rentable condition that are customarily undertaken or administered by residential property management services companies. "Ordinary maintenance" does not include repairs that would be considered replacement capital repairs or scheduled regular maintenance work on plumbing, electrical, or HVAC/R systems or their components.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, ~~((when used solely as permanent residences. It))~~ in the following categories:

(a) Affordable housing, including permanent supportive housing and transitional housing, which may include common spaces, community rooms, recreational spaces, a management office, or offices for the purposes of service delivery;

(b) Weatherization and home rehabilitation programs for low-income households; and

(c) Homeless shelters and domestic violence shelters.

"Residential construction" does not include the utilities construction (such as water and sewer lines), or work on streets, or work on other structures ((e.g., for recreation and business.)) unrelated to the housing.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

WAC 296-127-140 Investigation of complaint. (1) The department shall investigate a complaint filed by an interested party unless the complaint was filed more than ~~((thirty))~~ 60 days after the date the public agency accepted the public work that gave rise to the complaint. The department may, in its sole discretion, investigate a complaint filed more than ~~((thirty))~~ 60 days after the acceptance date. However, the department may not charge a contractor with a violation of RCW 39.12.065 if the complaint is filed after the ~~((thirty))~~ 60-day limit.

The department's investigation shall determine whether a violation of RCW 39.12.065 or 39.12.050, or both, or of any other provision of chapter 39.12 RCW, occurred.

(2) If the department's investigation substantiates a complaint that alleges that a contractor has violated RCW 39.12.065, the department is required to attempt to collect unpaid wages for the contractor's employees. During the investigation, the department should be able to identify the affected employees. The department shall direct to the affected employees the best notice practicable under the circumstances, including individual notice to all employees who can be identified through reasonable effort. The notice shall inform the employee that (a) the department's final order, whether favorable or not, will apply to all employees; (b) any employee may, if he or she desires, move to intervene as a party in any hearing held as a result of the investigation; and (c) that the employee may have a private right of action to collect unpaid prevailing wages.

AMENDATORY SECTION (Amending WSR 86-03-063, filed 1/17/86)

WAC 296-127-160 Appeal of notice of violation. The violator or any of its sureties who are interested in the matter may request a hearing on a notice of violation. ~~((One original and four copies of))~~ The request for hearing must be filed with the director within ~~((thirty))~~ 30 days after the date the department issued the notice. The party requesting the hearing must also serve a copy of the notice on all interested sureties and, if the requestor is a surety, on the violator.

The request for hearing must be in writing and must specify:

- (1) The name and address of the party requesting the hearing;
- (2) The notice of violation that is being appealed;
- (3) The items of the notice of violation that the requestor believes are erroneous; and
- (4) The reasons the notice of violation is erroneous.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-320 Payroll. (1) Each contractor, subcontractor, or employer shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the employee's full name, address, Social Security number, trade or occupation, classification, straight ((time)) and

overtime rates, hourly rate of usual benefits ((as defined by WAC 296-127-014(1))), and ((overtime)) hours worked each day and week, including any employee authorizations executed pursuant to ((WAC 296-127-022)) RCW 49.28.065, and the actual ((rate of)) gross wages, itemized deductions, withholdings, and net wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor ((shall, within ten days after it receives a written request, from the department or from any interested party as defined by RCW 39.12.010(4), file a certified copy of the payroll records with the agency that awarded the public works contract and with the department)), subcontractor, or employer shall file a copy of its certified payroll records using the department of labor and industries' online system at least once per month. If the department of labor and industries' online system is not used, a contractor, subcontractor, or employer shall file a copy of its certified payroll records directly with the department of labor and industries in a format approved by the department of labor and industries at least once per month.

(3) A ((contractor's)) contractor, subcontractor, or employer's noncompliance with this section shall constitute a violation of RCW 39.12.050.

WSR 24-21-089
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 17, 2024, 8:42 a.m., effective November 17, 2024]

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

Purpose: The purpose of this rule making is to adjust the submission deadline for when an apprenticeship program submits proposed new program standards or changes to their existing apprenticeship program standard(s). The rule change adjusts the submission deadline from 45 days to 60 days before the next regularly scheduled Washington state apprenticeship and training council meeting.

Citation of Rules Affected by this Order: Amending WAC 296-05-008.

Statutory Authority for Adoption: RCW 49.04.010.

Adopted under notice filed as WSR 24-16-131 on August 6, 2024.

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

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

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

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

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

Date Adopted: October 17, 2024.

Joel Sacks
Director

OTS-5537.1

AMENDATORY SECTION (Amending WSR 23-09-056, filed 4/18/23, effective 5/19/23)

WAC 296-05-008 Meetings and adjudicative proceedings. (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than 30 calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under subsection (6) of this section.

(e) Rescheduling regular meetings: Called at the request of the chair or by a majority of the WSATC members.

(i) When a regular meeting is rescheduled, the rescheduled meeting must occur on a date that is after the original scheduled date of the meeting (and not before the original scheduled date), and no more than 28 calendar days after the original scheduled date.

(ii) Notice of the rescheduled meeting: The supervisor must distribute notice to all WSATC members, including ex officio members, and approved program sponsors. Rescheduling must comply with the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(iii) The rescheduling of a regular meeting does not affect other deadlines in these rules. All deadlines and time frames will remain based on the original scheduled date of the regular meeting; only the date of the regular meeting will be affected by the change.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Provide written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally, by mail, or by electronic means at least 20 calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least ((45)) 60 days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least 15 business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within 30 calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular or rescheduled quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within 30 calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within 30 calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b) (5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

WSR 24-21-092

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 17, 2024, 10:02 a.m., effective November 17, 2024]

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

Purpose: Radioactive materials licensing fees in chapter 246-254 WAC. The department of health (department) is adopting increases in radioactive material licensing fees to cover operating costs for the following: WAC 246-254-030 Small business discount provision and optional fee payment schedule applicable to radioactive materials licenses, 246-254-070 Fees for specialized radioactive material licenses, 246-254-080 Fees for medical and veterinary radioactive material use, 246-254-090 Fees for industrial radioactive material licenses, 246-254-100 Fees for laboratory radioactive material licenses, and 246-254-120 Fees for licensing and compliance actions.

The adopted rules increase the fees 31 percent across all of the licenses, do not add any new license categories, removes the 50 percent discount for additional sites, and removes the 25 percent small business discount.

Citation of Rules Affected by this Order: Amending WAC 246-254-030, 246-254-070, 246-254-080, 246-254-090, 246-254-100, and 246-254-120.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and 70A.388.050.

Adopted under notice filed as WSR 24-15-097 on July 21, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: October 17, 2024.

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

OTS-5366.1

AMENDATORY SECTION (Amending WSR 91-22-027, filed 10/29/91, effective 11/29/91)

WAC 246-254-030 ((Small business discount provision and)) Optional fee payment schedule applicable to radioactive materials licenses. (1) ((Small business may receive a twenty-five percent discount

on radioactive materials license fees specified in WAC ~~246-254-070, 246-254-080, 246-254-090, and 246-254-100.~~

~~(2) To qualify for the discount, the business shall:~~

~~(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;~~

~~(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company); and~~

~~(c) Have fifty or fewer employees.~~

~~(3) To receive the discount, the license applicant at the time of initial license request, or the licensee at the time of annual billing shall:~~

~~(a) Certify, on the business' letterhead or appropriate departmental form, the business meets the conditions in subsection (2) of this section;~~

~~(b) Sign the certification as the chief executive officer of the business or as an official designee;~~

~~(c) Have the certification notarized;~~

~~(d) Enclose the payment with the certification; and~~

~~(e) Submit the certification and payment in accordance with instructions provided by the department.~~

~~(4)) The department may verify certifications and will suspend any radioactive materials license if the applicant/licensee:~~

~~(a) Failed to pay the required fee; or~~

~~(b) Made an invalid or false certification.~~

~~((5)) (2) Upon request of any radioactive materials licensee or license applicant, the department may accept semiannual or quarterly payments in lieu of the required annual license fee, provided:~~

~~(a) A written payment schedule setting specific due dates and payment amounts is submitted; and~~

~~(b) The total payments per the schedule equal the fee in effect at the time such fee payment schedule is accepted by the department.~~

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

WAC 246-254-070 Fees for specialized radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

(a) (~~(\$10,721)~~) \$14,054 for operation of a single nuclear pharmacy.

(b) (~~(\$18,284)~~) \$23,952 for operation of a single nuclear laundry.

(c) (~~(\$18,284)~~) \$23,952 for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.

(d) (~~(\$6,406)~~) \$8,392 for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) (~~(\$1,647)~~) \$2,158 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) (~~(\$12,266)~~) \$16,068 for a license authorizing decontamination services operating from a single facility.

(g) (~~(\$5,798)~~) \$7,595 for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) (~~(\$2,583)~~) \$3,384 for a license authorizing health physics services, leak testing, calibration services, equipment servicing, or possession of sealed sources for purpose of sales demonstration only.

(i) (~~(\$3,032)~~) \$3,972 for a civil defense license.

(j) (~~(\$912)~~) \$1,195 for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) (~~(\$36,288)~~) \$47,537 for a license authorizing possession of atomic numbers three through (~~(eighty-three)~~) 83 with maximum authorized possession of any single isotope greater than one curie.

(b) (~~(\$16,773)~~) \$21,973 for a license authorizing possession of atomic numbers three through (~~(eighty-three)~~) 83 with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) (~~(\$13,478)~~) \$17,656 for a license authorizing possession of atomic numbers three through (~~(eighty-three)~~) 83 with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of (~~(\$1,170)~~) \$1,533;

(b) Billing at the rate of (~~(\$189)~~) \$248 for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise nonrefundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of (~~(\$18,720)~~) \$24,523 which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

WAC 246-254-080 Fees for medical and veterinary radioactive material use. (~~((1))~~) Licensees authorized possession or use of radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(~~((a))~~) ~~(\$9,065)~~ (1) \$11,875 for operation of a mobile nuclear medicine program from a single base of operation;

(~~((b))~~) ~~(\$6,608)~~ (2) \$8,656 for the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, at a single facility (diagnostic imaging and localization nuclear medicine);

(~~((c))~~) ~~(\$5,723)~~ (3) \$7,497 for the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201 at a single facility (radiopharmaceutical therapy);

(~~((d))~~) ~~(\$9,126)~~ (4) \$11,955 for the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201, and/or the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (combination diagnostic nuclear medicine and/or radiopharmaceutical therapy), and/or sealed source (manual or machine) therapy;

(~~((e))~~) ~~(\$4,904)~~ (5) \$6,424 for the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (manual brachytherapy);

(~~((f))~~) ~~(\$3,032)~~ (6) \$3,972 for the use of sealed sources in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit, as defined in WAC 246-240-351, at a single facility (machine brachytherapy);

(~~((g))~~) ~~(\$4,605)~~ (7) \$6,033 for a license authorizing medical or veterinary possession of greater than (~~(two hundred)~~) 200 millicuries total possession of radioactive material at a single facility;

(~~((h))~~) ~~(\$3,664)~~ (8) \$4,800 for a license authorizing medical or veterinary possession of greater than (~~(thirty)~~) 30 millicuries but less than or equal to (~~(two hundred)~~) 200 millicuries total possession of radioactive material at a single facility;

(~~((i))~~) ~~(\$2,681)~~ (9) \$3,512 for a license authorizing medical or veterinary possession of less than or equal to (~~(thirty)~~) 30 millicuries total possession of radioactive material at a single facility;

(~~((j))~~) ~~(\$2,363)~~ (10) \$3,096 for the use of unsealed radioactive material for uptake, dilution and/or excretion studies for which a written directive is not required, as defined in WAC 246-240-151, at a single facility (diagnostic uptake, dilution, and excretion nuclear medicine);

(~~((k))~~) ~~(\$1,474)~~ (11) \$1,931 for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

(~~((2))~~) ~~The fee for a license authorizing multiple locations shall be increased by fifty percent of the annual fee for each additional location.)~~

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

WAC 246-254-090 Fees for industrial radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) (~~(\$10,675)~~) \$13,984 for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) (~~(\$14,311)~~) \$18,747 for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) (~~(\$7,010)~~) \$9,183 for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) (~~(\$1,511)~~) \$1,979 for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) (~~(\$1,647)~~) \$2,158 for a license authorizing possession of any nonportable sealed source, including special nuclear material and excluding radioactive material used in a gas chromatograph at a single facility.

(f) (~~(\$1,038)~~) \$1,360 for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) (~~(\$2,878)~~) \$3,770 for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than (~~one hundred~~) 100 curies at a single facility.

(h) (~~(\$15,298)~~) \$20,040 for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) (~~(\$13,323)~~) \$17,453 for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than (~~five hundred~~) 500 kilograms of source material at a single facility.

(j) (~~(\$4,263)~~) \$5,585 for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or (~~five hundred~~) 500 kilograms of source material at a single facility.

(k) (~~(\$673)~~) \$882 for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by (~~fifty~~) 100 percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of (~~(\$135)~~) \$177 to the department.

(4) General licensees required to register in accordance with WAC 246-233-020 (3)(k) shall forward an annual fee of (~~(\$402)~~) \$527 to the department.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

- WAC 246-254-100 Fees for laboratory radioactive material licenses.** (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:
- (a) (~~(\$7,300)~~) \$9,563 for a license authorizing possession at a single facility of unsealed sources in amounts greater than:
 - (i) One millicurie of I-125 or I-131; or
 - (ii) One hundred millicuries of H-3 or C-14; or
 - (iii) Ten millicuries of any single isotope.
 - (b) (~~(\$3,603)~~) \$4,720 for a license authorizing possession at a single facility of unsealed sources in amounts:
 - (i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or
 - (ii) Greater than (~~ten~~) 10 millicuries and less than or equal to (~~one hundred~~) 100 millicuries of H-3 or C-14; or
 - (iii) Greater than one millicurie and less than or equal to (~~ten~~) 10 millicuries of any single isotope.
 - (c) (~~(\$3,032)~~) \$3,972 for a license authorizing possession at a single facility of unsealed sources in amounts:
 - (i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or
 - (ii) Greater than one millicurie and less than or equal to (~~ten~~) 10 millicuries of H-3 or C-14; or
 - (iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.
 - (d) (~~(\$1,038)~~) \$1,360 for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:
 - (i) Less than or equal to 0.01 millicurie of I-125 or I-131; or
 - (ii) Less than or equal to one millicurie of H-3 or C-14; or
 - (iii) Less than or equal to 0.1 millicurie of any other single isotope.
 - (e) (~~(\$1,399)~~) \$1,833 for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcurie per gram.
- (2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by (~~fifty~~) 100 percent for each additional location.
- (3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of (~~(\$135)~~) \$177 to the department.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

- WAC 246-254-120 Fees for licensing and compliance actions.** (1) In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a service fee for each additional licensing and compliance action as follows:
- (a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of (~~(\$189)~~) \$248 per hour of direct staff time

associated with the follow-up inspection, not to exceed (~~(\$1,901)~~) \$2,480 per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed (~~(\$4,753)~~) \$6,226 per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of (~~(\$304)~~) \$398 in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with each sealed source and device evaluation, not to exceed (~~(\$5,703)~~) \$7,471 per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding (~~(ten)~~) 10 percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within (~~(thirty)~~) 30 days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

WSR 24-21-095

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed October 17, 2024, 10:15 a.m., effective November 17, 2024]

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

Purpose: Osteopathic Physicians and surgeons five-year rule review. RCW 43.70.041 requires a formal review process of existing rules every five years to simplify, improve, and streamline rules pertaining to health professions. The board of osteopathic medicine and surgery (board) conducted a review of all sections in chapter 246-853 WAC that have not been reviewed in the last five years and identified that WAC 246-853-045 and 246-853-210 contain outdated language. The board is adopting amendments to update the term "practitioner" to "osteopathic physician" to be consistent with the entire chapter. The board has also identified that WAC 246-853-060 does not contain any rule language content and is repealing this section.

Citation of Rules Affected by this Order: Repealing WAC 246-853-060; and amending WAC 246-853-045 and 246-853-210.

Statutory Authority for Adoption: RCW 18.57.005 and 43.70.041.

Adopted under notice filed as WSR 24-11-069 on May 14, 2024.

A final cost-benefit analysis is available by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711 email osteopathic@doh.wa.gov, website <https://fortress.wa.gov/doh/policyreview>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: October 9, 2024.

Lisa Galbraith, DO, Chair
Board of Osteopathic Medicine and Surgery

OTS-5239.1

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-853-045 Inactive credential. ((A practitioner)) An osteopathic physician may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC ((, Part 4)).

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-853-210 Expired license. (1) If the license has expired for three years or less, the ((~~practitioner~~)) osteopathic physician must meet the requirements of chapter 246-12 WAC((~~, Part 2~~)).

(2) If the license has expired for over three years, and the ((~~practitioner~~)) osteopathic physician has been in active practice in another United States jurisdiction, the ((~~practitioner~~)) osteopathic physician must:

(a) Submit verification of active practice from any other United States jurisdiction;

(b) Meet the requirements of chapter 246-12 WAC((~~, Part 2~~)).

(3) If the license has expired for over three years, and the ((~~practitioner~~)) osteopathic physician has not been in active practice in another United States jurisdiction, the ((~~practitioner~~)) osteopathic physician:

(a) May be required to be reexamined as provided in RCW 18.57.080;

(b) Must meet the requirements of chapter 246-12 WAC((~~, Part 2~~)).

OTS-5014.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-853-060	Continuing professional education required.
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WSR 24-21-099

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 17, 2024, 2:28 p.m., effective November 17, 2024]

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

Purpose: New WAC 458-20-18201; the purpose of this rule-making effort is to provide information about the qualifying criteria, application, and documentation requirements for the retail sales and use tax exemptions provided in RCW 82.08.820 and 82.12.820, respectively

Citation of Rules Affected by this Order: WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300.

Adopted under notice filed as WSR 24-14-148 on August 8 [July 3], 2024.

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

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

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

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

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

Date Adopted: October 17, 2024.

Brenton Madison
Rules Coordinator

OTS-5212.1

NEW SECTION

WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Part 1. General.

(101) **Introduction.** Wholesalers or third-party warehouse owners that own or operate qualifying warehouses or grain elevators, and retailers who own or operate qualifying distribution centers, may be eligible for a limited sales/use tax exemption on qualifying construction costs and qualifying purchases of material-handling and racking equipment. The exemption is in the form of a remittance. See RCW 82.08.820 and 82.12.820. This rule provides details on the qualifying criteria for the exemption.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Construction"** means the actual construction of a warehouse or grain elevator that did not exist before the construction began. Construction also includes expansion, if the expansion adds at least 200,000 square feet of additional space to an existing warehouse or additional storage capacity of at least 1,000,000,000 bushels to an existing grain elevator. Construction does not include renovation, remodeling, or repair. Activities not involving actual construction do not fall within the definition of construction. For example, costs related to housing, meals, trailers, permit fees, insurance, bonds, dumpsters, etc., are not construction costs. Similarly, "actual" construction generally does not include activities in the preparation of building a warehouse or grain elevator. Thus, except for design and engineering activities, activities occurring prior to the issuance of a building permit do not constitute construction.

(b) **"Distribution center"** means a warehouse used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer, i.e., to physical locations owned or operated by the retailer at which retail sales occur. Distribution center does not include any warehouse at which retail sales occur, and distribution centers are not used to fulfill retail orders directly to customers. RCW 82.08.820.

(c) **"Finished goods"** means tangible personal property intended for sale by a retailer or wholesaler. Finished goods do not include any of the following:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Cannabis, useable cannabis, or cannabis-infused products. RCW 82.08.820.

(d) **"Grain elevator"** means a structure used for storage and handling of grain in bulk. RCW 82.08.820. The term "structure" as it relates to a grain elevator is not limited to a single building or edifice of a single foundation or footprint.

(e) **"Material-handling equipment and racking equipment"** means equipment in a warehouse or grain elevator used primarily (more than 50 percent of the time) to handle, store, organize, convey, package, or repackage finished goods. RCW 82.08.820. The term includes tangible personal property with a useful life of at least one year that becomes an ingredient or component part of the equipment, including repair and replacement parts. See subsection 203(a) of this rule for additional information about the types of costs related to material handling and racking equipment that do and do not qualify for this exemption.

(f) **"Material-handling equipment"** means equipment that physically moves tangible personal property and equipment used in the process of moving tangible personal property. The term generally includes, but is not limited to, the following:

(i) Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots;

(ii) Mechanized systems, including containers that are an integral part of the system, the purpose of which is to lift or move tangible personal property;

(iii) Automated handling, storage, and retrieval systems, including computers that control them, the purpose of which is to lift or move tangible personal property;

(iv) Forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets; and

(v) Equipment used to organize and track products, such as hand-held scanners and stand-alone scales used to organize goods by weight. In contrast, stand-alone scales used to weigh goods to determine postage are not material-handling equipment.

(g) **"Qualifying activity"** means the storage by a wholesaler of finished goods for wholesaling purposes, the storage by a third-party warehouse of another person's finished goods, or the storage by a retailer of its finished goods for the purpose of distributing the goods to retail outlets of the retailer.

(h) **"Racking equipment"** means equipment used to physically store tangible personal property. The term generally includes conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system. Examples of racking equipment include stand-alone tables, when the tables are used during packaging or storing finished goods; drawers, when used to handle, store, or organize finished goods; and refrigeration systems that are a necessary part of the storage system for finished goods that must be stored in a refrigerated state. Dock doors and dock levelers are not racking equipment.

(i) **"Third-party warehouse"** means a person taxable under the B&O tax classification in RCW 82.04.280 (1)(d) for persons operating cold storage warehouses or storage warehouses. RCW 82.08.820.

(j) **"Warehouse"** means a single enclosed building or structure in which finished goods are stored. RCW 82.08.820. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse, as are loading docks and other such space attached to the building and used for handling of finished goods. A guard shack or any external building is not considered part of the warehouse. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is any building in which manufacturing takes place.

Part 2. Remittance Eligibility.

(201) **Qualifying owner/operator.** The remittance is available only to the following types of businesses:

(a) A wholesaler that owns or operates a warehouse or a grain elevator;

(b) A third-party warehouse that owns or operates a warehouse or a grain elevator; or

(c) A retailer that owns or operates a distribution center.

(202) **Effect of nonqualifying activities.**

(a) **Distribution centers.** A distribution center may qualify for the exemption only if the retailer that operates the distribution center uses it solely for a qualifying activity. For example, a retailer that operates its distribution center for its own retail outlets and also fulfills retail orders directly to consumers does not qualify for the exemption because the distribution center is not used exclusively for the qualifying activity of storing and distributing finished goods to the retailer's retail outlets.

(b) **Warehouses.**

(i) A single warehouse accommodating multiple business activities may qualify for the exemption if none of the activities is excluded by

statute and at least one of the activities carried on at the warehouse is a qualifying activity, provided that at least 200,000 square feet of the warehouse is dedicated to the qualifying activity.

(ii) A warehouse that accommodates both qualifying and nonqualifying activities must be able to demonstrate that it meets the 200,000 square feet requirement in order to receive the exemption. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are included within the 200,000 square feet warehouse space measure. The department determines eligibility under this section based on information provided by the taxpayer and through audit and other administrative records.

Examples.

(A) **Example 1.** Company A operates a 250,000 square foot warehouse that it uses to store goods of third parties. Company A also fulfills retail orders directly to its retail customers. Company A designates 200,000 square feet of the warehouse exclusively to its third-party warehousing activity, i.e., storing goods of third parties. The other 50,000 square feet of Company A's warehouse has separately stored goods, and Company A exclusively uses those goods (not the goods in the other 200,000 square feet) to fulfill Company A's retail sales. Company A's warehouse may qualify for the exemption because 200,000 square feet of its warehouse space is dedicated for use solely as a third-party warehouse, which is a qualifying activity, and retail order fulfillment is not a prohibited use of warehouses under RCW 82.08.820.

(B) **Example 2.** Company B operates a 500,000 square foot warehouse that it uses to store and distribute finished goods from the warehouse to its retail outlets. Company B also uses the warehouse to fulfill orders directly to its retail customers. Company B dedicates 300,000 square feet of the warehouse to storing the goods to be distributed to its retail outlets, and the remaining 200,000 square feet is segregated and dedicated exclusively to fulfillment of retail orders. Company B's warehouse is a distribution center; retail fulfillment is a disqualifying activity if it occurs in a retail distribution center. See subsection (102)(b) of this rule. Therefore, Company B's distribution center does not qualify for the exemption.

(C) **Example 3.** Company C operates a 500,000 square foot warehouse that it uses to store finished goods for wholesale. Company C also uses the warehouse to fulfill orders directly to its retail customers. The wholesale goods and the products for fulfilling retail orders are intermingled throughout the warehouse. Company B's warehouse does not qualify for the exemption because it does not dedicate 200,000 square feet of the warehouse's physical space exclusively to the wholesaling activity, the qualifying activity.

(203) **Payment of sales/use tax required.** The remittance is available only to an eligible business that has paid sales tax levied under RCW 82.08.020, or use tax levied under RCW 82.12.020, for the following types of costs:

(a) Material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment. For example, costs of renting material-handling and racking equipment, without an operator, qualifies for the remittance if the equipment is primarily used to handle, store, organize, convey, package, or repackage finished goods. However, the cost of renting equipment used to install material-handling and racking equipment does not qualify because the charge for the rental equipment is not a charge for labor or services and the equip-

ment used in installation is not itself material-handling and racking equipment. Costs for maintaining material-handling and racking equipment do not qualify for the exemption.

(b) Materials incorporated in the construction of a warehouse or grain elevator, and labor and services given in respect to that construction. Thus, construction costs may include flooring, walls, HVAC, roofing, and windows. Labor costs for pouring a foundation and installing a roof for a warehouse or grain elevator also may qualify as construction costs. However, costs for soil testing, soil amendments, excavation, and earth moving activities performed before the excavation of a foundation are not qualifying construction costs.

(204) **Remittance amount.** The amount of the remittance or credit available to an eligible person is based on the state share of sales tax paid or state share of use tax paid (or both, see RCW 82.08.020 for the state sales and use tax rate), computed as follows:

(a) For grain elevators with bushel capacity of at least 1,000,000 but less than 2,000,000, the remittance is equal to 50 percent of the amount of state sales or use tax paid for:

(i) Qualifying materials incorporated as an ingredient or component of the grain elevator, and labor and services rendered in respect to the grain elevator's construction; and

(ii) Qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) For grain elevators with bushel capacity of 2,000,000 or more, and for warehouses and distribution centers with at least 200,000 square feet of space dedicated exclusively to a qualifying activity, the remittance is equal to:

(i) 100 percent of the amount of state sales and use tax paid for qualifying materials incorporated as an ingredient or component of the structure, and labor and services rendered in respect to the structure's construction; and

(ii) 50 percent of the amount of state sales and use tax paid for qualifying material-handling equipment and racking equipment, and labor and services given in respect to installing, repairing, cleaning, altering, or improving the equipment.

Part 3. Application for Tax Remittance.

(301) **General application information.** The department determines eligibility for the exemption remittance in this section based on information provided by the buyer and through audit and other administrative records.

(a) An application and required documentation for a tax exemption remittance must be submitted quarterly.

(b) The department will send the approved exempted amount to the business by the end of the calendar quarter following the quarter the application was submitted.

(c) While not required, applicants are encouraged to submit the application and applicable documentation electronically through the MyDOR portal.

(302) **Documentation needed to verify eligibility.** Applicants must provide a completed Warehouse Tax Incentive Remittance application that corresponds to their qualifying activity. In addition to a completed application, supporting documentation is also required.

(a) Required documentation will depend on the applicant's qualifying activity and may include, but is not limited to, the following:

(i) Blueprints identifying the building location and the size of the facility;

(ii) Building permits associated with the foundation and the structure;

(iii) Proof of invoice and sales tax payments (copies of checks, bank statements for ACH payments, certification of use/deferred sales tax paid);

(iv) Completed electronic spreadsheet detailing purchase invoices and payments;

(v) For lessors, a copy of the lease agreement stating that the economic benefit of the remittance is passed to the tenant in the form of reduced rent; and

(vi) Any other items requested by the department to substantiate the applicant's claim for the remittance.

(b) Applicants are encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must provide sufficient substantiation to support the claim for remittance before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within 90 days after the notice is sent, unless the documentation is under the control of a third party not affiliated with or under the control of the taxpayer. If the documentation is under the control of an unaffiliated third party, the taxpayer will have 180 days to provide the documentation.

WSR 24-21-105

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed October 18, 2024, 11:42 a.m., effective November 18, 2024]

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

Purpose: Western Washington University is updating the rules regarding standards of conduct for students, chapter 516-21 WAC.

Citation of Rules Affected by this Order: WAC 516-21-010, 516-21-020, 516-21-030, 516-21-060, 516-21-110, 516-21-115, 516-21-120, 516-21-240, 516-21-250, 516-21-260, 516-21-270, 516-21-280, 516-21-290, 516-21-294, 516-21-295, 516-21-296, 516-21-297, 516-21-298, 516-21-299, 516-21-310, and 516-21-340.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 24-16-132 on August 6, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 20, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 21, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 18, 2024.

Jennifer L. Sloan
Rules Coordinator

OTS-5672.1

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-010 Introduction. The student conduct code is intended to support the mission and values of Western Washington University by promoting integrity, responsibility, and accountability. As a public institution of higher education, the university is committed to maintaining a learning environment that supports student development through fostering community values and promoting holistic wellness for the Western community. As members of this community, students are expected to understand and comply with the student conduct code, as well as other university rules, regulations, procedures, and policies.

The board of trustees of Western Washington University, acting under the authority of RCW 28B.35.120(12) has established the following regulations for student conduct. The responsibility for enforcement of the student conduct code lies with the university president and is delegated to the vice president ((øf)) for enrollment and student services.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-020 Definitions. As used in this chapter, the following words and phrases mean:

- (1) (~~(Appeals board.~~ The student conduct appeals board.) **Catalog.** The *Western Washington University General Catalog*.
- (~~(3)~~) (2) **Code.** The student conduct code.
- (3) **Conduct board.** The persons designated by the dean of students to consider a conduct matter, typically for a full hearing but may also be convened for an appeal. Conduct board members are experienced and were provided appropriate training specific to their role.
- (4) **Conduct hold.** A block placed on a student's official university record at the request of a conduct officer or dean of students. A conduct hold prohibits a student from registering for classes, and may prohibit the request of an official transcript, or receiving a degree from the university until the hold has been removed.
- (5) **Conduct officer.** A conduct officer or their authorized designee as determined by the dean of students. Conduct officers include conduct board members and all receive appropriate training as required for decision makers under Title IX regulations.
- (6) **Day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.
- (7) **Dean of students.** The person designated by the vice president for enrollment and student services for oversight and administration of the code.
- (8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.
- (9) **Member of the university community.** Any person who is a student, university official, registered volunteer or who is otherwise employed or contracted by the university. Any question regarding a person's status in a particular situation for purposes of this code shall be determined by the dean of students.
- (10) **Official university function.** Any live or virtual activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.
- (11) **Preponderance of evidence.** Defined as "more likely than not," the standard of responsibility that is used when determining whether a violation of the student conduct code has occurred.
- (12) **Reasonable person similarly situated.** The standard of a reasonable person taking into consideration any particularized circumstances, perspectives, and identities of the complainant within the context of the alleged conduct/incident.
- (13) **Retaliation.** Retaliation includes, but is not limited to, intimidation, threats, harassment, and/or other adverse action taken against any student or other person for filing a complaint or participating in a university investigation or student conduct proceeding in good faith.
- (14) **Sexual violence.** Sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.
- (15) **Shuttle diplomacy.** Resolution without direct contact between parties.
- (16) **Student.** Any person who:
 - (a) Has been formally admitted to the university;

(b) Is enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;

(c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;

(d) Is participating in a university-sponsored study abroad program;

(e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or

(f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university.

~~((16))~~ (17) Title IX. Title IX refers to any behavior covered under federal regulation and investigated by Western's office of civil rights and Title IX compliance. Definitions and regulations related to alleged violations of Title IX begin in WAC ~~((516-21-191.~~

~~(17) Title IX committee.~~ The student conduct committee that hears cases under Title IX. The committee consists of at least a chair, and may include faculty and/or staff, and is responsible for conferring and drafting an initial conduct order as described in WAC ~~516-21-298))~~ 516-21-291. How the university responds to and addresses discrimination on the basis of sex (including sex-based characteristics, sex-based stereotypes, pregnancy and related conditions, gender identity, or sexual orientation), and related retaliation are governed by state and federal laws, regulations, and court rulings in addition to university policy under POL-U1600.02 and POL-U1600.04. To the extent this code conflicts with state or federal law, state or federal law shall take precedence.

(18) **University.** Western Washington University and all associated programs, including those offered online and/or at off-campus program sites and includes those properties identified in subsection (20) of this section.

(19) **University official.** Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time, and may include student staff members.

(20) **University property.** All land, buildings, facilities, electronic presences, and other property that is owned, used, leased, or controlled by Western Washington University wherever located. University property also includes computer systems, virtual programs and platforms, and adjacent streets and sidewalks.

(21) **WAC.** An abbreviation for the Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-030 Jurisdiction. (1) General. The student conduct code applies to all student conduct that occurs on university property or in connection with any official university function including university-sponsored activities and transit to/from university functions or activities.

(2) Off-campus conduct. In addition to subsection (1) of this section, student conduct that occurs off campus may be subject to the student conduct code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Adversely affects the pursuit of the university's vision, mission, or values; or

(c) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, a conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged complainant(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of students for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enrollment. (~~Students who are found to be in violation of the code may be subject to sanctions under the code.~~)

(4) Online conduct. The student conduct code applies to behavior conducted online, via electronic mail, text message, or other electronic means, subject to subsections (1) and (2) of this section.

(5) 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.

(6) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, either:

(a) The university will proceed with the conduct process and, if so, the respondent will be provided with a continued opportunity to participate; and/or

(b) A conduct hold may be placed on the student's official record, preventing them from registering for classes, requesting an official transcript, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s) and may include completion of conduct process.

~~((5))~~ (7) The code applies to the conduct of any student employee whose position is conditioned upon their student status.

~~((6))~~ (8) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

(9) Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanc-

tions. 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 multiple organization officers, members, or guests.

(10) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding 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.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-060 Conduct that harms or threatens health or safety.

Conduct that harms, attempts to harm, or threatens the health or safety of any member of the Western community by any means (e.g., in person, through a third party, online) is a violation of the code. This includes, but is not limited to:

(1) Physical assault.

(2) Any threat stated or implied, to the health, safety or well-being of others.

(3) Any contact or communication of a threatening nature that intimidates, harasses, and would cause a reasonable person similarly situated to fear for their safety or well-being.

(4) Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for their own safety or well-being.

(5) Sexual violence including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment). Harassment is conduct by any means that is severe or pervasive. It is of such a nature that it would cause a reasonable person in the 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. Harassment causes the complainant substantial emotional distress and undermines the complainant's ability to work, study, or participate in the complainant's regular life activities or participate in the activities of the university and harassment is a violation of the code.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-115 Discrimination and discriminatory harassment.

Discrimination or discriminatory harassment is prohibited on the basis of race, ethnicity, color, national origin, age, citizenship or immigration status, pregnancy, use of protective leave, genetic status, sex, sexual orientation, gender identity, gender expression, marital status, creed, religion, veteran or military status, disability or the use of a trained guide dog or service animal (including service animals in training) by a person with a disability; and as defined in Western Washington University policy POL-U1600.02 and POL-U1600.04, which prohibit discrimination, sexual harassment, and sexual misconduct. Anyone filing or involved in a complaint of discrimination is protected against retaliation.

(1) Sexual harassment is a violation of the code. Sexual harassment is any unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, electronic, or physical conduct of a sexual nature, when:

(a) It has a tangible impact on a student's education including, but not limited to, classroom experiences, academic grades, living environment, participation in a university activity; or

(b) It is sufficiently severe, persistent and pervasive to interfere with a member of the university community's ability to work, study, or participate in their regular activities, or benefit from the university's programs or activities and creates a hostile environment.

(2) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes, and is a violation of the code. Gender-based harassment violates this code when it is sufficiently severe and/or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(3) Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination. Sexual violence is a violation of the code.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

WAC 516-21-120 Hazing. Hazing, defined as any act that, as an explicit or implicit condition for initiation or admission into, affiliation with, or continued membership in a group or organization, endangers the health, safety, or well-being of any member of the university community, is a violation of the code. Examples of hazing include, but are not limited to:

(1) Requiring the consumption of any food, alcohol, drug, or other substance.

(2) Requiring forced participation in physical activities, including calisthenics, exercise, or other games or activities that entail physical exertion.

(3) Creation of excessive fatigue including requiring exposure to weather elements or to other physically or emotionally uncomfortable situations, (~~including~~) such as sleep deprivation, confinement in

small spaces, physical bondage, and/or taking a student to an outlying area and dropping them off.

(4) Requiring conduct that can be reasonably expected to embarrass another, including the performance of public stunts or activities such as scavenger hunts or other degrading or humiliating activities.

(5) Requiring anything that would be illegal under city, state, or federal law, or in violation of any university policies or procedures, including the code.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-240 Student conduct ((system)) process. (1) The vice president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice president to the dean of students.

(2) A conduct officer(s) shall be appointed and supervised by the dean of students or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer ((in lieu of the conduct officer's investigation)). The conduct officer will then consider this report and make a referral to the ((Title IX committee.

~~(3) Appeal board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Appeal board members shall include a pool of the following:~~

~~(a) Four faculty members, appointed by the faculty senate; and~~

~~(b) Four staff members, generally but not exclusively from the division of enrollment and student services, confirmed by the dean of students.~~

~~(4) An appeals board shall be composed of five members and any three persons constitute a quorum of a board. Generally, an appeals board will be comprised of faculty and staff. The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint or involved in the complaint. Board members must be properly trained in accordance with state and/or federal guidance. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.~~

~~(5) A staff member appointed by the dean of students may advise the appeals board on technical details of the code and its procedures.~~

~~(6)) conduct board in matters requiring a full hearing.~~

~~(3) Conduct officers, ((the appeals)) conduct board, ((the Title IX committee,)) and the dean of students or authorized designees have full authority to administer a decision under the code.~~

(4) Consolidation. In any student conduct matter in which there are common issues or parties, the conduct officer or presiding officer may decide to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-250 Student rights in the conduct process. Alleged violations of the code will be resolved through the student conduct process, respecting fairness and due process for all involved parties.

(1) A student accused of violating the code, known as the respondent, has certain rights in the conduct process. These include the right to:

(a) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board (~~((delivered via email to the student's official university email account))~~);

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(c) Be accompanied through the conduct process by an advisor of their choice and at their own expense. A respondent should select as an advisor a person who is not involved in the same complaint and whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

(d) Remain silent or decline to respond to any question(s) during any conduct meeting or hearing;

(e) Review information relied upon by the conduct officer or appeals board in making a determination;

(f) Receive written notification of the findings, decision, and basis for each ~~((r))~~ delivered ~~((via email to the student's official university email account, r))~~ within seven business days of the date of the final meeting with a conduct officer, or ~~((ten))~~ 10 business days of the date of a hearing with an appeals board;

(g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;

(h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and

(i) Waive any of the rights contained in this section.

(2) An individual who has filed a complaint alleging violence or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, known as the complainant, has certain rights in the conduct process. These include the right to:

(a) Receive prior written notice to attend meetings with a conduct officer or hearings with an appeals board (~~((delivered via email to the student's official university email account))~~);

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(c) Be accompanied through the conduct process by an advisor of their choice and at their own expense. A complainant should select as an advisor a person who is not involved in the complaint and whose schedule allows attendance at the scheduled date and time for the

scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

(d) Remain silent or decline to respond to any question(s) during the conduct meeting;

(e) Review information relied upon by the conduct officer or appeals board in making a determination;

(f) Receive written notification of the findings, decision and basis for each, delivered (~~(via email to the complainant's official university email account,)~~) within seven business days of the date of the respondent's final meeting with a conduct officer or (~~(ten)~~) 10 business days of the date of a hearing with an appeals board;

(g) Request an appeal of a decision by a conduct officer, as described in WAC 516-21-280 Basis for appeal;

(h) Request a review of an appeal, as described in WAC 516-21-280 Basis for appeal; and

(i) Waive any of the rights contained in this section.

(3) For incidents involving sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complainants shall have the following additional rights:

(a) To be notified of the availability of counseling, academic support, and general assistance and support resources, both on campus and in the surrounding community;

(b) Have past behavior unrelated to the alleged behavior excluded; the conduct officer, appeals board chair, or dean of students will make a final determination regarding such behavior if in question;

(c) To be free from questioning about their sexual history involving anyone other than the respondent;

(d) Submit an oral or written impact statement to the conduct officer, and/or appeals board, and/or dean of students (if applicable), for consideration;

(e) To request an administrative no contact order against the respondent(s) during the conduct process;

(f) To have alternative accommodations to avoid being in the physical presence of the respondent during the conduct process; and

(g) Be free of any form of retaliation. Complainants should report any retaliation that occurs for further action. See *POL-U1600.02 Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation*.

(4) Respondents and complainants have the right to request reasonable accommodations through Western's disability access center, and to have the reason for such requests be kept private from another involved party.

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-260 Procedures for immediate interim suspension. In consultation with university officials, the dean of students may suspend a student from the university on an immediate interim basis, pending criminal proceedings, or a medical evaluation, and/or action through the student conduct process.

(1) An interim suspension may only be imposed when the dean of students has cause to believe that the student:

- (a) Has violated the student conduct code; and
 - (b) Poses an immediate danger to the safety or security of the university community; and/or
 - (c) Poses an ongoing threat of serious disruption or interference with the normal operations of the university.
- (2) During the interim suspension, a student may be denied access to university activities and privileges, including access to classes, university property, and/or campus residence halls and apartments.
- (3) A student suspended from the university on an interim basis shall be notified in writing of the terms of the interim suspension. The notice, which shall be delivered via email (~~(to the student's official university account)~~) and in person if possible, shall include the alleged violation(s), the circumstances, reasons, and terms of the interim suspension, and the time, date and location of a meeting to discuss the interim suspension.
- (4) The interim suspension meeting shall occur no fewer than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. The purpose of the interim suspension meeting is for the student to have an opportunity to demonstrate why the terms specified in the interim suspension notice should not continue, or why the suspension should be less restrictive.
- (5) Cases of interim suspension are given priority through the student conduct process. The interim suspension will remain in effect until a final decision has been made on the pending code violation(s) or until the dean of students determines that the reasons for imposing the interim suspension no longer exist or are not supported by available evidence.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-270 Proceedings for violations of the code. (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

- (a) Review the complaint, (~~(investigate and make a finding whether the code was violated and impose sanction(s))~~) and make a determination to resolve it through a brief hearing or full hearing, and communicate that decision to the relevant parties;
- (b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; (~~(or)~~)
- (c) Dismiss the (~~(investigation)~~) complaint, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises; or
- (d) A conduct officer may resolve a matter by agreement/alternative dispute resolution. Agreements may be reached directly or through alternative dispute resolution including, but not limited to, shuttle diplomacy or mediation. 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:

(i) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(ii) 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 in the student conduct process. Complaints alleging conduct covered by Title IX are not subject to agreement/alternative dispute resolution through the student conduct process.

(3) In complaints alleging a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer (~~in lieu of the conduct officer's investigation~~). The conduct officer will then (~~consider this report and make a finding as to whether the code was violated and impose sanction(s)~~).

~~(4))~~ make determinations regarding which code prohibitions may have been violated, and whether to resolve the matter through a brief hearing or full hearing.

(4) Brief hearings. The majority of student conduct matters are resolved through a brief hearing with a conduct officer. Such a hearing is a brief adjudication conducted in accordance with the Washington state Administrative Procedure Act chapter 34.05 RCW and allows the conduct officer to review available information, hear the relevant parties' views, make a determination, and assign sanctions.

(5) Full hearings. Full hearings are conducted by a conduct board and are used in matters in which the respondent faces possible suspension or expulsion; generally, a final investigation report from Western Washington University's office of civil rights and Title IX compliance are resolved through full hearings. Full board hearings are conducted in accordance with the Washington state Administrative Procedure Act.

(6) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location (five days for full hearings). Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

~~((5))~~ (7) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer or board, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

~~((6))~~ (8) All notifications under the code are delivered by electronic mail to the students' university email account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

~~((7))~~ (9) Upon written request to the dean of students' office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

~~((8))~~ (10) A conduct officer's or board's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

~~((9))~~ (11) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, ~~((appeal))~~ conduct board chair, or dean of students shall have the discretion to determine admissibility of evidence.

~~((10))~~ (12) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or ~~((appeals))~~ board, the complaint may be considered in their absence, and the conduct officer or ~~((appeals))~~ board may issue a decision based upon that information.

~~((11))~~ (13) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-280 Basis for appeal. (1) A student found in violation of the code may appeal the conduct officer's or board's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, a complainant may also request an appeal. An appeal may be requested for any reason including:

(a) The proceedings were not conducted in conformity with prescribed procedures and significantly impacted the outcome of the student conduct process;

(b) The sanctions imposed are substantially disproportionate to the violation(s) committed;

(c) The decision reached did not properly consider the information presented; and/or

(d) New information becomes available that was unavailable at the time of the original meeting and could substantially impact the original decision. A summary of this new information and its potential impact must be included. The dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate.

(2) The appeal must be submitted by the respondent or complainant (if applicable) in writing to the dean of students within ~~((ten))~~ 10 days of the decision. The appeal must state, as clearly and concisely as possible, the reason for the appeal.

~~(3) ((Appeals of a finding that resulted, or may have resulted, in suspension or expulsion are considered by an appeals board. All other appeals are considered by the dean of students.~~

~~(4))~~) No sanction will begin while an appeal or request for review is pending. However, interim measures (e.g., administrative no-contact orders, trespass, loss of privileges) may continue.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-290 Appeal procedures. (1) Appeals can be made by the respondent (or complainant in incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination) and must be made to the dean of students.

(2) The dean of students or their designee reviews the appeal.

(3) Where new information, unavailable at the time of the original meeting, that could substantially impact the original decision, is received, the dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate. The dean of students or their designee may, at their discretion, refer the complaint to a different conduct officer for reconsideration.

(4) In appeals in which the possible or recommended sanction is not expulsion or suspension as determined by the conduct officer, a designee of the dean of students will consider the appeal and may hold an informal meeting, giving each party an opportunity to be informed of the conduct officer's view of the matter and to explain their view of the matter.

(5) In appeals in which the possible or recommended sanction is expulsion or suspension as determined by the conduct officer, ~~((an appeals board considers the appeal.~~

~~(a) The appeals board will provide the respondent and complainant (if applicable) with five days' notice of an appeals hearing date, time and location. An appeal by respondent or complainant will be shared with the other party (parties).~~

~~(b) The appeals board meets confidentially and reviews the complaint, the results of the subsequent investigation and its findings, and the conduct officer's decision. The board provides an opportunity for respondent and complainant (if applicable) to share information and the board may call witnesses. The appeals board then deliberates in private.~~

~~(c) The chair of the appeals board will ensure that appropriate procedures and due process are in place for any respondent(s) and/or complainant(s), including:~~

~~(i) Only one official recording of the meeting is made and no other cameras or recording devices are allowed;~~

~~(ii) All written materials are shared with any respondent(s) and/or complainant(s);~~

~~(iii) Any respondent(s) and/or complainant(s) may be accompanied through the appeals board by an advisor of their choice and at their own expense;~~

~~(iv) Any respondent(s) and/or complainant(s) may make brief opening and closing statements;~~

~~(v) Any limits on questioning, including no direct questioning between any complainant and respondent; and~~

~~(vi) All witnesses and involved parties are sworn in under oath.~~

~~(d) After any appeal, the respondent and complainant (if applicable) may request that a decision be reviewed by the dean of students. This request for review must be made in writing within ten days of the written outcome of an appeal. The dean of students will review the written documentation only; any involved person (e.g., respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of the dean of students.~~

~~(e) During limited times during the year, such as break periods and summer quarter, when board members are unavailable, an interim board may be appointed by) the dean of students will review the available documentation including the appeal, any investigation report, the board's decision, and recordings. Any involved person (e.g., respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of the dean of students.~~

(6) Respondent and complainant (if applicable) will be informed of the outcome of reviews and/or appeals simultaneously and in writing within ~~((ten))~~ 10 days.

(7) If there is no request for appeal received by the dean of students within ~~((ten))~~ 10 days, the decision of the conduct officer is considered final. If there is no request for review within five days (or ~~((ten))~~ 10 days of an appeals board decision), the decision is considered final.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-294 Initiation of discipline under Title IX. (1)

Upon receiving the Title IX final investigation report from the Title IX coordinator, the ~~((student))~~ conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX and determine if other prohibitions of the code were violated.

(2) If the ~~((student))~~ conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the ~~((student))~~ conduct officer will initiate a ~~((Title IX disciplinary proceeding by filing a))~~ written disciplinary notice ~~((with the chair of the student conduct committee))~~ and ~~((serving))~~ serve the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Western Washington University will appoint the party an advisor of Western Washington University's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-295 Prehearing procedure under Title IX. (1) Upon receiving the disciplinary notice, the ~~((chair of the student))~~ conduct ~~((committee))~~ board will send a full hearing notice to all parties, in compliance with WAC 516-21-250. In no event will the hearing date be set less than ~~((ten))~~ 10 days after the Title IX coordinator provided the final investigation report to the student conduct officer.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the full hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Western Washington University intends to offer the evidence at the hearing.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-296 Rights of parties under Title IX. (1) Western Washington University's student conduct procedures, WAC 516-21-250 and 516-21-270 and this supplemental procedure shall apply equally to all parties.

(2) Western Washington University bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor who will conduct all questioning on the party's behalf. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then ~~((the Title IX coordinator))~~ one will ~~((appoint an advisor of))~~ be appointed at Western Washington University's choosing on the party's behalf at no expense to the party.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-297 Evidence under Title IX. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The ((~~committee~~)) conduct board chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) No negative inference: The ((~~committee~~)) conduct board may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) Privileged evidence: The ((~~committee~~)) conduct board shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-298 Initial conduct order under Title IX. (1) In addition to complying with WAC 516-21-250 and 516-21-270, the ((~~student~~)) conduct ((~~committee~~)) board will be responsible for conferring and drafting an initial conduct order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Western Washington University's educational programs or activities; and

(h) Describes the process for appealing the initial conduct order.

(2) The ~~((committee))~~ conduct board chair will serve the initial conduct order on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-299 Appeals under Title IX. (1) The parties shall have the right to request a review from the initial conduct order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. ~~((The right to request a review will be subject to the same procedures and time frames set forth in WAC 516-21-290 (5)(e).))~~ Appeals of initial conduct orders under Title IX ~~((move directly to the review stage of the student conduct code's proceedings))~~ will be considered by the dean of students.

(2) The vice president of enrollment and student services or their delegate will determine whether the grounds for a request for review have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial conduct order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The vice president of enrollment and student services or their delegate shall serve the final decision on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-310 Confidentiality of conduct proceedings and records. (1) The confidentiality of all conduct proceedings and records will be maintained in compliance with the student records policy as applicable with state and federal laws. Conduct records prepared by a conduct officer, the ~~((appeals))~~ conduct board, ~~((the Title IX committee))~~ and/or the dean of students:

(a) Will be held in the office of student life for six years, except in cases of suspension, interim suspension, or expulsion, which are permanent records; and

(b) Will not be shared with any member of the public, except upon the informed written consent of the student(s) involved or as stated in the student records policy, or as required by law or court order. This includes, but may not be limited to:

(i) Information disclosed in conformance with exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act (FERPA) and implementing regulations found at 34 C.F.R. Sec. 99.

(ii) Files subjected to public records requests as required by state law.

(iii) In cases involving any crime of violence or a nonforcible sex offense where the complainant is deceased, final results of any disciplinary proceeding may be shared with the complainant's next of kin, upon their written request.

(2) The conduct officer's findings may be shared with the complainant, as required by law, in cases involving violence as defined by FERPA or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(3) The findings may also be shared with university officials involved in the completion or supervision of the sanction and/or the student. See also chapter 516-26 WAC, Student records.

AMENDATORY SECTION (Amending WSR 22-01-075, filed 12/10/21, effective 12/11/21)

WAC 516-21-340 Revision of the code. The code shall be reviewed every five years or more often, if needed (~~(, by a committee which shall include students, faculty, and staff)~~). Student conduct code revisions will receive the most significant community deliberation including attempts to solicit feedback from Western students, internal policy control groups, and Washington Administrative Code reviews which includes a public hearing. The office of student life is responsible for completing periodic reviews of state and federal legislation, and community feedback, to make recommendations for changes to the code. Once recommendations are complete, they will be forwarded to the vice president for enrollment and student services. See also POL-U1000.11 *Developing and Maintaining University Provisions of the Washington Administrative Code.*

WSR 24-21-115

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed October 21, 2024, 9:25 a.m., effective November 21, 2024]

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

Purpose: The board of accountancy proposes adoption of new rule to provide guidance to consumers regarding client records.

Citation of Rules Affected by this Order: New WAC 4-30-053.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 24-16-042 on July 30, 2024.

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

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

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

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

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

Date Adopted: October 18, 2024.

Jennifer Sciba
Acting Director

OTS-5685.1NEW SECTION

WAC 4-30-053 Client record requests. (1) For the purpose of this rule:

(a) "Client" includes current and former clients.

(b) "Client-provided records" are accounting or other records, including hard copy and electronic reproductions of such records, belonging to the client that were provided to a licensee by, or on behalf of, the client.

(c) "Licensee-prepared records" are accounting or other records that a licensee was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that a licensee proposed or prepared as part of an engagement (for example, an audit).

(d) "Licensee's work products" are deliverables set forth in the terms of the engagement, such as tax returns.

(e) "Working papers" are all other items prepared solely for purposes of the engagement and include items prepared by a licensee, such as audit programs, analytical review schedules, and statistical sampling results and analyses, or items prepared by the client at the re-

quest of a licensee and reflecting testing or other work done by a licensee.

(f) "Make records available" means to provide the records in any format that is usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.

(2) When an initial request for client-provided records is received, a licensee should make those records in a licensee's custody or control available. A licensee may charge a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records; however, the client-provided records may not be withheld for nonpayment of such fees.

(3) A licensee and the client may agree to terms other than those stated in this rule. When this occurs, a licensee should respond in accordance with such agreement. Otherwise, a licensee should respond to a request for licensee-prepared records or a licensee's work products that are in a licensee's custody or control and that have not previously been made available to the client as follows:

(a) A licensee should make available licensee-prepared records relating to a completed and issued work product; however, such records may be withheld if fees are due to a licensee for that specific work product.

(b) Licensee's work products should be made available; however, such work products may be withheld if fees are due to a licensee for the specific work product; the work product is incomplete; for purposes of complying with professional standards (for example, withholding an audit report with outstanding audit issues); or threatened or outstanding litigation exists concerning the engagement or a licensee's work.

(4) Once a licensee has complied with this rule, a licensee is under no obligation to:

(a) Comply with any subsequent requests to again make records or copies of records available. However, if after complying with a request, a loss of records due to a natural disaster or an act of war is experienced, a licensee should, when practicable, comply with an additional request to make such records available.

(b) Retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.

(c) Make the records available to any other associated party, such as the general partner, majority shareholder, or spouse.

(5) Working papers are a licensee's property, and a licensee is not required to make such information available.

(6) In fulfilling a request for a licensee's copy of client-provided records that was previously made available to the client, licensee-prepared records, or a licensee's work products, a licensee may:

(a) Charge a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records and require payment before a licensee makes the records available.

(b) Make the requested records available in any usable and accessible format. However, a licensee is not required to convert records that are not in electronic format to electronic format. If the records are requested in a specific format and the records are available in such format within a licensee's custody and control, the request should be honored. In addition, a licensee is not required to make formulas available, unless a licensee was engaged to make such formulas available as part of a completed work product or the formulas were

used to create licensee-prepared records without which the client's financial information would be incomplete.

(c) Make and retain copies of any records that a licensee already made available.

(7) When a licensee is required to return or make records available, a licensee should comply as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

(8) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

WSR 24-21-116

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed October 21, 2024, 9:32 a.m., effective November 21, 2024]

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

Purpose: The board of accountancy proposes amending rules for the following reasons (rules may appear in more than one category):

(1) Align the rules with HB 1920 RCW revisions. On March 7, 2024, Governor Inslee signed into law HB 1920, which is effective June 6, 2024: WAC 4-30-010, 4-30-034, 4-30-040, 4-30-042, 4-30-044, 4-30-045, 4-30-046, 4-30-048, 4-30-049, 4-30-050, 4-30-052, 4-30-054, 4-30-056, 4-30-070, 4-30-090, 4-30-112, 4-30-114, 4-30-130, and 4-30-142.

(2) Update the quality assurance review requirements: WAC 4-30-130.

(3) Update to gender neutral pronouns: WAC 4-30-024, 4-30-040, 4-30-049, 4-30-132, and 4-30-142.

(4) Rename the rule: WAC 4-30-070, 4-30-090, and 4-30-114.

Citation of Rules Affected by this Order: Amending WAC 4-30-010, 4-30-024, 4-30-034, 4-30-040, 4-30-042, 4-30-044, 4-30-045, 4-30-046, 4-30-048, 4-30-049, 4-30-050, 4-30-052, 4-30-054, 4-30-056, 4-30-070, 4-30-090, 4-30-112, 4-30-114, 4-30-130, 4-30-132, and 4-30-142.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 24-16-043 on July 30, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 21, Repealed 0.

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

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

Date Adopted: October 18, 2024.

Jennifer Sciba
Acting Director

OTS-5673.1

AMENDATORY SECTION (Amending WSR 24-04-024, filed 1/29/24, effective 7/1/24)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

"**Act**" means the Public Accountancy Act codified as chapter 18.04 RCW.

"**Active individual participant**" means an individual whose primary occupation is at the firm or affiliated entity's business. An individ-

ual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

"Applicant" means an individual who has applied:

- (a) To take the national uniform CPA examination;
- (b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;
- (c) To renew an individual license, a CPA firm license, or registration as a resident nonlicensee firm owner;
- (d) To reinstate an individual license or registration as a resident nonlicensee firm owner;
- (e) To convert an inactive license to an active license.

"Attest" means providing the following services:

- (a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;
- (b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;
- (c) Any engagement to be performed in accordance with the statements on standards for attestation engagements; and
- (d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

"Audit," "review," and **"compilation"** are terms reserved for use by licensees, as defined in this section.

"Board" means the board of accountancy created by RCW 18.04.035.

"Breach of fiduciary responsibilities/duties" means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

"Certificate" issued under this act means an alternative license type previously issued by the board indicating that the certificate holder had passed the CPA examination, but had no verified experience, and was not fully licensed to practice public accounting. Certificates remained valid until June 30, 2024, at which time they convert to a CPA license in an inactive status. This definition does not include certificates issued by other jurisdictions which may be substantially equivalent to a Washington CPA license.

"Client" means the person or entity that retains a licensee, as defined in this section, a nonlicensee firm owner of a licensed firm or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

"Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

"CPA" or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350((+2-)) (1).

"CPE" means continuing professional education.

"Fiduciary responsibility/duty" means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

"Firm" or "CPA firm" means a sole proprietorship, a corporation, ~~((or))~~ a partnership, a limited liability company, or other forms of organization issued a license under RCW 18.04.195. ~~(("Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.))~~

"Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195 (1) (a) ~~((iii))~~ (ii) (A) through (D) exercising practice privileges in this state.

"Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

"Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

"Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW ~~((18.04.350))~~ 18.04.345 (9) (b).

"Inactive" means a status of a license which prohibits a licensee from practicing public accounting. A person holding an inactive license may apply to the board to convert the license to an active status through an approval process established by the board.

"Individual" means a living, human being.

"Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

"Interactive self-study program" means a CPE program that provides feedback throughout the course.

"IRS" means Internal Revenue Service.

"License" means a license to practice public accounting issued to an individual or a firm under the act, or a license or certificate to practice public accounting in another state or jurisdiction.

"Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, and individuals holding licenses or certificates to practice public accounting granted by an out-of-state jurisdiction who are allowed to exercise practice privileges in this state under RCW 18.04.350 ~~((2))~~ (1) and out-of-state firms permitted to offer or render certain professional services

in this state under the conditions prescribed in RCW 18.04.195 (1) (a) and (b).

"Manager" means a manager of a limited liability company licensed as a firm under the act.

"Nano learning" is a stand-alone continuing professional education (CPE) course that is a minimum of 10 minutes (0.2 CPE credit hours) consisting of electronic self-study with a stated learning objective and a minimum of two final assessment questions.

"NASBA" means the National Association of State Boards of Accountancy.

"Nonlicensee firm owner" means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

"PCAOB" means Public Company Accounting Oversight Board.

"Peer review" means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under this section.

"Person" means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

"Practice privileges" are the rights granted by chapter 18.04 RCW to a person who:

- (a) Has a principal place of business outside of Washington state;
- (b) Is licensed to practice public accounting in another substantially equivalent state;
- (c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(~~((2+))~~) for individuals or RCW 18.04.195 (1) (b) for firms;
- (d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;
- (e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;
- (f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and
- (g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

"Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

"Professional services" include all services requiring accountancy or related skills that are performed for a client, an employer, or on a volunteer basis. These services include, but are not limited to, accounting, audit and other attest services, tax, bookkeeping, management consulting, financial management, corporate governance, personal financial planning, business valuation, litigation support, educational, and those services for which standards are promulgated by the appropriate body for each services undertaken.

"Public practice" or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW (~~(18.04.350(10))~~) 18.04.345 (9) (b) by persons or firms not required to be licensed under the act.

"Quality assurance review or QAR" is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

"Reciprocity" means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

"Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW (~~(18.04.350(10) or (11))~~) 18.04.345 (9) (b) or (c) provided by persons not holding a license under this chapter as provided in RCW (~~(18.04.350(14))~~) 18.04.345 (1) (b).

"Representing oneself" means having a license, practice privilege, or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

"Rules of professional conduct" means rules adopted by the board to govern the conduct of licensees, as defined in this section, while representing themselves to others as licensees. These rules also govern the conduct of licensees with an inactive status, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

"SEC" means the Securities and Exchange Commission.

"Sole proprietorship" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

"**State**" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 ~~((+2))~~ (1)(a).

"**Statements on auditing standards (SAS)**" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

"**Statements on standards for accounting and review services (SSARS)**" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

"**Statements on standards for attestation engagements (SSAE)**" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

"**Substantial equivalency**" (~~or "substantially equivalent"~~) means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed those listed in this chapter.

OTS-5674.1

AMENDATORY SECTION (Amending WSR 18-21-034, filed 10/8/18, effective 11/8/18)

WAC 4-30-024 Public records. All public records of the agency are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the office of the Washington State Board of Accountancy at 711 Capitol Way S., Suite 400, Olympia, Washington, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) **Records index.** An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the agency's office.

(3) **Organization of records.** The agency maintains its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the agency's office. A variety of records are also available on the agency's website at www.acb.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request in writing by letter, fax, or email ad-

dressed to the public records officer. **Written requests must include the following information:**

- Date of the request;
- Name of the requestor;
- Address of the requestor and other contact information, including telephone number and any email address;
- Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer or designee may (~~(also)~~) accept requests for public records by telephone or in person. (~~(If the public records officer or designee accepts an oral or telephone request, he or she will confirm receipt)~~) The requestor will receive a written confirmation of the request (~~(and the details of the records requested, in writing, to the requestor)~~).

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, (~~(he or she)~~) the requestor should make that preference clear in the request. Copies will be made by the agency's public records officer or designee.

(e) When fulfilling public records requests the agency will perform its public records responsibilities in the most expeditious manner consistent with the agency's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the agency's anticipated installment delivery timetable.

(h) In certain instances, the agency may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within (~~(fifteen)~~) 15 days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the (~~(fifteen)~~) 15-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations:

In order to obtain a list of individuals under the provisions of RCW 42.56.070(~~(+9)~~) (8), educational organizations and professional associations must apply for and receive recognition by the board before requests will be honored. The requesting organization must provide sufficient information to satisfy the approving authority that the requested list of individuals is primarily for educational and professionally related uses.

Board forms are available on the board's website or upon request ((for your use)).

OTS-5675.1

AMENDATORY SECTION (Amending WSR 24-04-024, filed 1/29/24, effective 7/1/24)

WAC 4-30-034 Responding to board inquiries. All licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350((+2)) (1) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b), non-licensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within **20 days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

OTS-5676.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-040 Integrity and objectivity. (1) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate ((his or her)) judgment to others.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350((+2)) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5677.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-042 Independence. (1) A licensee in public practice shall be independent in the performance of professional services as required by standards promulgated by the appropriate body for each service undertaken.

(2) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350((~~2~~)) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5678.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-044 Contingent fees. (1) A licensee in public practice shall not:

(a) Perform for a contingent fee any professional services for, or receive such a fee from, a client for whom the licensee or the licensee's firm performs:

(i) An audit or review of a financial statement; or

(ii) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(iii) An examination of prospective financial information; or

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition above applies during the period in which the licensee or licensee's firm is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

(4) A licensee's fees may vary depending, for example, on the complexity of services rendered.

(5) Any licensee who is not prohibited by this rule from performing services for a contingent fee must:

(a) Disclose the arrangement in writing and in advance of client acceptance;

(b) Disclose the method of calculating the fee or amount of fee;

(c) Specify the licensee's role as the client's advisor; and

(d) Obtain the client's consent to the fee arrangement in writing.

(6) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350((~~2~~)) (1), and out-of-state firms permitted to offer or

render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5679.1

AMENDATORY SECTION (Amending WSR 23-04-087, filed 1/31/23, effective 3/3/23)

WAC 4-30-045 Commission and referral fees. (1) A licensee in public practice shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee or licensee's firm also performs for that client:

- (a) An audit or review of a financial statement; or
 - (b) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
 - (c) An examination of prospective financial information.
- (2) This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.
- (3) Any licensee who is not prohibited by this rule from performing services for, or receiving a commission or referral fee must:
- (a) Disclose the arrangement in writing and in advance of client acceptance;
 - (b) Disclose the method of calculating the fee or amount of fee;
 - (c) Specify the licensee's role as the client's advisor; and
 - (d) Obtain the client's consent to the fee arrangement in writing.
- (4) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~(-2-)~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5680.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-046 General standards. (1) Licensees shall comply with the following general standards:

- (a) Professional competence. Undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

(b) Due professional care. Exercise due professional care in the performance of professional services.

(c) Planning and supervision. Adequately plan and supervise the performance of professional services.

(d) Sufficient relevant data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~((2))~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5681.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-048 Compliance with standards. (1) A licensee who performs professional services shall comply with standards promulgated by the appropriate body for each service undertaken.

(2) Authoritative bodies include, but are not limited to(~~((7))~~); the American Institute of Certified Public Accountants (AICPA), its Code of Professional Conduct, its definitions, and interpretations, and other AICPA standards; the Internal Revenue Code (IRC); the Internal Revenue Service (IRS); (~~and~~) federal, state, and local audit, regulatory, and tax agencies; the Securities and Exchange Commission (SEC); the Public Company Accounting Oversight Board (PCAOB); the Financial Accounting Standards Board (FASB); the Governmental Accounting Standards Board (GASB); the Cost Accounting Standards Board (CASB); the Federal Accounting Standards Advisory Board (FASAB); the U.S. Governmental Accountability Office (GAO); and the Federal Office of Management and Budget (OMB).

(3) However, if the requirements found in the professional standards differ from the requirements found in specific board rules, board rules prevail.

(4) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~((2))~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5682.1

AMENDATORY SECTION (Amending WSR 23-04-087, filed 1/31/23, effective 3/3/23)

WAC 4-30-049 Accounting principles. (1) A licensee shall not (a) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (b) state that (~~he or she~~) the licensee is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies appropriate to the service undertaken to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the licensee can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the licensee can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~(+2)~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5683.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-050 Confidential client information. (1) A licensee in public practice shall not disclose any confidential client information without the specific consent of the client.

(2) This rule does not:

(a) Affect in any way the obligation of those persons to comply with a disclosure required by law or a lawfully issued subpoena or summons;

(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;

(c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or Board AICPA Rules;

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.

(3) It is permissible for the successor in interest of a deceased or incapacitated licensee to contract with a responsible custodian to securely store client records until such time as consent to transfer records has been obtained.

(4) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~(+2)~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5684.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-052 Acts discreditable. (1) A licensee shall not commit an act discreditable to the profession.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~(+2)~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5686.1

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

WAC 4-30-054 Advertising and other forms of solicitation. (1) A licensee in public practice shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, overreaching, or harassing conduct is prohibited.

(2) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(~~(+2)~~) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

OTS-5687.1

AMENDATORY SECTION (Amending WSR 23-22-047, filed 10/25/23, effective 11/25/23)

WAC 4-30-056 Form of organization and name. (1) A licensee may practice public accounting only in a form of organization permitted by law or regulation.

(2) A firm name that does not consist of the name(s) of one or more present or former owners must be approved in advance by the board as not being deceptive or misleading.

(3) Misleading or deceptive firm names are prohibited. The following are examples of misleading firm names. The board does not intend this listing to be all inclusive. The firm name:

(a) Implies it is a legal entity when it is not such an entity (as by the use of the designations "P.C.," "P.S.," "Inc. P.S.," or "L.L.C.");

(b) Implies the existence of a partnership when one does not exist;

(c) Includes the name of a person who is neither a present nor a past owner of the firm;

(d) Implies educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or

(e) Includes the terms "& Company", "& Associate", or "Group," but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff employee.

(4) Licensed firms and unlicensed firms.

(a) No licensed firm may operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board.

(b) A firm not required to be licensed may not operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the secretary of state and/or the department of revenue.

(5) A licensee may not operate under an alias or title that differs from the name that is registered with the board.

(6) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350((~~2~~)) (1), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195. Subsection (5) of this section also includes licensees in an inactive status.

OTS-5688.1

AMENDATORY SECTION (Amending WSR 13-22-001, filed 10/23/13, effective 1/1/14)

WAC 4-30-070 (~~(What are the)~~) Experience requirements (~~(in order to obtain a CPA license?)~~). (1) Qualifying experience may be obtained through the practice of public accounting and/or employment in industry or government. In certain situations, employment in academia may also provide experience to obtain some or all of the competency re-

quirements. Qualifying experience may be obtained through one or more employers, with or without compensation, and may consist of a combination of full-time and part-time employment.

(2) Employment experience should demonstrate that it occurred in a work environment and included tasks sufficient to have provided an opportunity to obtain the competencies defined by subsection (3) of this section and:

(a) Covered a minimum (~~twelve~~) 12-month period (this time period does not need to be consecutive);

(b) Consisted of a minimum of (~~two thousand~~) 2,000 hours;

(c) Provided the opportunity to utilize the skills generally used in business and accounting and auditing including, but not limited to, accounting for transactions, budgeting, data analysis, internal auditing, preparation of reports to taxing authorities, controllership functions, financial analysis, performance auditing and similar skills;

(d) Be verified by a licensed CPA as meeting the requirements identified in subsection (5) of this section; and

(e) Be obtained no more than eight years prior to the date the board receives your complete license application.

(3) **Competencies:** The experience should demonstrate that the work environment and tasks performed provided the applicant an opportunity to obtain the following competencies:

(a) Assess the achievement of an entity's objectives;

(b) Develop documentation and sufficient data to support analysis and conclusions;

(c) Understand transaction streams and information systems;

(d) Assess risk and design appropriate procedures;

(e) Make decisions, solve problems, and think critically in the context of analysis; and

(f) Communicate scope of work, findings and conclusions effectively.

(4) **The applicant's responsibilities:** The applicant for a license requesting verification is responsible for:

(a) Providing information and evidence to support the applicant's assertion that their job experience could have reasonably provided the opportunity to obtain the specific competencies, included on the applicant's Experience Affidavit form presented for the verifying CPA's evaluation;

(b) Producing that documentation and the completed Experience Affidavit form to a qualified verifying CPA of their choice;

(c) Determining that the verifying CPA meets the requirements of subsection (5) of this section; and

(d) Maintaining this documentation for a minimum of three years.

(5) **Qualification of a verifying CPA:** A verifying CPA must have held a valid CPA license to practice public accounting in the state of Washington or be qualified for practice privileges as defined in RCW 18.04.350 (~~(+2)~~) (1) for a minimum of five years prior to verifying the candidate's experience, including the date that the applicant's experience is verified. The five years do not need to be consecutive.

OTS-5689.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-090 (~~(Must an out-of-state individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?)~~) Practice privileges. (~~(No.)~~)

Out-of-state individuals holding valid licenses to practice public accounting issued by a substantially equivalent state, may hold out and practice within Washington state and/or provide public accounting services in person, by mail, telephone, or electronic means to clients residing in Washington state without notice or payment of a fee. An individual who qualifies for practice privileges under RCW 18.04.350(~~((2))~~) (1), and who performs any attest service described in RCW (~~(18.04.010)~~) 18.04.025(1) may only do so through a firm that has obtained a license under RCW 18.04.195 and 18.04.215 or that meets the requirements for an exception from the firm licensure requirements under RCW 18.04.195 (1) (a) (~~((iii))~~) (ii)(A) through (D) or (b).

As a condition of this privilege, the out-of-state individual is deemed to have consented to:

- (1) The personal and subject matter jurisdiction and disciplinary authority of this state's board;
- (2) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules contained in Title 4 WAC;
- (3) The appointment of the state board which issued the certificate or license as their agent upon whom process may be served in any action or proceeding by this state's board against the certificate holder or licensee;
- (4) Not render any professional services in this state unless the out-of-state individual is licensed to render such services in the state of licensure upon which the privilege is contingent;
- (5) Cease offering or performing professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is no longer valid; and
- (6) Cease offering or performing specific professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is restricted from offering or performing such specific professional services.

OTS-5690.1

AMENDATORY SECTION (Amending WSR 20-04-090, filed 2/5/20, effective 3/7/20)

WAC 4-30-112 In state and out-of-state firm licensing requirements. (1) A firm license must be obtained from the board if the firm has an office in this state and performs attest or compilation services for clients in this state.

(2) A firm license is not required for a firm that does not have an office in this state but offers or renders attest services described in RCW 18.04.025(1), and meets the requirements listed in RCW 18.04.195 (1) (a) (~~((iii))~~) (ii)(A) through (D).

(3) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(~~((2))~~) (1) and WAC 4-30-090 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

(4) As a condition of this privilege, any nonresident firm meeting the requirement of subsection (2) or (3) of this section is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules contained in Title 4 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render those services described in subsection (1) of this section for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through out-of-state individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

OTS-5691.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-114 (~~((How do I apply))~~) **Application for and ((maintain)) maintenance of a firm license((?))**. (1) (~~((How does a firm apply for an initial firm license?))~~) **Application**. To apply for an initial firm license an owner, or designee, or, in the case of an out-of-state firm, that does not meet the requirements to operate under firm mobility per RCW 18.04.195 (1) (a) (~~((iii))~~) (ii)(A) through (D), and is required to be licensed in this state, an individual qualified for practice privileges in this state under RCW 18.04.350(~~((2))~~) (1) who has

been authorized by the applicant firm to make the application must submit the following information to the board:

- (a) The firm name;
- (b) Address and telephone number of the main office and any branch offices of the firm;
- (c) Name of the managing licensee of the main office located and maintained in this state;
- (d) Resident licensee owners' names;
- (e) Name(s) of all resident nonlicensee owners; and
- (f) Type of legal organization under which the firm operates.

The required information must be submitted to the board either by making application through the board's online application system or on a form provided by the board upon request. All requested information, documents and fees must be submitted to the board before the application will be evaluated.

Upon approval of the firm's application the firm's licensed status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of the firm license can be provided upon request.

The initial CPA firm license will expire on June 30th of the third calendar year following initial licensure.

(2) ~~((How do I renew a CPA firm license?))~~ **Renewal.** To renew a CPA firm license an owner or designee or, in the case of an out-of-state firm that does not meet the requirements to operate under firm mobility per RCW 18.04.195 (1) (a) ~~((+iii))~~ (ii) (A) through (D), an individual qualified for practice privileges in this state under RCW 18.04.350 ~~((+2))~~ (1) who has been authorized by the applicant firm to make the application, must submit the information described in subsection (1) of this section that is current at the date the renewal application is submitted to the board. A renewal application is not complete and cannot be processed until all required information, requested documents, and all fees are submitted to the board.

An individual authorized by the firm must provide the required information to the board either by making application through the board's online application system or on a form provided by the board upon request. All requested information, documents and fees must be submitted to the board before the application will be evaluated.

On the date the renewal application is approved, the firm's license will be included in the board's licensee database and, therefore, made publicly available for confirmation. Confirmation of the renewed status can be provided upon request.

The CPA firm license will expire on June 30th of the third calendar year following the calendar year of renewal.

(3) ~~((When and how must the firm notify the board of changes in the licensed firm?))~~ **Notification of changes.** An individual authorized by the firm must provide the board written notification and other documentation deemed necessary by the board within ~~((ninety))~~ 90 days of any or all of the following occurrences:

- (a) Dissolution of the firm;
- (b) The occurrence of any event that would cause the firm to be in violation of RCW 18.04.195 or this section, including the retirement, lapse, revocation or suspension of the license of a sole proprietor or sole owner of another legal form of organization, for example, a limited liability company (LLC) or professional service corporation (PS) owned by a single person, licensed by the board for the practice of public accounting, and holding out to the public for the

practice of public accounting and/or offering or performing professional services restricted to licensees; or

(c) An event that requires an amendment to a firm license.

(4) ~~((What events require a firm amendment?))~~ **Firm amendments.** An individual authorized by the firm must provide written notification to the board, by submitting the following information and the appropriate amendment fee, within ~~((ninety))~~ 90 days of the following:

(a) Admission or withdrawal of a resident licensee owner;

(b) Any change in the name of the firm; or

(c) Change in the resident managing licensee of the firm's main office in this state; or

(d) Change in the resident managing licensee of any branch office of the firm.

(5) ~~((How long do I have to correct noncompliance with licensure requirements due to a change in ownership or an owner's credentials?))~~ **Correction of noncompliance.** The board must be notified in writing within ~~((ninety))~~ 90 days of the first date the firm is not in compliance with the firm's licensure requirements due to changes in firm ownership and propose a time period in which the firm will achieve compliance. The board may grant a reasonable period of time for a firm to become compliant. The board may revoke, suspend, or impose conditions on the firm's license for failure to bring the firm into compliance within the approved time period.

OTS-5692.1

AMENDATORY SECTION (Amending WSR 19-22-005, filed 10/24/19, effective 1/1/20)

WAC 4-30-130 Quality assurance review (QAR) requirements for licensed CPA firms. (1) ~~((Purpose. The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program, such as peer review, is to monitor licensees' compliance with audit, compilation, review, and other attestation standards. If the board becomes aware that a firm's performance and/or reporting practices for audit, review, compilation, and other engagements covered by relevant recognized professional standards as delineated in WAC 4-30-048, may not be in accordance with said professional standards, the board will take appropriate action to protect the public interest.~~

~~((2))~~ **Peer review.** Generally, all firms licensed in Washington state offering and/or performing attest services ~~((or compilation services))~~, as defined by WAC 4-30-010, or other professional services for which a report expressing assurance is prescribed by professional standards, are required to participate in a board-approved peer review program as a condition of renewing each CPA firm license under RCW 18.04.215 and WAC 4-30-114 ~~((. However, certain exemptions are listed in subsection (10) of this section)).~~

(2) **Approved programs.** Board-approved peer review programs include:

(a) The inspection processes of the Public Company Accounting Oversight Board (PCAOB);

(b) Peer review programs administered by the American Institute of CPAs (AICPA) and/or their assigned administering entities (AE); and

(c) Other programs recognized and approved by the board.

(3) **Enrollment in peer review:** A licensed firm must enroll in a board-approved peer review program **before** issuing a report for each of the following types of service:

~~(a) ((Compilation on historical financial statements;~~

~~(b))~~ Review ~~((on))~~ of historical financial statements;

~~((e))~~ (b) Audit ~~((report on))~~ of financial statements, performance audits ~~((reports))~~, or examination ~~((reports on))~~ of internal controls for nonpublic enterprises;

~~((d))~~ (c) Other professional services subject to Statements on Standards for Attestation Engagements.

The schedule for the firm's peer review shall be established according to the peer review program's standards. The board does not require any licensee to become a member of any organization administering a peer review program.

(4) **Participation in peer review.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is dropped or terminated by a peer review program for any reason shall have ~~((twenty-one))~~ 21 days to provide written notice to the board of such termination or drop and to request authorization from the board to enroll in another board-approved peer review program.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the peer review program shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another peer review program may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews.

(5) **Reporting requirements.** Every firm must provide the following information, along with the appropriate fees, with every application for renewal of a firm license by April 30th of the renewal year:

(a) Certify whether the firm does or does not perform attest services, or compilation services, as defined by WAC 4-30-010, or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state;

(b) If the firm is subject to the peer review requirements, provide the name of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review;

(c) Certify the result of the firm's most recent peer review.

Failure to timely submit complete information and the related fee by the April 30th due date can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(6) **Documents required.** Any firm required to undergo peer review per subsection ~~((2))~~ (1) of this section is required to ~~((partici-~~

pate)) provide unlimited access to all peer review documents to the board, including mandatory participation in the AICPA Facilitated State Board Access (FSBA). (~~Other information the board deems important, may be requested for understanding the information submitted.~~)

(7) **Document retention.** RCW 18.04.390(4) (~~and WAC 4-30-051(11)~~) requires a firm to retain audit and review records and documentation for a period of seven years after the firm concludes an audit or review of a client's financial statements.

(8) **Extensions.** The board may grant an extension of time for submission of the peer review report to the board. Extensions will be determined by the board on a case-by-case basis.

(9) **Verification.** The board may verify the certifications of peer review reports that firms provide.

(10) **Compilations.** Compilations are excluded from board-approved peer review requirements.

(a) A firm may be required to include compilations in any peer review program to satisfy membership requirements for the AICPA or any other professional organization; to satisfy licensing requirements in other jurisdictions; or for any other reason whatsoever.

(b) A firm license is still required even if a firm only performs compilation services that are otherwise excluded from board-approved peer review.

(11) Exemption from peer review.

(a) Out-of-state firms that do not have a physical location in this state, but perform attest (~~or compilation services~~) in this state, and are otherwise qualified for practice privileges under RCW 18.04.195 (1)(a) (~~(iii)~~) (ii) (A) through (D) or (b) are not required to participate in the board's program if the out-of-state firm participates in a board-approved peer review program or similar program approved or sponsored by another state's board of accountancy.

(b) Firms that do not perform attest services (~~or compilation services~~), as defined by WAC 4-30-010, or other professional services for which a report expressing assurance is prescribed by professional standards are not required to participate in a peer review program, and shall request exemption on each firm license renewal application.

~~((c) Firms that prepare financial statements which do not require reports under Statements on Standards for Accounting and Review Services (management use only compilation reports) and that perform no other attest or compilation services, are not required to participate in a peer review program; however, any such engagements performed by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.~~

~~(11))~~ (12) Quality assurance oversight.

(a) The board will:

(i) Annually appoint a peer review oversight committee, and such other committees as the board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews;

(ii) Consider reports from the peer review oversight committee;

(iii) Direct the evaluation of peer review reports and related documents submitted by firms;

(iv) Determine the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements;

(v) Determine appropriate action for firms when issues with a peer review report may warrant further action; and

(vi) Take appropriate actions the board, in its discretion, deems appropriate to carry out the functions of the quality assurance review program and achieve the purpose of the peer review requirement.

(b) The **peer review oversight committee** shall conduct oversight of approved peer review programs at least semiannually to provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews.

~~((i) The peer review oversight committee's oversight procedures may consist of, but are not limited to:~~

~~(A) Attending the peer review program's report acceptance body (RAB) meetings during consideration of peer review documents;~~

~~(B) Observing the peer review program administrator's internal review of program and quality control compliance;~~

~~(C) Observing the peer review program's review of the administrator's process.~~

~~(ii) The peer review oversight committee shall report to the board any modifications to approved peer review programs and shall make recommendations regarding the continued approval of peer review programs.~~

~~(12))~~ (13) Remedies. The board will take appropriate action to protect the public's interest if the board determines through the peer review process or otherwise that a firm's performance and/or reporting practices are not or may not be in accordance with applicable professional standards, the firm does not comply with peer review program requirements, or the firm does not comply with all or some of the reporting, remedial action, and/or fee payment requirements of subsection (5) of this section. The board's actions may include, but are not limited to:

(a) Require the firm to develop quality control procedures to provide reasonable assurance that similar occurrences will not occur in the future;

(b) Require any individual licensee who had responsibility for, or who substantially participated in the engagement(s), to successfully complete specific courses or types of continuing education as specified by the board;

(c) Require that the reviewed firm responsible for engagement(s) submit all or specified categories of its compilation or attest working papers and reports to a preissuance evaluation performed by a board-approved licensee in a manner and for a duration prescribed by the board. Prior to the firm issuing the reports on the engagements reviewed, the board-approved licensee shall submit to the board for board acceptance a report of the findings, including the nature and frequency of recommended actions to the firm. The cost of the board-approved preissuance evaluation will be at the firm's expense;

(d) Require the reviewed firm to engage a board-approved licensee to conduct a board-prescribed on-site field review of the firm's work product and practices or perform other investigative procedures to assess the degree or pervasiveness of nonconforming work product. The board-approved licensee engaged by the firm shall submit a report of the findings to the board within thirty days of the completion of the services. The cost of the board-prescribed on-site review or other board-prescribed procedures will be at the firm's expense; or

(e) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320.

(f) Absent an investigation, the specific rating of a single peer review report is not a sufficient basis to warrant disciplinary action.

((13)) (14) The board may solicit and review licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of such information.

OTS-5693.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-132 Qualifying continuing professional education (CPE) activities. (1) CPE activities are learning opportunities that contribute directly to an individual's knowledge, ability, and/or competence to perform ((his or her)) one's professional responsibilities. CPE activities should:

(a) Address the individual's current and future work environment, current knowledge and skills, and desired or needed knowledge and skills to meet future opportunities and/or professional responsibilities; and

(b) Maintain knowledge of current ethical and other regulatory requirements.

(2) An activity qualifies as acceptable CPE, under RCW 18.04.215, if it follows one of the following formats:

(a) **Nano learning format** - As defined in WAC 4-30-010. A nano learning course shall be considered a qualifying activity once a minimum of ((ten)) 10 minutes (0.2 credit hours) but less than ((fifty)) 50 minutes (1.0 credit hour) has been completed; or

(b) **Formal learning format** - Defined herein, as a formal activity of learning that is:

- A minimum of ((fifty)) 50 minutes of continuous instruction in length with participants signing in to record attendance;
- If the program exceeds four credit hours, participants must also sign out; and
- Attendees are provided a certificate of completion.

(3) **Formal learning formats can include:**

(a) Professional, technical, or education sessions of national, state, and local organizations and their chapters;

(b) Programs of other organizations (accounting, industrial, professional, etc.);

(c) Formal employer education programs;

(d) Dinner, luncheon, and breakfast meetings which are structured as formal education programs;

(e) Undergraduate and graduate courses. For both undergraduate and graduate courses, one quarter credit equals ((ten)) 10 CPE credit hours, and one semester credit equals ((fifteen)) 15 CPE credit hours;

(f) Interactive and noninteractive self-study programs;

(g) Instructor/developer of a college or university course;

(h) Instructor/developer of a CPE course;

(i) Authorship of published articles, books, and other publications relevant to maintaining or improving professional competence;

(j) Group study;

(k) Service on the Washington state board of accountancy, the board's committees, or volunteer service on one of the board approved peer review committees;

(l) CPE credit may not be claimed for CPA examination review courses; and

(m) You may not claim CPE credit for preparing for or taking a credential examination unless you complete a formal review course and receive a certificate of completion meeting the requirements of WAC 4-30-138.

(4) Formats other than those listed may be approved by the executive director provided you can demonstrate they contribute to your professional competence.

(5) **Subject areas:** Activities relating to the following subjects are acceptable for all formats provided they follow the standards of this section:

(a) **Technical subjects include:**

(i) Auditing standards or procedures;

(ii) Compilation and review of financial statements;

(iii) Financial statement preparation and disclosures;

(iv) Attestation standards and procedures;

(v) Projection and forecast standards or procedures;

(vi) Accounting and auditing;

(vii) Management advisory services;

(viii) Personal financial planning;

(ix) Taxation;

(x) Management information services;

(xi) Budgeting and cost analysis;

(xii) Asset management;

(xiii) Professional ethics;

(xiv) Specialized areas of industry;

(xv) Human resource management;

(xvi) Economics;

(xvii) Business law;

(xviii) Mathematics, statistics, and quantitative applications in business;

(xix) Business management and organization;

(xx) General computer skills, computer software training, information technology planning and management; and

(xxi) Negotiation or dispute resolution courses;

(b) **Nontechnical subjects include:**

(i) Communication skills;

(ii) Interpersonal management skills;

(iii) Leadership and personal development skills;

(iv) Client and public relations;

(v) Practice development;

(vi) Motivational and behavioral courses; and

(vii) Speed reading and memory building.

(6) Subjects other than those listed above may be acceptable provided you can demonstrate they contribute to your professional competence.

(7) **Washington state board approved ethics.** Courses must meet the following requirements:

(a) The content of the course, which shall be approved by the board, must be specific to the laws and rules applicable to the regulatory framework in Washington state including the administrative requirements for an individual's initial and continued use of restricted titles in this state;

(b) All CPE authors must submit course materials for this course to the executive director of the board for approval prior to delivery of the content for credit;

(c) The ethics and regulations course material must cover all of the following topics, and instructors of approved courses must substantially address these topics in their presentations:

(i) General level information on the AICPA code of professional conduct.

(ii) General level information on the Public Accountancy Act, the board's rules, policies, including recent or pending changes therein, and the rule-making process.

(iii) Emphasis must be placed on key differences between Washington state law (chapter 18.04 RCW), this board's rules (Title 4 WAC), and the AICPA code of professional conduct.

(iv) Detailed information on the following:

(A) WAC 4-30-026 How can I contact the board?

(B) WAC 4-30-032 (~~Do I need to notify the board if I change my address?~~) Change of address.

(C) WAC 4-30-034 (~~Must I respond to inquiries from the board?~~) Responding to board inquiries.

(D) WAC 4-30-040 through 4-30-058 ethics and prohibited practices, including related board policies, if any.

(E) WAC 4-30-130 series - Continuing competency, including related board policies, if any.

(F) WAC 4-30-142 (~~What are the bases for the board to impose discipline?~~) Disciplinary actions.

(G) Other topics or information as defined by board policy;

(d) The course must also include case study scenarios demonstrating how to comply with the relevant provisions of the AICPA code of professional conduct and the board's statutory or regulatory framework when faced with ethical situations that might occur when offering or performing a specific type of professional service in the practice of public accounting or as a professionally regulated person not in the practice of public accounting; and

(e) At least (~~sixty~~) 60 percent of the course material content, presentation time, and commentary must include general level information on the Public Accountancy Act, the board's rules and policies, including recent or pending changes thereto, variances of key differences between Washington state law (chapter 18.04 RCW), the board's rules (Title 4 WAC), and the AICPA code of professional conduct, and scenarios demonstrating the different compliance outcomes that might result because the board's rules prevail when the board's rules vary from the AICPA code of professional conduct and/or related official AICPA interpretations.

Limits on total hours that can be earned during any single renewal cycle for specified formats are detailed in WAC 4-30-133.

OTS-5694.1

AMENDATORY SECTION (Amending WSR 24-04-024, filed 1/29/24, effective 7/1/24)

WAC 4-30-142 Disciplinary actions. RCW 18.04.055, 18.04.295, (~~18.04.305~~) 18-04-345, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed \$30,000; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295, 18.04.305, and (~~18.04.350~~) 18-04-345. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license or registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee or a resident nonlicensee firm owner including, but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required per RCW 18.04.215, obtaining a firm license as required by RCW 18.04.195, or without qualifying to operate under firm mobility;

(b) Offering or rendering public accounting services in this state by an out-of-state individual not qualified for practice privileges under RCW 18.04.350(~~(+2)~~) (1);

(c) Offering or rendering public accounting services in this state by an out-of-state firm not qualified for practice privileges under firm mobility per RCW 18.04.195.

(d) Making misleading, deceptive, or untrue representations;

(e) Engaging in acts of fiscal dishonesty;

(f) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(g) Unlawfully selling unregistered securities;

(h) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(i) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties, acting in a manner not in compliance with chapter 11.96A RCW; or

(j) Withdrawing or liquidating, as fees earned, funds received by a licensee or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC 4-30-010, a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC 4-30-010, a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent (~~(himself, herself, or itself)~~) oneself as a licensee, as defined in WAC 4-30-010, or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC 4-30-010, or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent (~~(himself, herself, or itself)~~) oneself as a licensee, as defined in WAC 4-30-010, or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC 4-30-010, or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in Title 4 WAC, by a licensee, defined in WAC 4-30-010, or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(~~(+2)~~) (1) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state that does not meet the firm mobility requirements under RCW 18.04.195 (1) (a) (~~(+iii)~~) (ii) (A) through (D)

by an out-of-state individual not qualified under RCW 18.04.350(~~(+2)~~) (1) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(~~(+2)~~) (1) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(~~(+2)~~) (1) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business has been restricted from performing those specific services;

(e) Failure of an out-of-state firm operating under firm mobility per RCW 18.04.195 (1) (a) (~~(+iii)~~) (ii), in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a firm licensed in this state, or a firm operating under firm mobility to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in Title 4 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC 4-30-010, or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC 4-30-010, nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance, or securities regulatory body that the licensee or nonlicensee firm owner committed

a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee or nonlicensee firm owner.

WSR 24-21-126
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-08—Filed October 22, 2024, 9:04 a.m., effective November 22, 2024]

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

Purpose: The department of fish and wildlife (agency) is creating a new section in chapter 220-450 WAC, Wildlife in captivity and wildlife rehabilitation. The agency's purpose for this rule is to create a permit program allowing individuals to offer relocation as an alternative to lethal removal of conflict beaver. The beaver relocation permit program has existed as a pilot program since 2019. The program offers an alternative to lethal removal of conflict beavers and provides education and support for individuals and nonprofits as they perform relocations around the state. It is a requirement of the program that only conflict beavers can be relocated. Since the beginning, the program has successfully relocated over 80 beavers with the collaboration of agency wildlife services, certified wildlife control operators, and permitted licensed trappers. This new section codifies the aspects of the pilot program the agency has found successful. RCW 77.32.585 permits the agency to release wild beavers. This rule creates the permitting program to oversee the individuals performing these relocations.

Citation of Rules Affected by this Order: New WAC 220-450-230.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.585.

Other Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.15.290, 77.15.190, 77.15.430, 77.15.750, 77.32.585, and 77.36.160.

Adopted under notice filed as WSR 24-14-150 on July 3, 2024.

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

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

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

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

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

Date Adopted: September 27, 2024.

Barbara Baker, Chair
Fish and Wildlife Commission

OTS-5028.1

NEW SECTION

WAC 220-450-230 Beaver relocation permits—Requirements and restrictions.

Purpose

(1) Wildlife is property of the state, and as such it is unlawful to keep wildlife captive, feed wildlife, or relocate wildlife without expressed permission from the Washington department of fish and wildlife. The purpose of the beaver relocation permit is to grant the permission for citizens to perform relocation of wild American beaver (*Castor canadensis*) while establishing criteria to:

(a) Reduce lethal removal of beaver by allowing permittees to relocate conflict beaver;

(b) Ensure humane care and treatment is provided to beaver during the process of trapping, temporary captivity, and relocation; and

(c) Select release sites which maximize relocation success by providing suitable habitat for beaver with minimal likelihood for future human-beaver conflict as described in RCW 77.32.585.

Definitions

(2) For the purpose of this section, the following terms apply:

(a) "Beaver husbandry facility" means the authorized site(s), as shown on the beaver relocation permit, for the temporary holding of beaver involved in relocation.

(b) "Beaver relocation permit" means a permit issued by WDFW to allow the relocation of beaver.

(c) "Euthanasia" means compassionate killing with minimal pain and distress, in a timely manner, and safely to prevent disease transmission, public health or human safety risks, or prolonged or unremitting animal suffering due to illness, injury, or unremitting pain as outlined in WAC 220-450-180.

(d) "Habitat suitability" means a combination of abiotic and biotic factors used to assess the likelihood of beavers occupying and thriving in a site.

(e) "Humane care" means providing care such as water, food, safe handling, clean facilities, medical treatment, and euthanasia if needed, and conditions including environments sensitive to species-typical biology and behavior, with the intent to minimize fear, pain, stress, and suffering.

(f) "Permittee" means the person listed on the beaver relocation permit who applies for and receives a beaver relocation permit and is responsible for monitoring and approving the relocation activities conducted under the permit.

(g) "Release site" means a location in a stream where beavers will be relocated to. The site is assessed by a permittee using the criteria and methods discussed in the required training, is not in proximity of ungulate grazing territory, is not in proximity to buildings or infrastructure which may impart damage from beaver activity, does not currently show beaver occupation, and is analyzed for the factors listed in RCW 77.32.585.

(h) "Subpermittee" means a person listed on the permittee's beaver relocation permit who may assist the permittee with specified aspects of beaver relocation activities limited by the criteria in this section.

Application requirements and general criteria

(3) Applicants must meet all the following criteria to be issued a beaver relocation permit:

(a) Must be at least 18 years of age;

(b) Must not have within the last three years:

(i) More than one finding of "paid" or "committed," as final disposition, for an infraction under chapter 77.15 RCW; or

(ii) A conviction for a fish and wildlife crime under chapter 77.15 RCW.

(c) Must complete and submit a beaver relocation application on-line to the department's beaver relocation manager any time after March 1st for a permit of the same year.

(d) Must operate or have access to a beaver husbandry facility that meets minimum requirements outlined in the Beaver Relocation Handbook.

(e) Must submit a beaver relocation plan that describes the intent of relocations, area of work, and methods for identifying source beaver, capture, handling, transport, release site selection, release, and monitoring following release site factors listed in RCW 77.32.585.

(f) Must submit a statement of qualifications and relevant experience.

(g) Must demonstrate willingness and ability to comply with all requirements of the permit.

(h) Must complete a comprehensive training on beaver relocation in Washington as identified by the department within the past three years.

(4) The department may refuse a permit if the applicant submits an incomplete application or does not meet any of the requirements in this section.

(5) Permits will be valid within the dates listed on the permit and no more than one year after the application is approved.

(6) The permittee and subpermittees must provide all beavers with humane care during capture, transport, holding, and release.

(7) The permit does not authorize the permittee or any subpermittees to practice veterinary medicine.

(8) Permittees and subpermittees are responsible for abiding by all permit terms and conditions, reporting and record requirements, and compliance with state and federal regulations when conducting beaver relocation or actions associated with beaver relocation.

(9) Beaver acquired and held by a permittee, including deceased animals and parts, remain the property of the state and will not be offered for sale, sold, traded, or bartered.

(10) Beaver acquired and held by a permittee for the purposes of relocation must not be exported out of state or imported into Washington. A violation of this section is punishable under RCW 77.15.290 Unlawful transportation of fish or wildlife—Penalty.

(11) The permittee and any subpermittees must carry a digital or paper copy of the current year's beaver relocation permit while trapping, transporting, releasing, or holding beaver.

(12) Only beaver which cause human-wildlife conflict including, but not limited to, damage to private or public property or infrastructure, may be relocated. The human-wildlife conflict must be verified by the permittee. Mitigation of such conflict must be discussed with the landowner before trapping for relocation.

(13) Additional staff or volunteers may assist in the capture, transport, and relocation of beaver but only with the direct in-person supervision of the permittee.

(14) An annual report using the department's designated report form is required by the date listed on the permit so that information can be included on the department's website per RCW 77.36.160.

(15) Permittees assume all responsibility for the action of subpermittees listed on their annual permit. Subpermittees must be supervised by permittees and the permittee may assign subpermittee duties

under their current year's permit for the following activities: Transport of beaver to or from the husbandry facility, feeding of beaver while in captivity, observation of beaver while in captivity, intake or prerelease measurements of beaver, and/or completion and submission of required reports.

(16) Proposed subpermittees must meet the requirements of subsection (3)(a), (b), and (f) of this section.

(17) The following subpermittees are authorized to also conduct the following activities under a valid, current year's permit depending on their current, valid certifications and licenses:

(a) A wildlife control operator (WCO) listed as a subpermittee may capture and transport beaver to an approved beaver husbandry facility or to a release site unsupervised. They may only trap beaver within the regulations of their WCO certification and may charge a fee for capturing beaver pursuant to WAC 220-440-110. Wildlife control officers listed as subpermittees cannot release beaver or select release sites without the permittee being present.

(b) A WDFW trapping license holder listed as a subpermittee may capture and transport beaver to an approved beaver husbandry facility or to a release site unsupervised. WDFW trapping license holders cannot release beaver or select release sites without the permittee being present. Participation as subpermittee does not authorize licensed trappers to harvest beaver outside of the trapping license season.

(18) Permittees or subpermittees listed on a beaver relocation permit may not trap commercially or recreationally for beaver within two miles in any direction from any site where beaver were released under a permit for two years after the release date.

(19) The permittee is responsible for performing the habitat suitability assessment per the WDFW-approved site assessment form, selecting the site for release, and ensuring that post-release monitoring is conducted by appropriately trained personnel. A subpermittee may not select sites for beaver release or release beaver without supervision by the permittee.

Beaver capture

(20) Captured beaver must be checked for lactation at the trap site. Any lactating beaver should be brought to the beaver husbandry facility while an attempt is made to capture the kits so the family group may be relocated together. If a captured beaver is lactating, it must be noted in the annual report.

(21) The permit does not authorize the use of body-gripping traps (as defined in RCW 77.15.192). A special trapping permit is required for the use of body-gripping traps (WAC 220-417-040).

Beaver housing and caretaking - Generally applicable provisions

(22) A permittee must operate or have access to at least one beaver husbandry facility that meets the minimum requirements outlined in the permit. This facility is subject to inspection by WDFW staff each permit year.

(23) The permittee and subpermittees may not house beaver at a site different than the facility(ies) indicated on their permit except in an emergency situation requiring veterinary care. Documentation of such events must be submitted to WDFW within seven days of the advent of the emergency.

(24) The normal interval for holding beaver captive before release will be less than 14 days, but permittees may hold beaver for longer if they notify the WDFW program coordinator by the 14-day mark and receive approval from the department's beaver relocation manager (or their designee).

(25) A permittee must keep beaver which are the same sex and from different family groups separate to prevent beaver-beaver conflict.

(26) The permittee will ensure that beaver held at a beaver husbandry facility prior to relocation shall have minimal contact with humans and domestic animals to prevent habituation and/or disease transmission. Domestic animals should not be allowed at the husbandry facility. If this is unavoidable, domestic animals should be fully vaccinated and should have no direct contact with, nor direct exposure to, wildlife.

(27) The permittee will ensure that beaver housed in a beaver husbandry facility are observed daily for disease or injury and will maintain a daily log of observations. This log will be submitted to WDFW with the annual report. If disease or injury of a captive beaver is suspected, the permittee must contact a WDFW wildlife veterinarian. No beaver may be relocated that appears sick or injured without approval from a WDFW wildlife veterinarian.

(28) In cases where a captive beaver is suffering and humane euthanasia is necessary, but the permittee is unable to reach a WDFW wildlife veterinarian, the permittee may contact a local veterinarian to perform humane euthanasia. Euthanasia must be provided in accordance with an animal's welfare, using humane techniques and at a reasonable time after admission to prevent unnecessary suffering of the animal. Permittees must follow the most current American Veterinary Medical Association Guidelines on Euthanasia.

(29) The permittee must report any beaver illness or death within 24 hours to a WDFW wildlife veterinarian and the WDFW permit program coordinator and abide by the following criteria:

(a) Any beaver which has expired from or is suspected of expiring from the zoonotic diseases such as tularemia, leptospirosis, yersiniosis, or giardia must be submitted for necropsy per a WDFW wildlife veterinarian's instructions.

(b) In the case of a beaver expiring from any cause besides disease, the permittee is encouraged to donate the carcass to a permitted museum, research institution, or tribal organization; a WDFW transfer authorization must accompany any transfer of a beaver carcass unless the institution is permitted to receive specimens. Otherwise, the permittee or subpermittee will dispose of deceased beaver through lawful burial, incineration, or a licensed rendering facility (WAC 220-440-090).

(30) The permit authorizes the use of commonly used ear tags and passive integrated transponder (PIT) tags. Nonpermanent, superficial marks such as nontoxic paint or tape may be used as appropriate for distinguishing individuals in temporary captivity. The permit does not authorize the application of other devices (such as VHF transmitters).

Beaver release

(31) Permittee is responsible for selecting the release site and is required to select sites which meet the following criteria:

(a) Show no current sign of beaver occupancy within 2,000 feet both up and downstream of the site;

(b) Show no culverts, buildings, or infrastructure which may be impacted by flooding or beaver structures within 2,000 feet both up and downstream of the site;

(c) Does not show sign of heavy livestock or native ungulate presence within 2,000 feet both up and downstream of the site;

(d) Have been assessed for habitat suitability criteria listed in RCW 77.32.585; and

(e) Does not violate movement of beavers across the division of Eastern and Western Washington as defined in WAC 220-450-150.

(32) The permit does not authorize trespass or the relocation of beaver to any site without the express permission of the property owner, land manager, or their designee.

(33) The permittee must conduct a site evaluation of the property to receive beaver(s) and assess habitat suitability following WDFW protocols prior to capture, handling, and holding of beaver. The permittee or subpermittee may not capture beaver before securing a release site for that animal.

(34) The permittee must receive a signed Landowner Attestation Form from the release site landowner, land manager, or their designee before any beaver may be captured for release on the property which includes an agreement to gain approval from neighboring property owners within one mile downstream of the release site. The permittee must submit a copy of each signed Landowner Attestation Form to WDFW as part of their annual report. A formal agreement with a government or tribal land management agency is acceptable in lieu of a Landowner Attestation Form for releases on public or tribal land.

(35) Permittees and subpermittees may not be held liable for property damage caused by beaver released using a beaver relocation permit per RCW 77.32.585.

(36) A violation of this section by a person who engages in wildlife relocation without a department permit is punishable under RCW 77.15.190, 77.15.430, or other applicable sections of the RCW and WAC, depending on the circumstances of the violation.

(37) A violation of this section by a person who has a beaver relocation permit is punishable under RCW 77.15.750(1).

Permit modification, suspension, or revocation

(38) The department may modify, suspend, or revoke a beaver relocation permit if the primary permittee or a subpermittee violates any department rule related to beaver relocation, wildlife possession, wildlife rehabilitation, wildlife trafficking, or permit conditions. Violations include, but are not limited to, mal-imprinting, which is the over-habituation to where animals lose fear of humans and predators, or taming wildlife in relation to humans or domestic animals at the beaver relocation facility. In addition, the department may modify, suspend, or revoke a beaver relocation permit if a permittee or a subpermittee, within the last 10 years, was convicted of any offense involving animal or child cruelty, neglect, abuse, or found guilty practicing veterinary medicine without an active license as determined by the veterinary board of governors.

(39) A primary permittee who is in violation of permit conditions or department beaver relocation rules, or whose subpermittee is in violation of permit conditions or department beaver relocation rules shall, in this order:

(a) Receive written warning(s) outlining remedies and a deadline of not less than seven days to come into compliance after which time the department may impose permit modification to remedy those violations such as restriction of permitted counties or increased frequency of beaver husbandry facility inspections.

(b) If the permittee is noncompliant after 14 days, the permit will be suspended. A permit will only be reinstated again if the permittee successfully implements a corrective action plan within the compliance deadline.

(c) A primary permittee will have the permit revoked if written warnings, permit modifications, compliance plan remedies, and permit

suspension processes with concurrent inspections do not result in permittee compliance. Nothing in this section prevents the department from acting immediately to remove animals or suspend or revoke beaver relocation permits in case of documented animal cruelty or adverse animal welfare.

(40) The department's revocation, modification, or suspension of a beaver relocation permit under this section does not preclude the department from referring a matter for potential criminal prosecution against the primary permittee, subpermittee, or both.

(41) Permittees whose beaver relocation permit is revoked may re-apply for a new permit three years after the date of revocation. Upon application, the department will consider previous beaver relocation permit performance and the nature of the previous noncompliance or violations when determining whether to issue a new permit. The department will deny an application if the basis for revocation has not been or is not likely to be resolved.

(42) Any permittee whose beaver relocation permit is revoked, modified, or suspended under this section may request an administrative hearing to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW.

WSR 24-21-127
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-18—Filed October 22, 2024, 9:06 a.m., effective November 22, 2024]

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

Purpose: Washington department of fish and wildlife is amending WAC 220-417-010 Trapping seasons and regulations to restrict trapping of red fox. The rule closes fox trapping within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot national forests to prevent accidental take of the state endangered Cascade red fox in areas where Cascade red fox are found to be present or may possibly be present in Washington. To protect the Cascade red fox in these areas, we are preventing harvest of the potentially overlapping lowland red fox, which cannot be distinguished from the Cascade red fox without genetic analyses.

Citation of Rules Affected by this Order: Amending WAC 220-417-010.

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

Other Authority: RCW 77.04.012, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 24-14-151 on July 3, 2024.

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

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

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

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

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

Date Adopted: September 27, 2024.

B. Baker
Chair

OTS-5496.3

AMENDATORY SECTION (Amending WSR 21-14-022, filed 6/28/21, effective 7/29/21)

WAC 220-417-010 Trapping seasons and regulations. (1) Statewide trapping seasons:

Table with 3 columns: SPECIES, SEASON DATES, RESTRICTIONS. Row 1: Badger, Beaver, Bobcat, Mink, Muskrat, Raccoon, ((Red Fox,)) River Otter, and Weasel; Nov. 1 - Mar. 31 during the current license year; (empty)

SPECIES	SEASON DATES	RESTRICTIONS
Marten	Nov. 1 - Mar. 31 during the current license year	CLOSED in Clallam, Jefferson, Mason, and Grays Harbor counties.
<u>Red Fox</u>	<u>Nov. 1 - Mar. 31</u> <u>during the current</u> <u>license year</u>	<u>CLOSED within the</u> <u>exterior boundaries</u> <u>of Mount Baker-</u> <u>Snoqualmie,</u> <u>Okanogan,</u> <u>Wenatchee, and</u> <u>Gifford Pinchot</u> <u>National Forests.</u>

(2) Participation requirements:

(a) A valid Washington state trapper's license is required.

(b) To be issued your first Washington state trapping license an individual must pass the Washington state trapper education exam.

(c) Licensed trappers must comply with reporting requirements in WAC 220-417-020.

WSR 24-21-131
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 22, 2024, 9:35 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: This rule making adopts amendments to the factory assembled structures (FAS) rules that increase fees by the fiscal growth factor rate of 6.40 percent. The fee increase is the maximum allowed by the state office of financial management for fiscal year 2025.

A fee increase is needed to cover the operating expenses of the FAS program. The FAS program's current fee levels are insufficient to cover current expenses. The increase will ensure that revenues match expenditures.

Citation of Rules Affected by this Order: Amending WAC 296-150C-3000, 296-150F-3000, 296-150I-3000, 296-150M-3000, 296-150P-3000, 296-150R-3000, 296-150T-3000, and 296-150V-3000.

Statutory Authority for Adoption: Chapters 43.22 and 43.22A RCW.

Adopted under notice filed as WSR 24-16-128 on August 6, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 0.

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

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

Date Adopted: October 22, 2024.

Joel Sacks
Director

OTS-5603.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150C-3000 Commercial coach fees.

Table with 2 columns and 6 rows. Row 1: GENERAL INFORMATION. Row 2: Manufacture: | Manufacturer #. Row 3: 1. Building use: | 2. Building occupancy:. Row 4: 3. Type of construction: VB | 4. Square footage of building:. Row 5: 5. Valuation of the building shall be based on the following: (bullet point) Square footage of the building multiplied by the amount in the BVD valuation table. Row 6: 6. Total valuation: | \$

PERMIT FEE		
7.	Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*		
8.	One year design review: (Valid for one year) multiply the total on line 7 by ((0.454) <u>0.483</u>)	\$
9.	Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.649) <u>0.690</u>)	\$
* Minimum plan review fee is 2 1/2 hours x ((\$98.70) <u>\$105.00</u>) per hour		
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10.	Fire and life-safety plan review:	
a.	One year design—Multiply the total on line 7 by ((0.194) <u>0.206</u>)	\$
b.	Master plan design—Multiply the total on line 7 by ((0.323) <u>0.343</u>)	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy		
PLUMBING PLAN-REVIEW FEE		
11.	Plumbing ((\$23.20 + \$7.50) <u>\$24.60 + \$7.90</u>) per fixture	\$
12.	Medical gas ((\$23.20 + \$7.50) <u>\$24.60 + \$7.90</u>) per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM		
13.	((12.99%) <u>13.82%</u>) of building permit + ((\$98.70) <u>\$105.00</u>)	\$
RESUBMITTAL		
14.	((12.99%) <u>13.82%</u>) of building permit + ((\$98.70) <u>\$105.00</u>)	\$
ELECTRICAL PLAN-REVIEW FEE		
15.	See WAC 296-46B-906(9) for electrical review fees	
INSIGNIA FEES		
16.	FIRST SECTION	\$ ((29.50) <u>31.30</u>)
17.	EACH ADDITIONAL SECTION	\$ ((18.10) <u>19.20</u>)
TOTAL FEES		
18.	Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
19.	Total fees due: Includes plan fees and insignia fees	\$
20.	Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	(\$48.70) <u>\$51.80</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1-299*)) <u>1,382*</u>	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1-299*)) <u>1,382*</u>	

RENEWAL FEE - 10% of permit fee × ((1.299)) 1.382 +	((98.70)) \$105.00
RESUBMIT FEE - 10% of permit fee × ((1.299)) 1.382 +	((98.70)) \$105.00
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1.299)) 1.382 +	((98.70)) \$105.00
PLUMBING PLAN FEE, ((\$23.20)) \$24.60 + PER FIXTURE FEE of	((7.50)) \$7.90
MEDICAL GAS PLAN FEE, ((\$23.20)) \$24.60 + PER OUTLET FEE of	((7.50)) \$7.90
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1.299)) 1.382	
One year design 15% of the permit fee × ((1.299)) 1.382	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	((98.70)) \$105.00 per hour
INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	((98.70)) \$105.00 per hour
RENEWAL FEE (minimum 1 hour)	((98.70)) \$105.00 per hour
ADDENDUM (minimum 1 hour)	((98.70)) \$105.00 per hour
PLANS APPROVED BY LICENSED PROFESSIONALS - 10% of permit fee × ((1.299)) 1.382 +	((98.70)) \$105.00
FEEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((98.70)) \$105.00 per hour
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee × ((1.299)) 1.382 +	((98.70)) \$105.00
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	((98.70)) \$105.00
TRAVEL (Per hour)	((98.70)) \$105.00
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((98.70)) \$105.00
TRAVEL (Per hour**)	((98.70)) \$105.00
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	((128.30)) \$136.50
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	((29.50)) \$31.30
EACH ADDITIONAL SECTION (NEW or ALTERATION)	((18.10)) \$19.20
REISSUED-LOST/DAMAGED	((18.10)) \$19.20
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((98.70)) \$105.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((18.10)) \$19.20
REFUND FEE	((32.30)) \$34.30

*Minimum plan review fee is 2 1/2 hours at the field technical service rate

**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments

***Per state guidelines

****Actual charges incurred

OTS-5604.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION		
Manufacture:	Manufacturer #	
1. Building use:	2. Building occupancy:	
3. Type of construction:	4. Square footage of building:	
5. Valuation of the building shall be based on the following:		
	• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:		\$
PERMIT FEE		
7. Calculate from building permit fee table using the total valuation		\$
STRUCTURAL PLAN REVIEW FEE*		
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.454)) 0.483		\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.649)) 0.690		\$
* Minimum plan review fee is 2 1/2 hours x ((\$111.10)) \$118.20 per hour		
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10. Fire and life-safety plan review:		
a. One year design—Multiply the total on line 7 by ((0.194)) 0.206		\$
b. Master plan design—Multiply the total on line 7 by ((0.323)) 0.343		\$
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE		
11. Plumbing ((\$23.20 + \$7.50)) \$24.60 + \$7.90 per fixture		\$
12. Medical gas ((\$23.20 + \$7.50)) \$24.60 + \$7.90 per gas outlet		\$
DESIGN RENEWAL OR ADDENDUM		
13. ((12.99%)) 13.82% of building permit + ((\$111.10)) \$118.20		\$
RESUBMITTAL		
14. ((12.99%)) 13.82% of building permit + ((\$111.10)) \$118.20		\$
ELECTRICAL PLAN-REVIEW FEE		
15. See WAC 296-46B-906(9) for electrical review fees		
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16. Notification to local enforcement agency fee:		\$ ((47.70)) 50.70
INSIGNIA FEES		
17. FIRST SECTION		\$ ((355.60)) 378.30
18. EACH ADDITIONAL SECTION		\$ ((31.60)) 33.60
TOTAL FEES		
19. Total plan review fees: Add lines 8 or 9 and 10 through 15		\$
20. Total fees due: Includes plan fees, insignia fees, and NLEA fees		\$
21. Total amount paid		\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
b Unfinished basements (all use group) = \$15.00 per sq. ft.
c For shell only buildings deduct 20 percent
d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((\$86.70) <u>\$92.20</u>)
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1-299*)) <u>1.382*</u>	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1-299*)) <u>1.382*</u>	
RENEWAL FEE - 10% of permit fee × ((1-299)) <u>1.382</u> +	((\$111.10) <u>\$118.20</u>)
RESUBMIT FEE - 10% of permit fee × ((1-299)) <u>1.382</u> +	((\$111.10) <u>\$118.20</u>)
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1-299)) <u>1.382</u> +	((\$111.10) <u>\$118.20</u>)
PLUMBING PLAN FEE, ((\$23.20)) <u>\$24.60</u> + PER FIXTURE FEE of	((\$7.50) <u>\$7.90</u>)
MEDICAL GAS PLAN FEE, ((\$23.20)) <u>\$24.60</u> + PER OUTLET FEE of	((\$7.50) <u>\$7.90</u>)
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1-299)) <u>1.382</u>	
One year design - 15% of the permit fee × ((1-299)) <u>1.382</u>	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	((\$111.10) <u>\$118.20</u> per hour)
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	((\$111.10) <u>\$118.20</u> per hour)
RENEWAL FEE (minimum 1 hour)	((\$111.10) <u>\$118.20</u>)
ADDENDUM (minimum 1 hour)	((\$111.10) <u>\$118.20</u> per hour)
PLANS APPROVED BY LICENSED PROFESSIONALS - 10% of permit fee × ((1-299)) <u>1.382</u> +	((\$111.10) <u>\$118.20</u>)
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$111.10) <u>\$118.20</u> per hour)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee × ((1-299)) <u>1.382</u> +	((\$111.10) <u>\$118.20</u>)
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	((\$111.10) <u>\$118.20</u>)
TRAVEL (Per hour**)	((\$111.10) <u>\$118.20</u>)
PER DIEM****	
HOTEL****	
MILEAGE****	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	

AUDIT (Per hour**)	(((\$111.10)) \$118.20
TRAVEL (Per hour**)	(((\$111.10)) \$118.20
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	(((\$355.60)) \$378.30
EACH ADDITIONAL SECTION	(((\$31.60)) \$33.60
REISSUED-LOST/DAMAGED	(((\$86.70)) \$92.20
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	(((\$111.10)) \$118.20
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	(((\$47.70)) \$50.70
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	(((\$17.60)) \$18.70
REFUND FEE	(((\$32.30)) \$34.30

*Minimum plan review fee is 2 1/2 hours at the field technical service rate.

**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

***Per state guidelines.

****Actual charges incurred.

OTS-5605.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 may be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation \$250.00
 Each Additional Final Violation \$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation Warning
 Second Final Violation \$250.00
 Third Final Violation \$500.00
 Each Additional Final Violation \$1,000.00

(c) Failure by a certified installer to affix a certification tag to an installed manufactured or mobile home:

First Final Violation Warning
 Second Final Violation \$250.00
 Third Final Violation \$500.00

Each Additional Final Violation	\$1,000.00
(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:	
First Final Violation	Warning
Each Additional Final Violation	\$250.00
(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:	
First Final Violation to Each Contractor in Violation	\$250.00
Each Additional Final Violation to Each Contractor in Violation	\$1,000.00

Fees and Refunds

The following fees are payable to the department in advance:

Installer test and certification	(\$321.80) \$342.30
Homeowner test and approval	(\$160.80) \$171.00
Manufactured home installation inspector test and certificate	(\$160.80) \$171.00
Refund	(\$31.90) \$33.90
Certification renewal	(\$160.80) \$171.00
Continuing education class	(\$64.10) \$68.20
Retake failed examination and training at scheduled class	(\$48.10) \$51.10
Manufactured home installer training manual (on thumb drive)	(\$15.90) \$16.90
Installer certification tag	(\$11.00) \$11.70
L&I manufactured home installation inspection permit*	See WAC 296-150M-3000 for fee

* Only available when L&I has an interagency agreement with the local enforcement agency in accordance with WAC 296-150I-0370.

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
- (b) Request a refund.

(4) An applicant who fails the examination shall not be entitled to a refund.

OTS-5606.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	(((\$216.00)) \$229.80
RESUBMITTAL FEE	(((\$95.30)) \$101.30
ADDENDUM (Approval expires on the same date as original plan.)	(((\$95.30)) \$101.30
ELECTRONIC PLAN SUBMITTAL FEE (((\$6.50)) \$6.90 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	(((\$236.10)) \$251.20
Heat pump	(((\$236.10)) \$251.20
Air conditioning	(((\$236.10)) \$251.20
Air conditioning with replacement furnace	(((\$236.10)) \$251.20
Gas furnace installation includes gas piping	(((\$236.10)) \$251.20
Fire safety inspection	(((\$236.10)) \$251.20
MECHANICAL	
Gas*** piping	(((\$104.80)) \$111.50
Wood stove	(((\$104.80)) \$111.50
Pellet stove	(((\$104.80)) \$111.50
Gas*** Room heater	(((\$104.80)) \$111.50
Gas*** Decorative appliance	(((\$104.80)) \$111.50
Range: Changing from electric to gas***	(((\$104.80)) \$111.50
Gas*** Water heater replacement	(((\$78.40)) \$83.40
ELECTRICAL	
Electric water heater replacement	(((\$131.20)) \$139.50
Electric water heater replacing gas*** water heater	(((\$131.20)) \$139.50
Each added or modified 120 volt circuit (maximum charge is two circuits)	(((\$131.20)) \$139.50
Each added 240 volt circuit (for other than heat pumps, air conditioners, furnaces, water heaters, ranges, hot tubs or spas)	(((\$131.20)) \$139.50
Hot tub or spa (power from home electrical panel)	(((\$131.20)) \$139.50
Replace main electrical panel/permanently installed transfer equipment	(((\$131.20)) \$139.50
Low voltage fire/intrusion alarm	(((\$131.20)) \$139.50
Any combination of furnace, range and water heater changing from electric to gas***	(((\$131.20)) \$139.50
PLUMBING	
Fire sprinkler system	(((\$294.90)) \$313.70
Each added fixture	(((\$78.40)) \$83.40
Replacement of water piping system (this includes two inspections)	(((\$263.30)) \$280.10
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	(((\$117.60)) \$125.10
Reroofs (may require a plan review)	(((\$210.30)) \$223.70
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	(((\$210.30)) \$223.70
Other structural changes (may require a plan review)	(((\$210.30)) \$223.70
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (per hour*)	(((\$86.00)) \$91.50
ALL REINSPECTIONS (per hour*)	(((\$86.00)) \$91.50
Manufactured home installation inspection permit (only available in cities and counties with L&I inspection contract)	(((\$602.90)) \$641.40
Refund	(((\$25.90)) \$27.50
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	(((\$25.90)) \$27.50
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	(((\$43.40)) \$45.80

Second and succeeding inspections of unlabeled sections (per hour*)	((\$95.30) <u>\$101.30</u>)
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (per hour* separate from other fees)	((\$95.30) <u>\$101.30</u>)
Red tag removal at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Increased frequency surveillance (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Attendance at manufacturers training classes (per hour* only)	((\$95.30) <u>\$101.30</u>)
Subpart "I" investigations (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Alterations to a labeled unit (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
IPIA Issues/Responses (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Monthly surveillance during a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Monthly surveillance at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Plant certifications, recertifications and addenda updates (per hour* plus travel time* and mileage** per each inspector)	((\$95.30) <u>\$101.30</u>)
Response to HBT audit during a regularly scheduled IPIA audit (per hour*)	((\$95.30) <u>\$101.30</u>)
Response to HBT audit at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Alternative construction (AC) letter inspections at placement site (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
Replacement of HUD labels (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
State administrative agency (SAA) inspection fee (per hour* plus travel time* and mileage**)	((\$95.30) <u>\$101.30</u>)
State administrative agency (SAA) dispute resolution filing fee	((\$95.30) <u>\$101.30</u>)
State administrative agency (SAA) dispute resolution (per hour*)	((\$95.30) <u>\$101.30</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour plus travel time* and mileage**)	((\$88.60) <u>\$94.20</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (one free copy per year upon request)	((\$17.30) <u>\$18.40</u>)
VARIANCE INSPECTION FEE	((\$210.30) <u>\$223.70</u>)
HOMEOWNER REQUESTED INSPECTION	((\$210.30) <u>\$223.70</u>)
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	((\$210.30) <u>\$223.70</u>)
DEMOLITION OF A MOBILE/MANUFACTURED HOME	((\$210.30) <u>\$223.70</u>)
ENERGY CONSERVATION PERMIT	((\$35.60) <u>\$37.80</u>)

NOTE: Local jurisdictions may have other fees that apply.

- *Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
- **Per state guidelines.
- ***Gas means all gases; natural, propane, etc.

OTS-5607.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	((\$44.90) <u>\$47.70</u>)
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	((\$127.50) <u>\$135.60</u>)
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	((\$168.60) <u>\$179.30</u>)
RESUBMITTAL FEE	((\$91.20) <u>\$97.00</u>)
ADDENDUM (Approval expires on same date as original plan.)	((\$91.20) <u>\$97.00</u>)
PLANS APPROVED BY LICENSED PROFESSIONALS	((\$31.80) <u>\$33.80</u>)
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$91.20) <u>\$97.00</u> per hour)
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$91.20) <u>\$97.00</u>)
TRAVEL (per hour)*	((\$91.20) <u>\$97.00</u>)

PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((\$91.20) <u>\$97.00</u>)
TRAVEL (per hour)*	((\$91.20) <u>\$97.00</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$136.20) <u>\$144.90</u>)
INSIGNIA FEES:	
STATE CERTIFIED	((\$32.30) <u>\$34.30</u>)
ALTERATION	((\$44.90) <u>\$47.70</u>)
REISSUED-LOST/DAMAGED	((\$16.50) <u>\$17.50</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$91.20) <u>\$97.00</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$16.70) <u>\$17.70</u>)
REFUND FEE	((\$32.30) <u>\$34.30</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

OTS-5608.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150R-3000 Recreational vehicle fees.

STATE PLAN	
INITIAL FILING FEE	((\$38.90) <u>\$41.30</u>)
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE	((\$108.80) <u>\$115.70</u>)
RESUBMITTAL FEE	((\$78.60) <u>\$83.60</u>)
ADDENDUM (Approval expires on same date as original plan.)	((\$78.60) <u>\$83.60</u>)
PLANS APPROVED BY LICENSED PROFESSIONALS	((\$15.90) <u>\$16.90</u>)
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	((\$78.70) <u>\$83.70</u> per hour)
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$78.70) <u>\$83.70</u>)
TRAVEL (per hour)*	((\$78.70) <u>\$83.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	

DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((\$78.70) <u>\$83.70</u>)
TRAVEL (per hour)*	((\$78.70) <u>\$83.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$117.70) <u>\$125.20</u>)
INSIGNIA FEES:	
STATE CERTIFIED	((\$28.90) <u>\$30.70</u>)
ALTERATION	((\$38.90) <u>\$41.30</u>)
REISSUED-LOST/DAMAGED	((\$13.90) <u>\$14.70</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$78.70) <u>\$83.70</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	((\$14.60) <u>\$15.50</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

SELF CERTIFICATION	
INITIAL FILING FEE	((\$38.90) <u>\$41.30</u>)
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE (one time fee)	((\$110.30) <u>\$117.30</u>)
RESUBMITTAL FEE	((\$78.70) <u>\$83.70</u>)
ADDENDUM (Approval expires on same date as original plan.)	((\$78.70) <u>\$83.70</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.80) <u>\$6.10</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.)	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$78.70) <u>\$83.70</u>)
TRAVEL (per hour)*	((\$78.70) <u>\$83.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	((\$78.70) <u>\$83.70</u>)
TRAVEL (per hour)*	((\$78.70) <u>\$83.70</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
SELF CERTIFIED	((\$28.90) <u>\$30.70</u>)
ALTERATION	((\$38.90) <u>\$41.30</u>)
REISSUED-LOST/DAMAGED	((\$13.90) <u>\$14.70</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$78.70) <u>\$83.70</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	((\$14.60) <u>\$15.50</u>)
REFUND FEE	((\$28.90) <u>\$30.70</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

OTS-5609.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	(((\$68.20)) \$72.50
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	(((\$198.50)) \$211.20
RENEWAL FEE	(((\$68.20)) \$72.50
RESUBMIT FEE	(((\$98.70)) \$105.00
ADDENDUM (Approval expires on same date as original plan)	(((\$98.70)) \$105.00
ELECTRONIC PLAN SUBMITTAL FEE (((\$6.60)) \$7.00 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	(((\$17.10)) \$124.50
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	(((\$18.40)) \$19.20
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	(((\$98.70)) \$105.00
TRAVEL (Per hour)*	(((\$98.70)) \$105.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	(((\$98.70)) \$105.00
TRAVEL (Per hour*)	(((\$98.70)) \$105.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	(((\$278.60)) \$296.40
EACH ADDITIONAL SECTION	(((\$26.60)) \$28.30
REISSUED-LOST/DAMAGED	(((\$68.20)) \$72.50
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	(((\$288.50)) \$306.90
Additional Feeder	(((\$54.50)) \$57.90
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	(((\$152.80)) \$162.50
Additional Feeder	(((\$38.60)) \$41.00
OTHER FEES:	

FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	(((\$98.70)) \$105.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free per year)	(((\$18.40)) \$19.20
REFUND FEE	(((\$32.30)) \$34.30

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

OTS-5610.1

AMENDATORY SECTION (Amending WSR 23-21-084, filed 10/17/23, effective 12/1/23)

WAC 296-150V-3000 Conversion vendor units and medical units— Fees.

INITIAL FILING FEE	(((\$48.70)) \$51.80
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	(((\$338.80)) \$360.40
INITIAL FEE - ONE YEAR DESIGN	(((\$138.40)) \$147.20
RENEWAL FEE	(((\$58.60)) \$62.30
RESUBMIT FEE	(((\$98.70)) \$105.00
ADDENDUM (Approval expires on same date as original plan)	(((\$98.70)) \$105.00
PLANS APPROVED BY LICENSED PROFESSIONALS	(((\$86.40)) \$91.60
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	(((\$91.40)) \$96.90 per hour
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	(((\$150.80)) \$160.40
INITIAL FEE - ONE YEAR DESIGN	(((\$91.40)) \$96.90
RENEWAL FEE	(((\$91.40)) \$96.90
ADDENDUM	(((\$91.40)) \$96.90
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	(((\$18.40)) \$19.20
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	(((\$98.70)) \$105.00
TRAVEL (Per hour)*	(((\$98.70)) \$105.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	(((\$147.90)) \$157.30
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	(((\$28.20)) \$30.00
REISSUED-LOST/DAMAGED	(((\$18.40)) \$19.20
EXEMPT	(((\$48.70)) \$51.80
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	(((\$98.70)) \$105.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	(((\$18.40)) \$19.20
REFUND FEE	(((\$32.30)) \$34.30

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

WSR 24-21-150

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 22, 2024, 3:09 p.m., effective November 22, 2024]

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

Purpose: Nursing fee rule housekeeping correction to totals. The department of health (department), in consultation with the Washington state board of nursing (board), has permanently adopted amendments to WAC 246-840-990 to make a housekeeping change to correct fee total amounts.

In January 2024, the department in consultation with the board, adopted amendments to WAC 246-840-990. These amendments were introduced to establish the multistate nursing license fee and increase the nursing center surcharge fee as directed by SSB 5499 (chapter 123, Laws of 2023). The nursing center surcharge fee increased from five to eight dollars per year for all initial licenses and renewal licenses for registered nurses and licensed practical nurses.

It was discovered that the fee totals for retired active and inactive licenses in WAC 246-840-990 were incorrect and did not include the increased surcharge fee. The department, in consultation with the board, has adopted further amendments to WAC 246-840-990 to ensure the fee totals accurately reflect the updated surcharge fee. There is no change to the fees being charged. The changes only correct a technical error in the total lines.

Citation of Rules Affected by this Order: Amending WAC 246-840-990.

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

Other Authority: RCW 18.79.202.

Adopted under notice filed as WSR 24-14-126 on July 2, 2024.

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

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

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

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

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

Date Adopted: October 22, 2024.

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

OTS-5474.1

AMENDATORY SECTION (Amending WSR 24-02-057, filed 12/28/23, effective 1/31/24)

WAC 246-840-990 Fees and renewal cycle. (1) A licensed practical nurse (LPN) or a registered nurse (RN) must renew their single or multistate license every year on the licensee's birthday.

(2) When applying for a license an applicant for an initial or renewal LPN license or RN license must pay, in addition to the application fee, the University of Washington (UW) health sciences online library access (HEAL-WA) surcharge and the central nursing resource center (nursing center) surcharge, as required in RCW 43.70.110.

(3) An advanced registered nurse practitioner (ARNP) must renew their license every two years on the licensee's birthday. An ARNP must also hold a valid single or multistate RN license and pay all associated fees every year on the licensee's birthday.

(4) A nursing technician must renew their registration every year on the practitioner's birthday. The renewal must be accompanied by an attestation as required in RCW 18.79.370 that includes the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire 30 days after the anticipated graduation date. The expiration date may be extended to 60 days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

(5) A practitioner who holds more than one credential will be charged separate fees for each credential, in compliance with WAC 246-12-020 through 246-12-051 and RCW 43.70.110.

(6) The following nonrefundable fees will be charged:

Application Fees

	Registered Nurse	Multistate Registered Nurse ²	Licensed Practical Nurse	Multistate Licensed Practical Nurse ²	Advanced Registered Nurse Practitioner ¹	Nursing Technician
Application Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0
Multistate License Fee	0	65	0	65	0	0
Total	138	203	93	158	130	25

¹ Pays a \$130 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

² Providers currently licensed in Washington state pay the \$65 multistate license fee to convert their existing license to a multistate license.

On-Time Renewal

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner ²	Nursing Technician
Renewal Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0

On-Time Renewal

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner ²	Nursing Technician
Multistate License Fee	0	20	0	20	0	0
Total	138	158	93	113	130	25

²Pays a \$130 renewal fee per specialty license once every two years. Must also renew RN license every year.

Late Renewal - Up to One Year Past the Expiration

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner ³	Nursing Technician
Renewal Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0
Late Renewal Penalty	50	50	50	50	50	25
Multistate License Fee	0	20	0	20	0	0
Total	188	208	143	163	180	50

³Pays \$50 per specialty license in late fees.

Late Renewal - One Year or More Expired

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner	
Renewal Fee	114	114	69	69	130	
HEAL-WA Surcharge	16	16	16	16	0	
Nursing Center Surcharge	8	8	8	8	0	
Late Renewal Penalty	50	50	50	50	50	
Expired Licenses Reissuance	70	70	70	70	0	
Multistate License Fee	0	20	0	20	0	
Total	258	278	213	233	180	

Retired Active Renewal

	Registered Nurse		Licensed Practical Nurse			
Renewal Fee	44		44			
HEAL-WA Surcharge	16		16			
Nursing Center Surcharge	8		8			
Total	((65)) 68		((65)) 68			

Retired Active Renewal—Late Renewal - Up to One Year Past the Expiration

	Registered Nurse		Licensed Practical Nurse			
Renewal Fee	44		44			
HEAL-WA Surcharge	16		16			
Nursing Center Surcharge	8		8			
Late Renewal Penalty	45		45			
Total	((110)) 113		((110)) 113			

Retired Active Renewal—Late Renewal - One Year or More Expired

	Registered Nurse		Licensed Practical Nurse			
Renewal Fee	44		44			
HEAL-WA Surcharge	16		16			
Nursing Center Surcharge	8		8			
Late Renewal Penalty	45		45			
Expired License Reissuance	70		70			
Total	((180)) 183		((180)) 183			

Inactive License Renewal

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	
Renewal Fee	44		44		40	
HEAL-WA Surcharge	16		16		0	
Nursing Center Surcharge	8		8		0	
Total	((65)) 68		((65)) 68		40	

Inactive License Renewal—Late Renewal - Up to One Year Past the Expiration

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	
Renewal Fee	44		44		40	
HEAL-WA Surcharge	16		16		0	
Nursing Center Surcharge	8		8		0	
Late Renewal Penalty	45		45		40	
Total	((110)) 113		((110)) 113		80	

Inactive License Renewal—Late Renewal - One Year or More Expired

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	
Renewal Fee	44		44		40	
HEAL-WA Surcharge	16		16		0	
Nursing Center Surcharge	8		8		0	
Late Renewal Penalty	45		45		40	
Expired License Reissuance	40		40		40	
Total	((150)) 153		((150)) 153		120	

Other fees

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	Nursing Technician
Duplicate Licensee or Registration	20		20		20	15
Verification Licensure	25		25		25	25

WSR 24-21-160
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed October 23, 2024, 8:33 a.m., effective November 23, 2024]

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

Purpose: To amend the types and credit amounts of some professional development hours (PDH) that professional land surveyors use when reporting their PDH during renewal periods.

Citation of Rules Affected by this Order: Amending WAC 196-16-120.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 24-17-056 on August 15, 2024.

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

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

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

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

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

Date Adopted: October 17, 2024.

Ken Fuller
Director

OTS-5766.1

AMENDATORY SECTION (Amending WSR 18-22-075, filed 11/2/18, effective 12/3/18)

WAC 196-16-120 Units. Qualifying activities will accrue PDH as follows:

- 1. College hours:
a. Completion of 1 college semester hour 45 PDH
b. Completion of 1 college quarter hour 30 PDH
2. 1 Continuing education unit 10 PDH
3. For publication or presentation of each:
a. Authored technical paper or article 10 PDH
b. Authored book 30 PDH
4. Membership in professional/technical societies or government committees or boards. (Not to exceed 5 PDH/year) 2 1/2 PDH

- | | |
|--|--------------|
| 5. For each hour of attendance at professional or technical society meetings with an informational program. (Not to exceed ((5)) <u>10</u> PDH/year) | 1 PDH |
| 6. For each hour of attendance at <u>board meetings or committee meetings</u> ((or hearings)) of the board. (Not to exceed ((7 1/2)) <u>10</u> PDH/year) | 1 PDH |
| 7. For each hour of preparation and subsequent presentation (*) of a professional development program at seminars, professional/technical meetings, conventions or conferences. (Not to exceed 10 PDH/year) (*) <i>This credit does not apply to full-time faculty</i> | 1 PDH |
| 8. For each hour of participation in committees of organizations whose purpose is to develop codes, standards, examinations and regulations. | 1 PDH |
| 9. For each hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment. (Not to exceed 5 PDH/year) | 1 PDH |
| 10. For each hour of participation in organized courses, including employer provided courses, on ((first aid/safety,)) technical or management skills. <u>(Not to exceed 5 PDH/year)</u> | 1 PDH |
| 11. For each hour of participation in sessions, or courses sponsored by technical or professional societies, organizations or the board. | 1 PDH |
| 12. Each hour of self-study. (Not to exceed 5 PDH/year) | 1 PDH |
| 13. For reading chapters 58.09 RCW and 332-130 WAC. | 2 PDH |
| 14. Completion of CFedS program. | 30 PDH |
| <u>15. For each hour of participation in organized first aid, safety, and security training.</u> (Not to exceed 5 PDH/year) | <u>1 PDH</u> |

WSR 24-21-163

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 23, 2024, 9:15 a.m., effective November 23, 2024]

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

Purpose: The health care authority is revising these rules to remove the requirement that physician assistants work under the supervision of a physician and to make other related housekeeping changes.

Citation of Rules Affected by this Order: Amending WAC 182-501-0135, 182-531-0425, 182-531-1300, 182-531-1720, 182-534-0200, and 182-552-0001.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-19-099 on September 18, 2024.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: October 23, 2024.

Wendy Barcus
Rules Coordinator

OTS-5778.2

AMENDATORY SECTION (Amending WSR 23-14-073, filed 6/29/23, effective 8/1/23)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service (FFS) clients and managed care organization (MCO) enrollees.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a) (2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section:

"Agency's designee" - See WAC 182-500-0010.

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization

(MCO) who agrees to be assigned as a primary provider and coordinator of services for an FFS client or MCO enrollee in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for non-emergency services.

"At-risk" - A term used to describe one or more of the following:

(a) A client with a medical history of:

- (i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or
 - (ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.
- (b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:
- (i) Indications of forging or altering prescriptions;
 - (ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;
 - (iii) Noncompliance with medical or drug and alcohol treatment;
 - (iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;
 - (v) Arrests for diverting controlled substance prescriptions;
 - (vi) Positive urine drug screen for illicit street drugs or non-prescribed controlled substances;
 - (vii) Negative urine drug screen for prescribed controlled substances; or
 - (viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to MCO enrollees with multiple health, behavioral, and social needs to improve care coordination, client education, and client self-management skills.

"Client" - See WAC 182-500-0020.

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. 438.114.

"Fee-for-service" or **"FFS"** - See WAC 182-500-0035.

"Fee-for-service client" or **"FFS client"** - A client not enrolled in an agency-contracted MCO.

"Just cause" - A legitimate reason to justify the action taken including, but not limited to, protecting the health and safety of the client.

"Managed care organization (MCO) enrollee" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

"Prescriber of controlled substances" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

- (a) A physician under chapter 18.71 RCW;
- (b) A physician assistant under chapter 18.71A RCW;
- (c) An osteopathic physician under chapter 18.57 RCW; and
- (d) ~~((An osteopathic physician assistant under chapter 18.57A RCW; and~~
- ~~(e-))~~ An advanced registered nurse practitioner under chapter 18.79 RCW.

"Primary care provider" or "PCP" - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or agency's designee selects a client for PRC review when either or both of the following occur:

- (a) An agency or MCO claims utilization review report indicates the client has not used health care services appropriately; or
- (b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **Clients not selected for PRC review.** Clients are not reviewed or placed into the PRC program when they:

- (a) Are in foster care;
- (b) Are covered under state-only funded programs;
- (c) Do not have medicaid as the primary payor; or
- (d) Are covered under the alien emergency medical (AEM) program, according to WAC 182-507-0115.

(5) **Prior authorization.** When an FFS client is selected for PRC review, the prior authorization process as defined in WAC 182-500-0085 may be required:

- (a) Before or during a PRC review; or
- (b) When the FFS client is currently in the PRC program.

(6) **Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

(7) **Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be reviewed for placement in the PRC program when the review shows the usage is not medically necessary and either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of 90 consecutive calendar days in the previous 12 months. The client:

(i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received 10 or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;

(v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had 10 or more office visits;

(b) Any one of the following occurred within a period of 90 consecutive calendar days in the previous 12 months. The client:

(i) Made two or more emergency department visits;

(ii) Exhibits "at-risk" usage patterns;

(iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or

(iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the 90-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous 12 months:

(i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or

(ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.

(8) **PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case one or more of the following actions take place:

(i) The MCO:

(A) Refers the MCO enrollee:

(I) For education on appropriate use of health care services; or

(II) To other support services or agencies; or

(B) Places the MCO enrollee into the PRC program for an initial placement period of no less than 24 months. For MCO enrollees younger than 18 years of age, the MCO must get agency approval before placing the MCO enrollee into the PRC program; or

(ii) The agency places the FFS client into the PRC program for an initial placement period of no less than 24 months.

(9) **Initial placement in the PRC program.**

(a) When an FFS client is initially placed in the PRC program, the agency places the FFS client for no less than 24 months with a primary care provider (PCP) for care coordination and a pharmacy for all medication prescriptions and one or more of the following types of health care providers:

- (i) Prescriber of controlled substances if different than PCP;
- (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. An FFS client may receive covered emergency services from any hospital;
- (iii) Another qualified provider type, as determined by agency program staff on a case-by-case basis; or
- (iv) Additional pharmacies on a case-by-case basis.

(b) Based on a medical necessity determination, the agency may make an exception to PRC rules when in the best interest of the client. See WAC 182-501-0165 and 182-501-0160.

(c) When an MCO enrollee is initially placed in the PRC program, the MCO restricts the MCO enrollee for no less than 24 months with a primary care provider (PCP) for care coordination and a primary pharmacy for all medication prescriptions and one or more of the following types of health care providers:

- (i) Prescriber of controlled substances if different than PCP;
- (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. An MCO enrollee may receive covered emergency services from any hospital;
- (iii) Another qualified provider type, as determined by MCO program staff on a case-by-case basis; or
- (iv) Additional pharmacies on a case-by-case basis.

(10) MCO enrollees changing MCOs. MCO enrollees:

(a) Remain in the same MCO for no less than 12 months for initial placement and whenever the enrollee changes MCOs, unless:

(i) The MCO enrollee moves to a residence outside the MCO's service area and the MCO is not available in the new location;

(ii) The MCO enrollee's assigned PCP no longer participates with the MCO and is available in another MCO, and the MCO enrollee wishes to remain with the current provider;

(iii) The MCO enrollee is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The MCO enrollee is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The MCO enrollee is an American Indian/Alaska Native.

(b) Placed in the PRC program must remain in the PRC program for no less than 24 months regardless of whether the MCO enrollee changes MCOs or becomes an FFS client.

(11) Notifying the client about placement in the PRC program.

When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

(a) Informs the client of the reason for the PRC program placement;

(b) Informs the client of the providers the client has been assigned to;

(c) Directs the client to respond to the agency or MCO to take the following actions if applicable:

- (i) Change assigned providers, subject to agency or MCO approval;
- (ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from agency or MCO program staff; and
(d) Informs the client of administrative hearing or appeal rights (see subsection (16) of this section).

(12) **Selection and role of assigned provider.** A client has a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.

(ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.

(A) The PCP:

(I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;

(II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange; and

(III) Makes referrals to behavioral health treatment for clients who are using the emergency department for behavioral health treatment issues.

(B) The assigned PCP must be one of the following:

(I) A physician;

(II) An advanced registered nurse practitioner (ARNP); or

(III) A licensed physician assistant (PA) (~~(, practicing with a supervising physician)~~).

(iii) Prescriber of controlled substances prescribes all controlled substances for the client;

(iv) Pharmacy fills all prescriptions for the client; and

(v) Hospital provides all hospital nonemergency services.

(c) A client placed in the PRC program must remain with the assigned providers for 12 months after the assignments are made, unless:

(i) The client moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;

(iii) The provider refuses to continue to serve the client;

(iv) The client did not select the provider. The client may request to change an assigned provider once within 30 calendar days of the assignment;

(v) The MCO enrollee's assigned PCP no longer participates with the MCO. In this case, the MCO enrollee may select a new provider from the list of available providers in the MCO network or follow the assigned provider to the new MCO; or

(vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.

(d) When an assigned prescribing provider no longer contracts with the agency or the MCO:

(i) All prescriptions from the provider are invalid 30 calendar days following the date the contract ends; and

(ii) The client must choose or be assigned another provider according to the requirements in this section.

(13) PRC placement.

(a) The initial PRC placement is no less than 24 consecutive months.

(b) The second PRC placement is no less than an additional 36 consecutive months.

(c) Each subsequent PRC placement is no less than 72 consecutive months.

(14) Agency or MCO review of a PRC placement period. The agency or MCO reviews a client's use of health care services before the end of each PRC placement period described in subsection (13) of this section using the guidelines in subsection (7) of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection (7) of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

(v) Of administrative hearing or appeal rights (see subsection (16) of this section); and

(vi) Of the rules that support the decision.

(c) The agency or MCO may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a substance use disorder (SUD) service provider certified by the agency under chapter 182-538D WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection (7) of this section for six consecutive months after the date the treatment ends; or

(iv) Successfully stabilizes due to the usage of treatment medications including, but not limited to, Buprenorphine.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client remains placed in the PRC program regardless of change in eligibility program type or change in address.

(15) Client financial responsibility. A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a nonpharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection (12) of this section. See WAC 182-502-0160.

(16) Right to administrative hearing or appeal.

(a) An FFS client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. An FFS client must request an administrative hearing from the agency within 90 days of

the written notice of placement or continued placement to exercise this right.

(b) An MCO enrollee who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under chapter 182-538 WAC.

(c) The agency conducts an administrative hearing according to chapter 182-526 WAC.

(d) A client who requests an administrative hearing or appeal within 10 calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

(e) A client who requests an administrative hearing or appeal more than 10 calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program until a final administrative order is entered that orders the client's removal from the program.

(f) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

(g) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and before the date the initial order is issued based on a showing of just cause.

OTS-5779.1

AMENDATORY SECTION (Amending WSR 21-20-132, filed 10/6/21, effective 11/6/21)

WAC 182-531-0425 Collaborative care. (1) Under the authority of RCW 74.09.497, and subject to available funds, the medicaid agency covers collaborative care provided in clinical care settings.

(2) For the purposes of this section:

(a) **Collaborative care** means a specific type of integrated care where medical providers and behavioral health providers work together to address behavioral health conditions, including mental health conditions and substance use disorders.

(b) **Collaborative care model** is a model of behavior health integration that enhances usual clinical care by adding two key services:

(i) Care management support for clients receiving behavioral health treatment; and

(ii) Regular psychiatric or board certified addiction medicine consultation with the clinical care team, particularly for clients whose conditions are not improving.

(c) **Collaborative care team** means a team of licensed behavioral health professionals operating within their scope of practice who participate on the clinical care team along with the collaborative care billing provider to provide collaborative care to eligible clients. The team must include a collaborative care billing provider, a behavioral health care manager, and a psychiatric consultant. Professionals making up this team include, but are not limited to:

(i) Advanced registered nurses;

- (ii) Substance use disorder professionals (SUDP);
- (iii) Substance use disorder professional trainees (SUDPT) under the supervision of a certified SUDP;
- (iv) Marriage and family therapists;
- (v) Marriage and family therapist associates under the supervision of a licensed marriage and family therapist or equally qualified mental health practitioner;
- (vi) Mental health counselors;
- (vii) Mental health counselor associates under the supervision of a licensed mental health counselor, psychiatrist, or physician;
- (viii) Physicians;
- (ix) Physician assistants (~~(under the supervision of a licensed physician)~~);
- (x) Psychiatrists;
- (xi) Psychiatric advanced registered nurses;
- (xii) Psychologists;
- (xiii) Registered nurses;
- (xiv) Social workers;
- (xv) Social worker associate-independent clinical, under the supervision of a licensed independent clinical social worker or equally qualified mental health practitioner; and
- (xvi) Social worker associate-advanced, under the supervision of a licensed independent clinical social worker, advanced social worker, or equally qualified mental health practitioner.

(3) The behavioral health care manager is a designated licensed professional with formal education or specialized training in behavioral health (including social work, nursing, or psychology), working under the oversight and direction of the treating medical provider.

(4) The collaborative care billing provider must meet all of the following:

- (a) Be enrolled with the agency as one of the following:
 - (i) A physician licensed under Titles 18 RCW and 246 WAC;
 - (ii) An advanced registered nurse practitioner licensed under Titles 18 RCW and 246 WAC;
 - (iii) A federally qualified health center (FQHC);
 - (iv) A rural health clinic (RHC); or
 - (v) A clinic that is not an FQHC or RHC that meets the requirements of Titles 70 RCW and 247 WAC.
- (b) Complete, sign, and return the Attestation for Collaborative Care Model, form HCA 13-0017, to the agency; and
- (c) Agree to follow the agency's guidelines for practicing a collaborative care model.

- (5) Providers of collaborative care must:
- (a) Use a registry to track the client's clinical outcomes;
 - (b) Use at least one validated clinical rating scale;
 - (c) Ensure the registry is used in conjunction with the practice's electronic health records (EHR);
 - (d) Include a plan of care; and
 - (e) Identify outcome goals of the treatments.

(6) If a provider no longer meets the agreed upon requirements in the agency's Attestation for Collaborative Care Model, form HCA 13-0017, the provider must immediately notify the agency. The agency does not pay for collaborative care if a provider does not meet the agreed upon requirements.

(7) Providers are subject to post pay review by the agency. The agency may recoup payment if the provider is found to have not met the

requirements for providing collaborative care as agreed to in the agency's Attestation for Collaborative Care Model, form HCA 13-0017.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1300 Foot care services for clients ((~~twenty-one~~) 21 years of age and older. (1) This section addresses care of the lower extremities (foot and ankle) referred to as foot care and applies to clients ((~~twenty-one~~) 21 years of age and older.

(2) The department covers the foot care services listed in this section when those services are provided by any of the following health care providers and billed to the department using procedure codes and diagnosis codes that are within their scope of practice:

(a) Physicians or ((~~physician's assistants-certified (PA-C)~~) physician assistants;

(b) Osteopathic physicians, surgeons, or ((~~physician's assistant-certified (PA-C)~~) physician assistants;

(c) Podiatric physicians and surgeons; or

(d) Advanced registered nurse practitioners (ARNP).

(3) The department covers evaluation and management visits to assess and diagnose conditions of the lower extremities. Once diagnosis is made, the department covers treatment if the criteria in subsection (4) of this section are met.

(4) The department pays for:

(a) Treatment of the following conditions of the lower extremities only when there is an acute condition, an exacerbation of a chronic condition, or presence of a systemic condition such as metabolic, neurologic, or peripheral vascular disease and evidence that the treatment will prevent, cure or alleviate a condition in the client that causes pain resulting in the inability to perform activities of daily living, acute disability, or threatens to cause the loss of life or limb, unless otherwise specified:

(i) Acute inflammatory processes such as, but not limited to tendonitis;

(ii) Circulatory compromise such as, but are not limited to:

(A) Lymphedema;

(B) Raynaud's disease;

(C) Thromboangiitis obliterans; and

(D) Phlebitis.

(iii) Injuries, fractures, sprains, and dislocations;

(iv) Gout;

(v) Lacerations, ulcerations, wounds, blisters;

(vi) Neuropathies (e.g., reflex sympathetic dystrophy, secondary to diabetes, charcot arthropathy);

(vii) Osteomyelitis;

(viii) Post-op complications;

(ix) Warts, corns, or calluses in the presence of an acute condition such as infection and pain effecting the client's ability to ambulate as a result of the warts, corns, or calluses and meets the criteria in subsection (4) of this section;

(x) Soft tissue conditions, such as, but are not limited to:

(A) Rashes;

(B) Infections (fungal, bacterial);

(C) Gangrene;

- (D) Cellulitis of lower extremities;
- (E) Soft tissue tumors; and
- (F) Neuroma.
- (xi) Nail bed infections (paronychia); and
- (xii) Tarsal tunnel syndrome.

(b) Trimming and/or debridement of nails to treat, as applicable, conditions from the list in subsection (4) (a) of this section. The department pays for one treatment in a (~~sixty~~) 60-day period. The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;

(c) A surgical procedure to treat one of the conditions in subsection (4) of this section performed on the lower extremities, and performed by a qualified provider;

(d) Impression casting to treat one of the conditions in subsection (4) of this section. The department includes (~~ninety~~) 90-day follow-up care in the reimbursement;

(e) Custom fitted and/or custom molded orthotic devices to treat one of the conditions in subsection (4) of this section.

(i) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and

(ii) The department includes an evaluation and management (E&M) fee reimbursement in addition to an orthotic fee reimbursement if the E&M services are justified and well documented in the client's medical record.

(5) The department does not pay for:

(a) The following radiology services:

(i) Bilateral X-rays for a unilateral condition; or

(ii) X-rays in excess of three views; or

(iii) X-rays that are ordered before the client is examined.

(b) Podiatric physicians or surgeons for X-rays for any part of the body other than the foot or ankle.

AMENDATORY SECTION (Amending WSR 19-22-017, filed 10/25/19, effective 11/25/19)

WAC 182-531-1720 Tobacco/nicotine cessation counseling. (1) The medicaid agency covers tobacco/nicotine cessation counseling when:

(a) Delivered by qualified providers through an agency-approved tobacco/nicotine cessation telephone counseling service;

(b) The client is pregnant or in the postpartum period as defined in 42 C.F.R. 435.170. The agency pays for face-to-face office visits for tobacco/nicotine cessation counseling for these clients with the following limits:

(i) Counseling must be provided by qualified physicians, advanced registered nurse practitioners (ARNPs), physician assistants (~~certified (PA-Cs)~~), naturopathic physicians, pharmacists, certified nurse-midwives (CNM), licensed midwives (LM), psychologists, or dentists;

(ii) Two tobacco/nicotine cessation counseling attempts are allowed every (~~twelve~~) 12 months. An attempt is defined as up to four tobacco/nicotine cessation counseling sessions; and

(iii) The agency does not cover more than one face-to-face tobacco/nicotine cessation counseling session per client, per day. The pro-

vider must keep written documentation in the client's record for each session.

(c) Provided through screening, brief intervention, and referral to treatment (SBIRT). To receive payment for tobacco/nicotine cessation counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

(2) A provider may prescribe pharmacotherapy for tobacco/nicotine cessation when the provider considers the treatment appropriate for the client. The agency covers certain pharmacotherapy for tobacco/nicotine cessation, including prescription drugs and over-the-counter (OTC) nicotine replacement therapy (NRT), as described in chapter 182-530 WAC.

OTS-5780.1

AMENDATORY SECTION (Amending WSR 15-12-074, filed 5/29/15, effective 7/1/15)

WAC 182-534-0200 Enhanced payments for EPSDT screens for children in out-of-home placement. The medicaid agency pays providers an enhanced fee for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) screens provided to children in out-of-home placement. See the agency's EPSDT provider guide for specific billing code requirements, and see the agency's fee schedule for the fee.

(1) For the purposes of this section, out-of-home placement means temporary, (~~(twenty-four)~~) 24 hour per day, substitute care for a child:

(a) Placed away from the child's parents or guardians in licensed, paid, out-of-home care; and

(b) For whom the department of social and health services or a licensed or certified child placing agency has placement and care responsibility.

(2) The agency pays an enhanced fee to the providers listed in subsection (3) of this section for EPSDT screens provided to only those children in out-of-home placement.

(3) The following providers are eligible to perform EPSDT screens and bill the enhanced rate for children in out-of-home placement:

(a) EPSDT clinics;

(b) Physicians;

(c) Advanced registered nurse practitioners (ARNPs); and

(d) Physician assistants (PAs) (~~(working under a physician's guidance)~~).

(4) To be paid an enhanced fee, services furnished by the providers listed in subsection (3) of this section must meet the federal requirements for EPSDT screens at 42 C.F.R. Part 441 Subpart B.

(5) The provider must retain documentation of the EPSDT screens in the client's medical file. The provider must use the agency's Well Child Exam forms or provide equivalent information. The Well Child Exam forms include the required elements for an EPSDT screen. The Well Child Exam forms are available for downloading at no charge at <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(6) The agency evaluates client files and payments made under this program. The agency may recover the enhanced payment amount when:

- (a) The client was not in out-of-home placement as defined in subsection (1) of this section when the EPSDT screen was provided; or
- (b) Documentation was not in the client's medical file (see subsection (5) of this section).

OTS-5781.1

AMENDATORY SECTION (Amending WSR 19-21-087, filed 10/14/19, effective 11/14/19)

- WAC 182-552-0001 Respiratory care—General.** (1) The respiratory care, equipment, and supplies described in this chapter applies to:
- (a) Medicaid clients who require respiratory care in their homes, community residential settings, and skilled nursing facilities;
- (b) Providers who supply respiratory care to medicaid clients;
- and
- (c) Licensed health care professionals whose scope of practice allows for the provision of respiratory care.
- (2) The agency covers the respiratory care listed in this chapter according to the limitations and requirements in this chapter.
- (3) The agency pays for respiratory care for medicaid clients when it is:
- (a) Covered;
- (b) Within the scope of the eligible client's medical care program;
- (c) Medically necessary, as defined under chapter 182-500 WAC;
- (d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant (~~certified (PAC)~~) within the scope of (~~his or her~~) their licensure;
- (e) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid billing guides and provider alerts;
- (f) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid billing guides and provider alerts; and
- (g) Provided and used within accepted medical or respiratory care community standards of practice.
- (4) The agency does not require prior authorization for requests for covered respiratory care for medicaid clients that meets the clinical criteria set forth in this chapter.
- (5) The agency requires prior authorization for covered respiratory care for medicaid clients when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.
- (a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.
- (b) Refer to WAC 182-552-1300, 182-552-1325, 182-552-1350, and 182-552-1375 for specific details regarding authorization.
- (6) The agency evaluates on a case-by-case basis for medical necessity and appropriateness items, procedures, and services that do

not have an established procedure code available and which are billed using miscellaneous procedure codes.

WSR 24-21-164

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 23, 2024, 9:31 a.m., effective November 23, 2024]

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

Purpose: The health care authority (agency) repealed these rule sections because they contain redundant and/or outdated language and cross reference(s) to nonexistent rules. The same information can be found within Title 182 WAC or within another agency's rules. Detailed information is listed below:

WAC 182-556-0100 references chapter 388-877B WAC, which is no longer in existence. Chemical dependency is also an outdated term. WAC 182-502-0002 includes substance use disorder professionals for the treatment of substance use disorders, as well as mental health providers and peer counselors. WAC 182-501-0060 (6)(d) includes behavioral health services in the coverage table, and WAC 182-501-0065(2) also includes behavioral health services. Behavioral health is defined in WAC 182-538D-0200. Therefore, this rule section is repealed and no longer necessary.

WAC 182-556-0300 Personal care services, is listed in WAC 182-501-0060 (6)(d), under the coverage table, and is also referenced in WAC 182-501-0065 (2)(bb) Health care coverage—Description of service categories. Therefore, this rule section is repealed and no longer necessary.

The following sections are repealed as they are no longer necessary and the information is found in other rule(s):

WAC 182-556-0400(1) - See WAC 182-550-1900(2).

WAC 182-556-0400(2) - See WAC 182-540-005 and 182-540-015 under the kidney disease program and kidney center services, chapter 182-540 WAC.

WAC 182-556-0400(3) - See WAC 182-550-1100(4) Hospital care—General.

WAC 182-556-0400(4) - See WAC 182-533-0701, 182-533-0730, and 182-550-1100 (5)(a).

WAC 182-556-0400(5) - Outdated language and cross references that no longer exist. See WAC 182-501-0060(d) and 182-501-0065 (2)(c) for behavioral health services.

WAC 182-556-0400(6) - See WAC 182-531-0200(6).

WAC 182-556-0400(7) - See WAC 182-501-0065, 182-550-5800, and 182-531-1700.

WAC 182-556-0600 - See WAC 182-531-1400.

The agency changed the title of this chapter to chiropractic services (reflecting the remaining section in this chapter). See the agency's other rule making, filed under WSR 24-13-055, regarding chiropractic services.

Citation of Rules Affected by this Order: Repealing WAC 182-556-0100, 182-556-0300, 182-556-0400, and 182-556-0600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-17-066 on August 15, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 4.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 4.

Date Adopted: October 23, 2024.

Wendy Barcus
Rules Coordinator

OTS-5763.2

Chapter 182-556 WAC
(~~(MEDICAL CARE—OTHER SERVICES PROVIDED)~~) CHIROPRACTIC SERVICES

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-556-0100 Chemical dependency treatment services.
- WAC 182-556-0300 Personal care services.
- WAC 182-556-0400 Limitations on services available to categorically needy Washington apple health clients.
- WAC 182-556-0600 Mental health services.

WSR 24-21-166

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 23, 2024, 10:00 a.m., effective November 23, 2024]

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

Purpose: The health care authority (agency) amended WAC 182-550-5130 to remove subsections (5) and (6). The agency does not distribute any state funded grants for the institution for mental diseases disproportionate share hospital; there is no state money allocated to the institution for mental diseases. The agency repealed WAC 182-550-5210, 182-550-5220, and 182-550-5380; old information, the programs have not been funded by the legislature for over 10 years.

Citation of Rules Affected by this Order: Repealing WAC 182-550-5210, 182-550-5220 and 182-550-5380; and amending WAC 182-550-5130.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-19-090 on September 17, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 3.

Date Adopted: October 23, 2024.

Wendy Barcus
Rules Coordinator

OTS-5665.1

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-5130 Payment method—Institution for mental diseases disproportionate share hospital (IMDDSH) and institution for mental diseases (IMD) state grants. (1) A psychiatric hospital owned and operated by the state of Washington is eligible to receive payments under the institution for mental diseases disproportionate share hospital (IMDDSH) program.

(2) For the purposes of the IMDDSH program, the following definitions apply:

(a) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than (~~sixteen~~) 16 beds, that is primarily engaged in providing diagnosis, treatment, or

care of people with mental diseases, including medical attention, nursing care, and related services.

(b) "Psychiatric community hospital" means a psychiatric hospital other than a state-owned and operated hospital.

(c) "Psychiatric hospital" means an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mentally ill people. The term applies to a medicare-certified distinct psychiatric care unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital.

(d) "State-owned and operated psychiatric hospital" means eastern state hospital and western state hospital.

(3) Except as provided in subsection (4) of this section, a psychiatric community hospital, regardless of location, is not eligible to receive:

(a) IMDDSH payments; or

(b) Any other disproportionate share hospital (DSH) payment from the medicaid agency. See WAC 182-550-4800 regarding payment for psychiatric claims for clients eligible under the medical care services programs.

(4) A psychiatric community hospital within the state of Washington that is designated by the agency as an IMD is eligible to receive IMDDSH payment if:

(a) IMDDSH funds remain available after the amounts appropriated for state-owned and operated psychiatric hospitals are exhausted; and

(b) The legislature provides funds specifically for this purpose.

~~(5) ((A psychiatric community hospital within the state of Washington that is designated by the agency as an IMD is eligible to receive a state grant amount from the agency if the legislature appropriates funds specifically for this purpose.~~

~~(6) An institution for mental diseases located out-of-state, including an IMD located in a designated bordering city, is not eligible to receive a Washington state grant amount.~~

~~(7))~~ Under federal law, 42 U.S.C. 1396r-4 (h) (2), the state's annual IMDDSH expenditures are capped at ~~((thirty-three))~~ 33 percent of the state's annual statewide DSH cap. This amount represents the maximum that the state can spend in any given fiscal year on IMDDSH, but the state is under no obligation to actually spend that amount.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-550-5210	Payment method—Small rural indigent assistance disproportionate share hospital (SRIADSH).
WAC 182-550-5220	Payment method—Nonrural indigent assistance disproportionate share hospital (NRIADSH).
WAC 182-550-5380	Payment method—Sole community disproportionate share hospital (SCDSH).